

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

DATE: March 15, 1994

REVISED: \_\_\_\_\_

SUBJECT: Business and Professional Regulation

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>De-Marsh- Mathues</u>	<u>Masterton</u>	<u>PR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____

## I. Summary:

The bill amends various sections of law relating to the organization of the Department of Business and Professional Regulation (DBPR) and the department's regulation of professions and business entities. The bill includes changes to chapters 120, 215, and 455, F.S., relating to the department's general powers and duties to implement and enforce professional regulation. The bill amends the provisions of the "Sunrise Act" to clarify that these provisions apply to any state agency that is proposed to have jurisdiction over previously unregulated professions or occupations. The bill resolves conflicting provisions in chapter 455, F.S., created by sections of chapter 92-33 and chapter 92- 149, L.O. F.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

ss. 11.62, 20.165, 20.42, 24.108, 83.49, 110.205, 120.57, 154.04, 190.009, 192.037, 205.065, 205.194, 210.01, 210.021, 210.151, 210.20, 210.25, 210.31, 210.405, 210.75, 212.08, 213.053, 215.37, 216.0165, 229.8075, 231.262, 240.4075, 253.025, 255.565, 282.1095, 309.01, 310.002, 310.011, 326.002, 337.162, 370.07, 381.0036, 381.0039, 381.004, 381.0065, 381.0072, 386.203, 394.907, 395.3025, 397.419, 397.451, 399.01, 400.211, 400.414, 400.506, 402.48, 403.0877, 403.708, 403.7197, 409.905, 415.107, 415.51, 440.02, 455.017, 455.11, 455.201, 455.203, 455.205, 455.208, 455.211, 455.217, 455.219, 455.2175, 455.218, 455.219, 455.221, 455.2224, 455.223, 455.224, 455.225, 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.236, 455.241, 455.243, 455.245, 455.26, 455.303, 455.304, 455.306, 455.307, 455.309, 457.102, 457.103, 458.305, 458.307, 458.3125, 458.320, 458.346, 458.347, 459.003, 459.004, 459.0085, 459.022, 460.403, 460.404, 460.4104, 461.003, 461.004, 462.01, 463.002, 463.003, 464.003, 464.004, 465.003, 465.004, 465.017, 466.003, 466.004, 467.003, 467.004, 468.1125, 468.1135, 468.1315, 468.1655, 468.1665, 468.352, 468.382, 468.384, 468.385, 468.392, 468.401, 468.413, 468.431, 468.453, 468.503, 468.520, 468.521, 468.530, 468.542, 468.603, 468.605, 471.005, 471.007, 472.005, 472.007, 473.302, 473.303, 474.202, 474.204, 475.01, 475.02, 475.045, 475.455, 475.611, 476.034, 476.054, 477.013, 477.015, 478.42, 480.033, 480.035, 481.203, 481.205, 481.303, 481.305, 483.803, 483.805, 484.002, 484.003, 484.041,

484.042, 486.021, 486.023, 487.0437, 489.105, 489.107, 489.113, 489.505, 489.507, 489.516, 490.003, 490.004, 491.003, 491.004, 492.101, 492.102, 492.103, 498.005, 499.028, 499.051, 500.10, 500.12, 509.013, 509.2112, 509.291, 548.003, 550.002, 550.0251, 550.135, 559.79, 559.791, 559.927, 561.02, 561.025, 561.111, 561.17, 561.29, 561.42, 561.68, 561.703, 562.44, 565.02, 569.002, 616.265, 626.989, 627.7842, 627.912, 633.70, 641.55, 713.06, 713.135, 718.111, 718.1255, 718.501, 718.5019, 718.508, 719.104, 719.1255, 719.501, 719.508, 721.05, 721.13, 723.003, 765.110, 766.101, 766.106, 766.1115, 766.308, 766.314, 828.055, 832.06, 849.094, 859.061, 865.09, 877.06, and 893.035, F.S.

## **II. Present Situation:**

The Department of Business and Professional Regulation (DBPR) regulates approximately 1.5 million licensees, including over 50 professions and a variety of businesses that provide services to Florida's consumers. The department's responsibilities include the collection of taxes associated with regulated industries (e.g., alcoholic beverages, tobacco, and pari-mutuel wagering). Chapter 20, F.S., establishes the organizational structure of the executive branch of government. Chapter 93-220, L.O.F., creates s. 20.165, F.S., establishing the Department of Business and Professional Regulation (DBPR), as well as the following divisions within the agency: the Division of Alcoholic Beverages and Tobacco; the Division of Florida Land Sales, Condominiums, and Mobile Homes; the Division of Administration; the Division of Hotels and Restaurants; the Division of Pari-mutuel Wagering; the Division of Technology, Testing, and Training; the Division of Professions; the Division of Medical Quality Assurance; the Division of Real Estate; the Division of Regulation; and the Division of Certified Public Accounting. The law also reestablished various trust funds within the DBPR.

Chapter 93-220, L.O.F., reestablishes professional boards within the DBPR. The law recreates various boards within the Division of Professions, including: the Board of Architecture and Interior Design; the Board of Auctioneers; the Barbers' Board; the Construction Industry Licensing Board; the Board of Cosmetology; the Electrical Contractors' Licensing Board; the Board of Employee Leasing Companies; the Board of Funeral Directors and Embalmers; the Board of Hearing Aid Specialists; the Board of Landscape Architecture; the Board of Massage; the Board of Pilot Commissioners; the Board of Professional Engineers; the Board of Professional Geologists; the Board of Professional Land Surveyors; and the Board of Veterinary Medicine. The law also recreates other boards and establishes them within the current Division of Medical Quality Assurance, including: the Board of Acupuncture; the Board of Chiropractic; the Board of Clinical Laboratory Personnel; the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling; the Board of Dentistry; the Board of Medicine; the Board of Nursing; the Board of optometry; the Board of Osteopathic Medicine; the Board of Pharmacy; the Board of Physical Therapy Practice; the Board of Podiatric Medicine; the Board of Psychological Examiners; and the Board of Speech-Language Pathology and Audiology. In addition, the law recreates within the DBPR the Florida Real Estate Commission and the Florida Real Estate Appraisal Board in the Division of Real Estate and the Board of Accountancy within the Division of Certified public Accounting.

