

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 667 Department of Business and Professional Regulation

SPONSOR(S): Commerce Committee, McClain

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
3) Commerce Committee	19 Y, 0 N, As CS	Wright	Hamon

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including asbestos professionals, mold-related professionals, electrical contractors, public lodging establishments, public food service establishments, veterinarians, and malt beverage manufacturers.

Related to mold-related professional licensing regulations, the bill provides a pathway for a person who holds a license in another state to obtain a Florida license.

Related to asbestos professional licensing regulations, the bill:

- provides a limited pathway for a person licensed in another state to get a Florida license, and
- removes the requirement to show limits of bondability and credit to demonstrate financial stability.

Related to electrical contractors licensing regulations, the bill allows certain local electrical and alarm contractors to be licensed statewide.

Related to pugilistic exhibitions, the bill removes the maximum participant weight differential requirement for all exhibition matches, which will allow any exhibition to include participants not in the same weight category.

Related to public lodging establishments and public food service establishments, the bill:

- requires licensees to submit certain documents, fees, and communications online;
- requires licensees to provide an email address for primary communication with DBPR;
- allows the guest registry at a transient public lodging establishment to be kept online;
- allows 2-year renewals on licenses, instead of only 1-year renewals;
- removes the requirement for a staggered initial license fee schedule; and
- exempts outdoor ovens or outdoor kitchen equipment from certain operational requirements.

Related to veterinarians, the bill allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals.

Related to malt beverage manufacturers, the bill limits the annual registration fee for each malt beverage brand and label to a brand or label that is sold to a distributor, not to a brand or label that is kept in-house.

The bill has a significant negative fiscal impact on state government revenues in the Hotel and Restaurant Trust Fund. The estimated loss of licensing revenue for the Division of Hotels and Restaurants over three fiscal years is \$5.1 million (6% annually). There is a minimal positive impact on state expenditures. There is no fiscal impact on local governments and a significant positive fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 2022.

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

STORAGE NAME: h0667e.COM

DATE: 2/17/2022

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through the following divisions:

- 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.¹

The Division of Professions licenses and regulates various professions through 12 professional boards, five programs, and one council, including the:²

- Asbestos Licensing Unit,
- Electrical Contractors' Licensing Board (ECLB), and
- Mold-Related Services Program.

The Division of Regulation is the enforcement authority for Labor Organizations and Business Agents, the Florida Athletic Commission (FAC), Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.³

The Division of Hotels and Restaurants (H&R) licenses, inspects, and regulates public lodging and food service establishments in Florida..⁴

Mold-Related Services

Background

Mold assessors and mold remediators are regulated by ch. 468, part XVI, F.S., and licensed by the Mold-Related Services Licensing Program⁵ in DBPR.

“Mold assessment” means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than ten square feet.⁶

¹ S. 20.165, F.S.

² Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/DBPR/division-of-professions/> (last visited Jan. 14, 2022).

³ 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/division-of-regulation/> (last visited Jan. 14, 2022).

⁴ Florida Department of Business and Professional Regulation, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Jan. 14, 2022).

⁵ S. 468.84, F.S.

⁶ S. 468.8411(3), F.S.

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.⁷

In order to be licensed as a mold assessor or mold remediator, an applicant must:

- be of good moral character,
- pass the required DBPR-approved examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation,
- have required liability insurance, and
- complete either:
 - at least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
 - a high school diploma or the equivalent with a minimum of four years of experience.⁸

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:⁹

- are of good moral character;
- hold required general liability insurance;
- hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the required Florida examination.

Applicants for a mold-related license pay an initial licensure fee of \$230. There are currently 2,700 licensed mold assessors and 2,727 licensed mold remediators in the state.¹⁰

Effect of the Bill

The bill allows applicants who hold a mold-related license in another state to obtain a license by endorsement in Florida, if they have held a valid license to practice in another state or territory of the United States for at least ten years before the date of application, without needing to take a Florida-specific examination or training.

Such applications for a Florida license by endorsement must be made either when the applicant’s license in another state or territory is active or within two years of when such license was last active.

The bill clarifies the provision relating to licensure examination requirements.

