

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 679 Legislative Review of Proposed Regulation of Unregulated Functions
SPONSOR(S): Business & Professions Subcommittee, Hage, and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	14 Y, 0 N, As CS	Brackett	Anstead
2) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N	Moehrle	Harrington
3) Commerce Committee	23 Y, 0 N	Brackett	Hamon

SUMMARY ANALYSIS

A sunrise review is a formal process of review requiring a cost-benefit analysis be conducted before legislation proposing to regulate an unregulated profession or occupation is enacted.

Florida's sunrise review, which was enacted in 1991, is called the Sunrise Act. The Sunrise Act requires the legislature to consider certain factors before determining whether to regulate an unregulated profession or occupation. Those factors include:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare;
- Whether the practice of the profession or occupation requires specialized skill or training;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The bill amends the Sunrise Act too:

- Provide that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation;
- Require proponents of a regulation to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the state agency that is proposed to have jurisdiction of the regulation, no later than 30 days prior to the session in which the legislation is to be filed; and
- Require the state agency proposed to have jurisdiction to provide certain information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the regulation within 25 days after receiving the legislation.

The bill may have a fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.¹ Generally, an individual obtains permission from the government to perform a certain type of work by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and exams. If the individual successfully completes the pre-determined criteria the government issues the individual a license, which allows them to perform the work.²

In the 1950s, less than five percent of U.S. workers were required to have a license to do their jobs. Since then the number of workers required to have a license has risen five-fold to more than one-quarter of U.S. workers with most of these workers being licensed by the states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.³

In 2015, the White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully requiring occupational licenses offers important health and safety protections to consumers, as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and
- Work to reduce licensing's barriers to mobility.

Policy makers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.⁴

¹ The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Feb. 22, 2019).

² Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, <https://www.bls.gov/cps/certifications-and-licenses-faqs.htm>, (last visited on Feb. 22, 2019).

³ White House *supra* note 1 at 3.

⁴ *Id.*

Sunrise Review

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis to be conducted before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.⁵

Currently thirteen states, including Florida, have sunrise reviews.⁶ However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.⁷ Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.⁸ Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.⁹ Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.¹⁰

Florida's Sunrise Act

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

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

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

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

⁵ *Id.* at 48; Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx> (last visited Feb. 22, 2019); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, <https://www.clearhq.org/page-486181> (last visited Feb. 22, 2019).

⁶ White House *supra* note 1 at 48.

⁷ Colo. Rev. Stat. § 24-34-104.1.

⁸ Minn. Stat. § 214.002.

⁹ ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.

¹⁰ S. 11.62(4), F.S.

The Sunrise Act requires proponents of legislation that proposes new regulation on professions or occupations to provide the following information, **upon request** by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

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

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

State Agency Rulemaking and Statements of Estimated Regulatory Costs (SERC)

State agencies are required to follow the Administrative Procedure Act (APA)¹¹ which sets forth a uniform set of procedures that agencies must follow when exercising authority to make rules delegated

¹¹ Ch. 120, F.S.
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to the agency by the legislature. Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to “adopt, develop, establish, or otherwise create” rules.¹²

A state agency is required by the APA in certain circumstances to complete a statement of estimated regulatory costs (SERC), which is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule. A SERC is required, however, if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate within one year after implementation of the rule.¹³ A SERC must include:

- Good faith estimates of the number of people and entities affected by the proposed rule;
- Good faith estimates of the cost to the agency and other governmental entities to implement the proposed rule;
- Good faith estimates of the transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs is defined to mean direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs;
- An analysis of the proposed rule’s impact on small businesses, counties, and cities; and
- Any additional information that the agency determines may be useful.¹⁴

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹⁵

Effect of the Bill

The bill provides that in addition to applying to legislation that regulates an unregulated profession or occupation, the Sunrise Act also applies to legislation that substantially expands regulation of an already regulated profession or occupation. The bill defines the term “substantial expansion of regulation” to mean to expand the scope of practice for current practitioners of a profession or occupation by regulating an activity that is not regulated by the state.

The bill requires proponents of legislation proposing regulation to provide the Legislature and the state agency proposed to have jurisdiction certain information documenting the need for regulation by a certain time, instead of doing so only upon request. The proponents must also file a draft of the legislation and a summary of any bills on the same subject that have been filed with the Legislature in the preceding five years. The proponents must provide this information to the President of the Senate, the Speaker of the House of Representatives, and the agency proposed to have jurisdiction over the regulation at least 30 days before the session in which the legislation is filed.

In addition to the current information an agency must provide to the Legislature, the bill provides that an agency must also provide the Legislature with the following information:

- Good faith estimates of the number of people and entities affected by the proposed regulation;
- Good faith estimates of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance. Transactional costs are defined to mean direct costs that are ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures

¹² Ss. 120.52(16)-(17) & 120.54(1)(a), F.S.; Ch. 120, F.S.

¹³ Ss. 120.54(3)(b) & 120.541(2), F.S.

¹⁴ S. 120.541(2)(b), F.S.

¹⁵ *Id.*

required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule;

- The anticipated costs to implement and enforce the proposed regulation, and any anticipated license fees necessary to cover the anticipated costs;
- Whether additional statutory or rulemaking authority is necessary to implement and enforce the proposed regulation;
- A comparison of similarly situated professions and occupations regulated by the agency;
- The anticipated impact of the proposed regulation's impact on small businesses, counties, and cities;
- The anticipated impact of the proposed regulation's impact on economic growth, private-sector job creation or employment, and business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets; and
- Any other information the agency determines relevant to the analysis of the proposed regulation.

The bill provides that the state agency proposed to have jurisdiction must provide the information to the President of the Senate, the Speaker of the House of Representatives, and the proponents of the legislation within 25 days of receiving the draft legislation from the proponents. If a state agency fails to provide the required information, they must notify the proponents of the legislation, the President of the Senate, and the Speaker of the House of Representatives that they could not comply with the Sunrise Act's requirements because the agency was unable to acquire sufficient information.

B. SECTION DIRECTORY:

Section 1. Amends s. 11.62, F.S., revising the requirements of the Sunrise Act.

Section 2. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate, positive impact on the private sector.

D. FISCAL COMMENTS:

The fiscal impact of the bill on state government is indeterminate.

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2019, the Business & Professions Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute changed some of the requirements regarding the review of proposed regulations by the legislature.

The staff analysis has been updated to reflect the committee substitute approved by the Business & Professions Subcommittee.