

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 497 Continuing Education Requirements

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Melo and others

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|--|
| 1) Regulatory Reform & Economic Development Subcommittee | 13 Y, 0 N, As CS | Herrera | Anstead |
| 2) State Administration & Technology Appropriations Subcommittee | 13 Y, 0 N | Helpling | Topp |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida. Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees. Licensees who wish to renew their license must pay a license renewal fee and may be subject to continuing education requirements and other conditions in the various practice acts.

A board, or DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services, home inspection services, mold-related services, real estate services (i.e., brokers, sales associates, and schools), and real estate appraisal services. In addition, for these specified professions, a board or DBPR may not require centralized examinations for completion of continuing education requirements.

The bill requires that a board, or DBPR in the absence of a board, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual's license.

The bill requires DBPR and relevant boards to adopt rules to implement these provisions. The bill grants DBPR authority to enact emergency rules to streamline procedures for exempting eligible individuals from continuing education, with these rules effective for 6 months and renewable during the process of adopting permanent rules. This provision expires on January 1, 2026.

The bill may have an indeterminate, insignificant negative fiscal impact on state government. See Fiscal analysis and Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

Professional Licensure

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professions in Florida.¹

DBPR has authority over the following professional boards and programs:

- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.²

Each profession is regulated by an individual practice act and by ch. 455, F.S., which provide regulatory and licensure authority. Generally, to act as a regulated professional, a person must hold an appropriate license. Applicants for licensure for each profession must meet specific statutory requirements, including education and/or experience requirements, and must pay all applicable licensing and application fees.³ Licensees who wish to renew their license must pay a license renewal fee⁴ and may be subject to continuing education requirements⁵ and other conditions in the various practice acts.

Powers and Duties of DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."⁶ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within DBPR.⁷ The term "profession" means any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁸

¹ S. 20.165, F.S.

² S. 20.165(1)-(4), F.S.

³ S. 455.201, F.S.

⁴ S. 455.203, F.S.

⁵ S. 455.2123, F.S.

⁶ Section 455.01(6), F.S.

⁷ See s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of DBPR. See s. 455.221(1), F.S.

⁸ S. 455.01(6), F.S.

DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."⁹ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹⁰

However, DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.¹¹

Ch. 455, F.S., provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹²

When a person is authorized to engage in a profession or occupation in Florida, DBPR issues a "permit, registration, certificate, or license" to the licensee.¹³ DBPR has the authority to charge license fees and license renewal fees.¹⁴ Each board within DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁵

However, the general licensing provisions for professions were revised for Fiscal Years 2023-2024 and 2024-2025,¹⁶ to direct DBPR to waive a portion of certain license fees for the professions regulated under ch. 455, F.S., as follows:

- 50 percent of the *initial licensing fee* for those applying for an initial license, up to \$200 per year per license; and
- 50 percent of the *license renewal fee* for those renewing licenses, up to \$200 per year per license.

The fee waivers may not include any applicable unlicensed activity or background check fees.

Continuing Education Course Requirements

A board, or DBPR in the absence of a board, may provide by rule that distance learning may be used to satisfy continuing education requirements. However, a board or DBPR must approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements for persons licensed to engage in community association management services,¹⁷ home inspection services,¹⁸ mold-related services,¹⁹ real estate services (i.e., brokers, sales associates, and schools),²⁰ and real estate appraisal services.²¹ In addition, for these specified professions, a board or DBPR may not require centralized examinations for completion of continuing education requirements.

⁹ S. 455.201(2), F.S.

¹⁰ *Id.*

¹¹ S. 455.201(4)(b), F.S.

¹² See s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹³ S. 455.01(4) and (5), F.S.

¹⁴ S. 455.203 and 455.213, F.S.

¹⁵ S. 455.219(1), F.S.

¹⁶ See s. 455.213(15), F.S. For Fiscal Year 2023-2024, the sum of \$50 million in nonrecurring funds was appropriated from the General Revenue Fund to DBPR to implement the fee waiver, with any unexpended funds to be used during Fiscal Year 2024 -2025 for the same purpose. See ch. 2063-68, Laws of Fla.

¹⁷ See part VIII of ch. 468, F.S.

¹⁸ See part XV of ch. 468, F.S.

¹⁹ See part XVI of ch. 468, F.S.

²⁰ See part I of ch. 475, F.S.

²¹ See part II of ch. 475, F.S.

However, the following boards have no continuing education requirements:²²

- Board of Auctioneers²³
- Talent Agencies²⁴
- Athlete Agents²⁵
- Board of Employee Leasing Companies²⁶
- Board of Professional Geologists²⁷

The terms “distance learning” and “distance-learning” are not defined in ch. 455, F.S., or elsewhere in the Florida Statutes as of the date of this analysis. However, a rule adopted by the Florida Real Estate Appraisal Board provides the term “distance education” means “education that takes place when the learner is separated from the source of instruction by time and/or distance.”²⁸

Renewal and Proration of Continuing Education Courses

A board, or DBPR in the absence of a board, has the authority to prorate continuing education for new licensees as follows:

- Half of the required continuing education for an applicant who becomes licensed with more than half of the renewal period remaining.
- No continuing education requirement for any applicant who becomes licensed with half or less than half of the renewal period remaining.

Effect of the Bill

The bill requires that a board, or DBPR in the absence of a board, must allow distance learning as an alternative to classroom courses for satisfying continuing education requirements.