Asbestos Consultants and Contractors

Background

Asbestos consultants and contractors are regulated by ch. 469, F.S., and licensed by the Asbestos Licensing Unit in DBPR. Florida licensing standards must also comply with the U.S. Environmental Protection Agency’s Asbestos Model Accreditation Plan for States(MAP), which includes mandatory nationwide standards for testing and education.¹¹

“Asbestos abatement” means the removal, encapsulation, enclosure, or disposal of asbestos.¹²

⁷ S. 468.8411(5), F.S.

⁸ S. 468.8413(2), F.S.

⁹ S. 468.8414(3), (4), F.S.

¹⁰ Email from Cody McCloud, Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 667 (Jan. 6, 2022).

¹¹ 40 C.F.R. § 763 Appendix C to Subpart E.

¹² S. 469.001(1), F.S.

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abatement specifications.¹³

An asbestos contractor may perform the work of an asbestos consultant and conduct asbestos abatement work.¹⁴

In order to be eligible to be licensed as an asbestos consultant or contractor, an applicant must meet one of the following criteria:¹⁵

- hold a current, valid, active license as an architect issued under ch. 481, F.S.;
- hold a current, valid, active license as a professional engineer issued under ch. 471, F.S.,
- hold a current, valid, active license as a professional geologist under ch. 492, F.S.;
- be a diplomat of the American Board of Industrial Hygiene; or
- have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

An applicant for licensure as either an asbestos consultant or contractor must also:¹⁶

- if applying for an asbestos consultant license, complete DBPR-approved courses in the following topics:
 - building asbestos surveys and mechanical systems,
 - asbestos management planning,
 - respiratory protection, and
 - project designer.
- if applying for an asbestos contractor license, complete courses in the following topics:
 - asbestos contractor/supervisor, and
 - respiratory protection.
- provide evidence of satisfactory work on ten asbestos projects within the last five years,
- provide evidence of financial stability, and
- pass the DBPR-approved examination.

In order to determine financial stability and adopt standards in related rules,¹⁷ DBPR must use both the applicant's credit history and **limits of bondability and credit**.¹⁸

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay a business license fee of \$555, an initial licensure fee of \$555, and an examination fee of \$340.¹⁹ There are currently 119 licensed asbestos contractors and 106 licensed asbestos consultants in the state.²⁰ DBPR has received an average of 33 asbestos applications per year over the last three fiscal years.²¹

Effect of the Bill

The bill allows applicants who hold an asbestos license in another state license to obtain a license by endorsement in Florida if they have:

- passed a written examination in any state that meets the requirements of MAP,

¹³ S. 469.003, F.S.

¹⁴ S. 469.003(3), F.S.

¹⁵ S. 469.004(1), F.S.

¹⁶ S. 469.005, F.S.

¹⁷ The standards for determining an applicant's financial stability can be found in r. 61E1-4.002, F.A.C.

¹⁸ S. 469.006(2)(c)2., F.S.

¹⁹ R. 61E1-3.001, F.A.C.

²⁰ DBPR, *supra* note 10.

²¹ Department of Business and Professional Regulation (DBPR), Agency Analysis of 2022 Senate Bill 714, p. 9 (Jan. 14, 2022).

- held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least ten years,
- demonstrated financial stability, and
- completed the required DBPR-approved courses.

Such applicants must apply while they hold an active license in another state or territory or within 2 years after such license was last active.

The bill removes the requirement that applicants show **limits of bondability and credit** in order to prove financial stability. Applicants will still need to provide their credit history to meet financial stability standards.

Electrical Contractors

Background

Statewide electrical, alarm system, and specialty contractors are regulated by of ch. 489, part II, F.S., and licensed and regulated by the ECLB within DBPR.²² An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.²³

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.²⁴

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service burglary, fire, robbery, or medical emergency alarm systems.²⁵

In order to become a certified electrical, alarm system, or specialty contractor, an applicant must:²⁶

- be at least 18 years of age;
- be of good moral character;
- pass the certification examination;
- have workers' compensation insurance or an exemption, and public liability and property damage insurance; and
- meet certain training and education criteria.

A registered contractor is an individual that have taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.²⁷ Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.²⁸

Section 489.514, F.S., created a pathway that allowed registered local electrical and alarm contractors who met certain criteria to have their local registration converted into a certified statewide license by the ECLB. The provision required applicants to apply by November 1, 2021, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any registered contractor wishing to have their license "grandfathered" into a certified license had to submit a completed application to the ECLB, pay an appropriate fee, and show evidence of the following criteria:

²² S. 489.507, F.S.

²³ S. 489.505(9), F.S.

²⁴ Ss. 489.505(12) & 489.537(7), F.S.

²⁵ S. 489.505(1)-(2), F.S.

²⁶ S. 489.511(1) & (4), F.S.

²⁷ S. 489.505(21)-(23), F.S.

²⁸ S. 489.513, F.S.

- currently holds a valid registered local license in the certification of electrical contractor, alarm system contractor, or electrical specialty contractor sought;
- has, for the certification category sought, passed a written, proctored examination that the ECLB finds to be substantially similar to the examination required to be licensed as a certified contractor;
- has at least five years of experience as a contractor in the certification category sought, or as an inspector or building administrator with oversight over that category. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the required five years;
- has not had the contractor's license revoked at any time, suspended in the last five years, or assessed a fine in excess of \$500 in the last five years; and
- has the required workers' compensation insurance or an exemption, and public liability and property damage insurance.²⁹

DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.³⁰

Effect of the Bill

The bill reopens the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors without an expiration date.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the FAC under DBPR. The function of the FAC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FAC ensures that all matches are conducted in accordance with provisions of state laws and rules.

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,³¹ matchmaker, or promoter must be licensed by FAC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:³²

- complete an application in a form prescribed by the FAC;
- be at least 18 years of age; and
- pay an application fee.

An "exhibition" is a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.³³ Participants in an exhibition, except one held solely for training purposes, must weigh within 12 pounds of each other.³⁴

Effect of the Bill

The bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants that are more than 12 pounds from each other.

Hotels and Restaurants

²⁹ S. 489.514, F.S.

³⁰ DBPR, *supra* note 21, at 9.

³¹ A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.

³² S. 548.021, F.S.

³³ S. 548.002(8), F.S.

³⁴ S. 548.043(2), F.S.

“Public lodging establishment” includes:³⁵

- “Transient public lodging establishments,” which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests; and
- “Nontransient public lodging establishments,” which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.³⁶

“Public food service establishments” means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.³⁷

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.³⁸

Electronic Communications - Background

While H&R has rulemaking authority to adopt rules to implement ch. 509, F.S., H&R does not have authority to adopt rules to require electronic submissions for any required document or fee from a licensee or for H&R to require online communications with a licensee.³⁹ There is also no statutory requirement that such documents, fees, or communications be transmitted online or for licensees to provide an email address to H&R.⁴⁰

Notices that are served by H&R must be delivered to the operator of a licensed establishment by an H&R agent or by registered mail. If H&R is unable to effect service, the notice may be conspicuously posted at the licensee’s establishment.⁴¹ Inspection reports may be served via electronic means.

Each transient public lodging establishment is required to maintain a register of guests who occupy rental units in the establishment. The guests must also sign the registry. There is not a specific allowance that the registry may be kept in an electronic format.

Electronic Communications – Effect of the Bill

The bill gives rulemaking authority to H&R to adopt rules to mandate that certain documents, fees, and communications must be made online. The bill allows H&R to prescribe requirements and procedures for exemptions due to a technological or financial hardship.

The bill requires all H&R licensees to provide an email address to function as the primary method of communication with H&R.

³⁵ S. 509.013(4), F.S.

³⁶ S. 509.242, F.S.

³⁷ S. 509.013(5), F.S.

³⁸ R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/> (last visited Jan. 14, 2022).

³⁹ S. 509.032, F.S.

⁴⁰ S. 509.091, F.S.

⁴¹ S. 509.091(1), F.S.

The bill allows H&R to serve notices or inspection reports to the operator of licensed establishments via email, in addition to in-person service and mail.

The bill allows the guest registry at a transient public lodging establishment to be kept online, and will no longer require guests to sign the registry.