Additionally, the bill requires professional boards, or DBPR if there is no board, to exempt an individual from completing the continuing education required for renewal of a license for a renewal period if:

- The individual holds an active license issued by the board or DBPR to practice the profession;
- The individual has continuously held the license for at least 10 years; and
- No disciplinary action is imposed on the individual’s license.

The exemption from continuing education requirements in the bill does not apply to engineers regulated under ch. 471, certified public accountants regulated under ch. 473, brokers, broker associates, and sales associates regulated under part I of ch. 475, appraisers regulated under part II of ch. 475, architects or interior designers regulated under part I of ch. 481, and contractors regulated under ch. 489, F.S.

The bill requires that DBPR and each relevant board adopt rules, as outlined in ss. 120.536(1) and 120.54, F.S., to implement the provisions of this section

The bill grants DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill, including streamlining procedures for exempting eligible individuals

²² DBPR, Agency Analysis of 2024 SB 382, p. 2 (Nov. 21, 2023).

²³ Ch. 468, Part VI, F.S.

²⁴ Ch. 468, Part VII, F.S.

²⁵ Ch. 468, Part IX, F.S.

²⁶ Ch. 468, Part XI, F.S.

²⁷ Ch. 492, F.S.

²⁸ In addition, the Florida Real Estate Commission (FREC) has issued its Distance Education Checklist at http://www.myfloridalicense.com/dbpr/re/documents/frec_distance_ed_chk_list.pdf (last visited Jan. 31, 2024), which lists the information required to be submitted by education providers seeking to offer FREC educational courses via distance education. The Checklist provides “[d]istance learning necessitates a high level of self-direction and should, therefore, require students to read, conduct research, complete timed exams and similar assignments, designed to measure the student’s competency relative to the required subject matter objectives.” See also other rules referencing similar but undefined terms, such as Fla. Admin. Code R. 64B15-13.001 (a Board of Osteopathic Medicine rule that provides “CME courses may be obtained in any format, including in a distance learning format, provided that the format includes an ability to interact with the presenter of the course;” and Fla. Admin. Code R. 61G4-18.001, (a Construction Industry Licensing Board rule that requires “at least 14 classroom or interactive distance learning hours of continuing education in one or more courses from a continuing education provider approved by the Board.”).

from completing continuing education. These emergency rules will be effective for 6 months, renewable during the adoption of permanent rules. This provision expires on January 1, 2026.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 455.2123, F.S., relating to continuing education.

Section 2: Amends s. 455.2124, F.S., relating to proration of or not requiring continuing education.

Section 3: Creates rulemaking authority under s. 120.54(4), F.S., for the Department of Business and Professional Regulation.

Section 4: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate effect on state government expenditures because DBPR must assess license holders for disciplinary actions before each profession's renewal cycles to determine which licensees must fulfill continuing education (CE) requirements for renewal. This assessment will influence CE renewal notifications, as well as the functioning of the Versa Regulation (VR) and Versa Online (VO) systems, and renewal processing. However, DBPR believes any potential effects could be managed within existing resources.²⁹

Moreover, the fiscal impact on the service operations division remains indeterminate. The CE exemption for eligible licenses is expected to decrease call volumes to the Customer Contact Center during peak renewal periods. However, the precise number of potentially exempted licensees who historically contacted the Customer Contact Center regarding CE reporting to the department cannot be determined at this time.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. Continuing education providers may experience a decrease in revenue because of licensees being exempt from continuing education requirements if certain requirements are met. While, licensees may experience a decrease in expenditures as a result of being able to complete more continuing education via distance learning, as well as being exempt from continuing education requirements if certain requirements are met.

D. FISCAL COMMENTS:

None.

²⁹ DBPR, Agency Analysis of 2024 SB 382, p. 7 (Nov. 21, 2023).

³⁰ *Id.*

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:

The bill requires rulemaking by DBPR and the affected board, and authorizes emergency rulemaking by DBPR pending the adoption of permanent rules to implement the exemption from continuing education requirements granted to eligible licensees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DBPR recommends that the following professions be excluded from the provisions of the bill, so that the affected licensees will be kept informed of laws, rules, and industry advancements to protect the health, safety, and welfare of the public, and the portability of such licensing for use in other jurisdictions will be maintained³¹:

- Certified Public Accountants³²;
- Veterinary Medicine;
- Landscape Architecture;
- Cosmetology and Barbers;
- Building Code Administrators and Inspectors;
- Community Association Managers; and
- Construction Contractors.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform and Economic Development Subcommittee considered the bill, adopted an amendment, an amendment to the amendment, and reported the bill favorably as a committee substitute. The amendment makes the following changes:

- Removed provisions related to medical boards or departments regulated by the Department of Health.
- Exempted the following professionals from the provisions that allow professional licensees with more than 10 years' experience to skip continuing education requirements:
 - Brokers, broker associates and sales associates, in addition to engineers, CPA's, appraisers, interior designers, and contractors, which are already exempted in this bill.
- Granted DBPR rulemaking authority to adopt emergency rules for the purpose of implementing the amendment made by the bill.
- Made technical changes.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform and Economic Development Subcommittee.

³¹ *Id.* at 9.

³² DBPR's General Counsel's Office indicates that 30 to 40 percent of prosecutions of certified public accountants (CPAs) involve the failure to meet continuing education requirements, so the elimination of the continuing education requirement for CPAs who have held active licenses continuously for at least 10 years with no disciplinary action imposed on the license could result in fewer violations and prosecutions. *Id.* at 10.