Licensure Fees – Background

Each public lodging establishment and public food service establishment must obtain a license from H&R. Licenses are renewed annually, and H&R must adopt a rule establishing a staggered schedule for license renewals.⁴²

The staggered initial license fee schedules require such establishments applying for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal period, and one-half of the fee if the application is made six months or less before the next renewal period.⁴³ For example: if an applicant is applying for a hotel license with between 26 and 50 rental units, the initial license fee is \$215, but if such applicant is applying for the license less than six months before the beginning of the next renewal period, the initial license fee is \$112.50. Such applicant will need to pay the full annual fee when the next renewal period begins.⁴⁴

H&R adopts, by rule, a schedule of fees to be paid by each public lodging establishment and public food service establishment for the issuance or renewal of a license. Such fees are based on the number of rental units in the public lodging establishment and based on seating capacity and services offered for public food service establishments. Licenses must be renewed annually.⁴⁵ License fees generally range from \$91 for a temporary food vendor to \$357 for a hotel with 501 or more rental units.⁴⁶

Licensure Fees – Effect of the Bill

The bill removes the requirement for a staggered initial license fee schedule for public lodging establishments and public food service establishments, and instead provides for an initial license that may be renewed for one or two years. Applications for licensure must be made on forms provided by H&R, and H&R must adopt a rule for license issuance and renewal procedures.

The bill provides that license renewal fees for public lodging establishments must be based on the number of rental units in the establishment and whether the renewal is for one or two years. License renewal fees for public food service establishments must be based on the classification of the license and whether the renewal is for one or two years.

The bill provides that the statutory maximum fee for a public lodging establishment for a two-year renewal is set at \$2,000, which is double the currently allowed maximum for annual renewals. The statutory maximum fee for a public food service establishment for a two-year renewal is set at \$800, which is double the currently allowed maximum for annual renewals.

The bill clarifies that all fees be must be paid by the applicant when the license application is submitted to H&R.

⁴² S. 509.241(1), F.S.

⁴³ S. 509.251(1), (2), F.S.

⁴⁴ S. 509.251(1), (2), F.S.; Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Jan. 14, 2022).

⁴⁵ S. 509.251(1), (2), F.S.

⁴⁶ R. 61C-1.008, F.A.C.

Outdoor Kitchen Equipment – Background

Each person who plans to open a public food service establishment is required to apply for and receive a license from H&R prior to the commencement of operation. Applicants are required to complete the following:⁴⁷

- **Food service plan review.** This requirement is applicable to new restaurants, remodeled restaurants, re-opened restaurants that have been closed for at least one year and restaurants that have been converted from another use. The plan must be submitted to H&R for approval.
- **Application forms.** Applicants must complete the appropriate application forms. If the restaurant will be serving alcohol, applicants will need to apply for a liquor license.
- **License fees.** Applicants must pay a license fee based on the type of food service operation and the number of seats.

H&R has the right of entry and access to public food service establishments at any reasonable time.⁴⁸

The regulation of public food service establishments is preempted to the state. This does not preempt the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.⁴⁹

H&R is required, upon proper finding, to immediately issue an order to close a licensed public food service establishments in the instance of a severe and immediate public health or safety or welfare threat.⁵⁰

H&R Sanitation Rules

H&R is required to adopt and enforce sanitation rules to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by H&R.⁵¹

Effective November 1, 2019, H&R has adopted the 2017 Food and Drug Administration (FDA) Food Code, which establishes practical, science-based guidance and enforceable provisions for reducing risk factors known to cause or contribute to foodborne illness.⁵²

The FDA Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service. This model is offered for adoption by local, state, and federal governmental jurisdictions for food service, retail food stores, or food vending operations.⁵³

The FDA Food Code provides Recommended Guidelines for Outdoor Cooking Operations at Permanent Food Establishments (OCO).⁵⁴ OCOs may offer a wide range of cooking methods, from

⁴⁷ See ch. 509, F.S.

⁴⁸ S. 509.032(2)(b), F.S.

⁴⁹ S. 509.032(7), F.S.

⁵⁰ S. 509.035, F.S.

⁵¹ S. 509.032(2)(d), F.S.

⁵² Rule 61C-1.001(12), F.A.C.

⁵³ U.S. Public Health Service, FDA Food Code 2017, p. 327, <http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited Feb. 16, 2022).

⁵⁴ FDA, Recommended Guidance for Outdoor Cooking Operations at Permanent Food Establishments, <http://www.foodprotect.org/guides-documents/> (last visited Feb. 16, 2022).

barbecue pits at beach resorts to campfire meals at dude ranches, pig roasts and clam bakes, and multi-menu food service sites in amusement and theme parks.⁵⁵

The provision addressing overhead protection for OCOs requires each individual piece of cooking and hot and cold holding equipment to be separately covered (cooker top, chafing dish lid, etc.) or have overhead protection.⁵⁶

Outdoor Kitchen Equipment – Effect of the Bill

The bill allows outdoor kitchen equipment to be used to prepare, serve, or sell food for immediate consumption.

The bill defines “outdoor kitchen equipment” as equipment used to prepare, serve, or sell food for immediate consumption, including a cooking appliance, that is owned by, is adjacent to, and operates in conjunction with a licensed public food service establishment.

The bill provides that outdoor kitchen equipment is not required to be separately covered, have overhead protection or hoods, or be enclosed. However, outdoor kitchen equipment must meet all other applicable laws, codes, standards, and rules, including for fire safety and sanitation.

The bill requires any food that is prepared on outdoor kitchen equipment be kept at appropriate temperatures and prepared using sanitation practices. Such food may not be permanently stored outdoors, but may be temporarily stored outside the licensed food service establishments’ enclosure while preparation is taking place on such kitchen equipment.

The bill provides that use of outdoor kitchen equipment is subject to all other laws that apply to public food service establishments, including but not limited to, sanitation standards, food safety training, inspections, enforcement, and disciplinary action.

The bill bars local laws, ordinances, or regulations from prohibiting, or have the effect of prohibiting, the use of outdoor kitchen equipment.

The bill allows H&R or a local health department from issuing and enforcing an order to cease and desist the use of outdoor kitchen equipment if the equipment is the source of an adulterated food or of an outbreak of illness caused by contaminated food.

Malt Beverages Brand or Label Registration

Background

In Florida, alcoholic beverages are regulated by the Beverage Law,⁵⁷ which regulates and licenses the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.⁵⁸ The Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.⁵⁹

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer. A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.

⁵⁵ U.S. Public Health Service, FDA Food Code 2017, p. 327, <http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf> (last visited Feb. 16, 2022).

⁵⁶ FDA, *supra* note 54, at 5.

⁵⁷ S. 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

⁵⁸ See s. 561.14, F.S.

⁵⁹ S. 561.02, F.S.

Generally, Florida has adopted the three-tier system. Exceptions to the three-tier regulatory system permit in-state wineries,⁶⁰ breweries,⁶¹ and craft distilleries to be licensed as a vendor and sell directly to consumers under certain circumstances.⁶²

No manufacturer, brewer, bottler, distributor, or importer of malt beverages may sell or offer for sale in Florida, or move or cause to be moved within or into Florida, any malt beverages, without:⁶³

- qualifying to do business in the state and registering with ABT its name and the brands or labels under which the malt beverages are to be sold or moved; and
- furnishing any samples and information as to content, quality, and formula of such malt beverages as ABT may require.

Each registrant must pay an annual registration fee to ABT of \$30 for a brand or label.⁶⁴

Effect of the Bill

The bill provides that the annual registration fee of \$30 for each malt beverage brand and label only applies to **a brand or label that is sold to a distributor**, not to a brand or label that is kept in-house.

The bill also specifies that no other annual registration fee for a brand or label is authorized under the provision.

Rabies Vaccinations for Impounded Animals

Background

The Board of Veterinary Medicine under DBPR licenses and regulates veterinarians in Florida.⁶⁵

A “veterinarian” is a health care practitioner licensed by DBPR to engage in the practice of veterinary medicine in Florida⁶⁶ and subject to disciplinary action for various violations of the practice act.⁶⁷

The practice of “veterinary medicine” is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁶⁸

Rabies Vaccinations

All dogs, cats, and ferrets four months of age or older must be vaccinated **by a licensed veterinarian** against rabies with a vaccine that is licensed by the U.S. Department of Agriculture for use in those species. The owner must have the animal revaccinated 12 months after the initial vaccination, and subsequent vaccinations must conform to the vaccine manufacturer’s directions. The cost of vaccination must be borne by the animal’s owner. Violations of this requirement are a civil infraction, punishable as provided in s. 828.27(2), F.S.⁶⁹

Currently, Florida law does not appear to allow anyone other than the veterinarian to administer the rabies vaccine. The law allows certain vaccines, anesthesia and tranquilization to be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while

⁶⁰ See s. 561.221(1), F.S.

⁶¹ See s. 561.221(2), F.S.

⁶² See s. 565.03, F.S.

⁶³ S. 563.045(1), F.S.

⁶⁴ S. 563.045(2), F.S.

⁶⁵ S. 474.201, F.S.

⁶⁶ S. 474.202(11), F.S.

⁶⁷ Ss. 474.213 & 474.214, F.S.

⁶⁸ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

⁶⁹ S. 828.30(1), F.S.

under the “immediate supervision” of a licensed veterinarian.⁷⁰ In addition, the following tasks may be performed without the licensed veterinarian on the premises:

- The administration of medication and treatment, **excluding vaccinations**, as directed by the licensed veterinarian; and
- The obtaining of samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.⁷¹

The Board has recognized that the following diseases are communicable to humans and are of public health significance, and as a result, **only a veterinarian** is authorized to immunize or treat an animal for these diseases. The diseases include:

- Brucellosis.
- Tuberculosis.
- Rabies.
- Equine Encephalomyelitis.⁷²

Effect of the Bill

The bill allows an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.

The bill defines "indirect supervision," to mean the supervising veterinarian must be available for consultation through telecommunications but is not required to be on the premises during such consultation. The supervising veterinarian assumes responsibility for the veterinary care given to the animal by any person working under or at his or her direction and supervision.

The bill authorizes veterinarians who supervise an employee, agent, or contractor of an animal control authority administering the rabies vaccination to an animal to affix his or her signature stamp in lieu of an actual signature.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 468.8414, F.S., revising licensure requirements for mold assessors and remediators.
- Section 2:** Amends s. 469.004, F.S., revising licensure requirements for asbestos consultants and contractors.
- Section 3:** Amends s. 469.006, F.S., revising licensure requirements for asbestos consultants and contractors.
- Section 4:** Amends s. 474.203, F.S., adding a cross reference.
- Section 5:** Amends s. 489.514, F.S., removing a deadline for an electrical contractor licensing provision.
- Section 6:** Amends s. 509.032, F.S., providing rulemaking authority for electronic form submissions for hotels and restaurants.
- Section 7:** Amends s. 509.091, F.S., revising requirements for hotel and restaurant inspection reports.
- Section 8:** Amends s. 509.101, F.S., revising requirements for hotel guest registries.
- Section 9:** Amends s. 509.105, F.S., providing requirements for outdoor kitchen equipment.
- Section 10:** Amends s. 509.241, F.S., revising license provisions for public lodging establishments and public food service establishments.
- Section 11:** Amends s. 509.251, F.S., revising fee schedules for public lodging establishments and public food service establishments.

⁷⁰ S. 474.202(5), F.S., defines “immediate supervision” or words of similar purport to mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.

⁷¹ R. 61G18-17.005, F.A.C.

⁷² R. 61G18-17.006, F.A.C.

- Section 12:** Amends s. 548.043, F.S., revising participant weight differentials for certain pugilistic exhibitions.
- Section 13:** Amends s. 563.045, F.S., revising requirements for malt beverage brand or label fees.
- Section 14:** Amends s. 828.30, F.S., allowing certain animal control agency employees to administer a rabies vaccination under certain circumstances.
- Section 15:** Reenacts s. 509.102, F.S., relating to mobile food dispensing vehicles.
- Section 16:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR expects the following fiscal impacts on revenues:⁷³

Division of Hotels and Restaurants

DBPR’s internal projections for FY 2022-23 indicate the bill would reduce H&R’s license revenues in the Hotel and Restaurant Trust Fund by approximately \$1.7 million (6%) and a total of \$5.1 million over the next three fiscal years. These figures assume a 2.81% annual growth rate in H&R license revenue.

	FY22-23	FY23-24	FY24-25
Impact of HB 667 on Licensing Revenue ⁷⁴	\$(1,652,302)	\$(1,698,775)	\$(1,746,556)
Change as %	- 6%	- 6%	- 6%

Under the current license fee structure, about 58% of new applicants pay an initial license fee for some fraction of time and then pay H&R again to renew their license within the same fiscal year.

Under the bill, H&R will collect a slightly larger initial license fee and a lower amount of renewal fees during the first year of licensure for each new license. The bill would eliminate half year prorating of license fees, replacing it with a full year, which slightly increases revenue, but results in a true “annual license” from the start with no same fiscal year renewals.

H&R is unable to predict how many licensees will choose a 2-year license or renewal, so it is unknown how the 2-year option would affect revenue.

The bill may cause an indeterminate decrease in brand and label fees collected by ABT.

Division of Professions

Reopening the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors would increase revenues between \$150,136 and \$399,056 over the next three years based on the potential number of eligible applicants.

2. Expenditures:

Division of Hotels and Restaurants

The bill has a positive fiscal impact on state expenditures. Due to the reduction of licensing revenue, the amount transferred to the General Revenue Fund for the 8% service charge from the Hotel and Restaurant Trust Fund would be reduced by approximately \$407,810 over three fiscal years.⁷⁵ H&R also anticipates a reduction of expenditures for postage and bank fees due to the reduction in license renewals.⁷⁶

⁷³ DBPR, *supra* note 21, at 6-7.

⁷⁴ DBPR, *supra* note 21, at 10.

⁷⁵ *Id.*

⁷⁶ *Id.*

HB 667 Impact	FY 2022-23	FY 2023-24	FY 2024-25
Reduction in 8% Service Charge to General Revenue	\$132,184	\$135,902	\$139,724
Cost Savings on Postage and Bank Fees	\$12,439	\$12,789	\$13,148

The bill may have an indeterminate increase in workload for H&R related to inspections of outdoor kitchen equipment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments could see an insignificant decrease in revenues associated with renewal and reciprocity fees if eligible registered contractors choose to apply for the grandfathering provision created in the bill for ECLB licensees.

2. Expenditures:

There is an indeterminate fiscal impact on local governments. Animal control authorities will be able to administer rabies vaccinations of impounded animals without a veterinarian having to be physically present. This may create a savings for local animal control authorities to the extent they are incurring extra veterinary costs associated with veterinarians being required to be onsite to administer rabies vaccinations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors that choose to take advantage of the grandfathering provision. Thus, making more electrical contractors available to work across the state.

The removal of the bond and credit limitation proof requirement will likely reduce costs to asbestos applicants.

The bill will likely generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. DBPR estimates licensees will save about \$1.65 million in Fiscal Year 2022-23. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. Under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year.⁷⁷

The bill may have a positive impact on certain malt beverage manufacturers, who may pay less in brand and label fees to ABT.

D. FISCAL COMMENTS:

The charts below shows the projected impact of the bill⁷⁸. Despite the reduction of annual licensing revenues, the Hotel and Restaurant Trust Fund cash balance is sufficient to fund H&R staff and operations.

Hotel and Restaurant Trust Fund	FY 2022-23	FY 2023-24	FY 2024-25
Estimated Revenue - Current Licensing System	\$27,287,063	\$28,054,554	\$28,843,632
Impact of HB 667 on Licensing Revenues	-\$1,652,302	-\$1,698,775	-\$1,746,556
Estimated Revenue under Proposed Change	\$25,634,761	\$26,355,779	\$27,097,076
Impact of HB 667 on Expenditures	\$144,623	\$148,691	\$152,872
Net Impact of HB 667 (Line 2 + Line 4)	-\$1,507,679	-\$1,550,084	-\$1,593,684

⁷⁷ *Id.*

⁷⁸ DBPR, *supra* note 21, at 10.

Hotel and Restaurant Trust Fund	Current	HB 667
Carry Forward Cash Balance - June 30	\$23,608,344	\$23,608,344
Licensing Revenue	\$27,287,063	\$25,634,761
Other Revenues/Fees	\$12,506,852	\$12,506,852
<i>Less Expenditures for Fiscal Year 2022-23</i>	<i>(\$40,668,766)</i>	<i>(\$40,391,959)</i>
Fiscal Year Ending Balance	\$22,733,493	\$21,357,998

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill will require DBPR to amend rules related to asbestos licensing standards and pugilistic exhibition requirements.

The bill gives rulemaking authority to H&R to adopt rules relating to electronic communications and license issuance and renewal.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2022, the Commerce Committee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Allow an employee, agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to administer rabies vaccinations to impounded animals;
- Allows outdoor ovens at licensed public food service establishments and exempts outdoor ovens or outdoor kitchen equipment from certain requirements; and
- Provides that the annual registration fee for each malt beverage brand and label only applies to a brand or label that is sold to a distributor, not to a brand or label that is kept in-house.

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

⁷⁹ Figures for the Hotel and Restaurant Trust Fund are based on DBPR's Schedule I submitted on Sept. 15, 2021, on the Florida Fiscal Portal website available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23231&DocType=PDF>.