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The law requires a director, responsible to the Secretary, for each specific division and requires the director to directly administer the division. The law retains the current arrangements for the Secretary to appoint a division director for the Division of Real Estate and the Division of Certified Public Accounting. The current locations for these divisions are retained (Orlando and Gainesville, respectively). The law provides for the appointment of board members by the Governor, subject to Senate confirmation. The law provides for term lengths and vacancies, and consumer members. The law provides that no board, with the exception of joint coordinators, can be transferred from its present location without legislative authorization in the General Appropriations Act.

The Agency for Health Care Administration is administratively placed within the former DPR. Section 20.42, F.S., specifies the organization of the agency. The law (section 23 of chapter 93-129, L.O.F.) delays the transfer of the regulation of health care professions within the Division of Medical Quality Assurance within the former DPR to the Agency for Health Care Administration until July 1, 1994.

Chapter 455, F.S., provides for the general powers and duties of the DBPR to implement and enforce professional regulation, including the provision of various administrative services to professional boards. Chapter 92-33, L.O.F., created the Agency for Health Care Administration and amended provisions of chapter 455, F.S. During the 1992 legislative session, some of the same provisions of chapter 455, F.S., were substantively amended by chapter 92-149, L.O.F. As a consequence, there are conflicting provisions in chapter 455, F.S., that remain unresolved.

Chapter 215, F.S., relates to general provisions for financial matters for the state. Section 215.37, F.S., relates to the former DPR and requires the department to be financed solely from revenues collected from fees and other charges. Fees, licenses, and other charges assessed by each board within the department must be deposited into the Professional Regulation Trust Fund (PRTF). The department must maintain separate accounts in the PRTF for every profession.. The DBPR is charged a service charge, pursuant to chapter 215, F.S.

The Sunrise Act (s. 11.62, F.S.), enacted during special session "D" of the 1991 Legislative Session, requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on specific criteria. The law requires proponents of the unregulated profession to provide the former DPR and the legislative committees of reference information concerning the effect of the proposed legislation to initially regulate a previously unregulated profession on the department's resources to implement and enforce the regulation. The law currently refers only to the former DPR as a regulatory entity regarding its requirements for proponents of professional regulation to provide certain information relevant to the sunrise process.

The bill is the result of a committee interim project to review the implementation of the merger of the Department of Business Regulation and the Department of Professional Regulation. Staff's findings and recommendations concerning this review are detailed in a separate report.

**III. Effect of Proposed Changes:**

Section 1. Amends s. 11.62, F.S., to clarify that the provisions related to the sunrise process apply to any state agency that is proposed to have jurisdiction over previously unregulated professions or occupations.

Section 2. Amends s. 20.165, F.S., related to the organization of the DBPR, to include the Board of Building Code Administrators and Inspectors under the Division of Professions and the Board of Nursing Home Administrators and the Board of Opticianry under the Division of Medical Quality Assurance.

Section 3. Amends s. 20.42, F.S., related to the organization of the Agency for Health Care Administration, to clarify that it is administratively placed under the new DBPR.

Sections 4-6. Amends ss. 24.108, 83.49, and 110.205, F.S., to make technical and conforming changes.

Section 7. Amends s. 120.57, F.S., to clarify that the procedural requirements relate only to professional regulation.

Sections 8-22. Amends ss. 154.04, 190.009, 192.037, 205.065, 205.194, 210.01, 210.021, 210.151, 210.20, 210.25, 210.31, 210.405, 210.75, 212.08, and 213.053, F.S., to provide technical and conforming changes.

Section 23. Amends s. 215.37, F.S., to clarify that the provisions relate only to the regulation of professions and to provide technical and conforming changes.

Sections 24-58. Amends ss. 216.0165, 229.8075, 231.262, 240.4075, 253.025, 255.565, 282.1095, 309.01, 310.002, 310.011, 326.002, 337.162, 370.07, 381.0036, 381.0039, 381.004, 381.0065, 381.0072, 386.203, 394.907, 395.3025, 397.419, 397.451, 399.01, 400.211, 400.414, 400.506, 402.48, 403.0877, 403.708, 403.7197, 409.905, 415.107, 415.51, and 440.02, F.S., to make technical and conforming changes.

Section 59. Creates s. 455.017, F.S., to provide that chapter 455, F.S., applies to the regulation by the DBPR of professions as defined in s. 455.01, F.S.

Sections 60-70. Amends ss. 455.11, 455.201, 455.203, 455.205, 455.208, 455.209, 455.211, 455.217 and 455.2175, F.S., to provide technical and conforming changes.

Section 71. Amends s. 455.21.8, F.S., to make technical and conforming changes as well as resolve conflicting provisions of law created by chapter 92-33 and chapter 92-149, L.O.F., related to the examination of foreign-trained professionals.

Sections 72-76. Amends ss. 455.219, 455.221, 455.2224, and 455.223, F.S., to make technical and conforming changes.

Sections 77-78. Amends. 455.224 and 455.225, F.S., to make technical and conforming changes and to resolve conflicting provisions of law created by chapter 92-33 and chapter 92-149, L.O.F., related to the authority to issue citations and to disciplinary proceedings.

Sections 79-89. Amends ss. 455.227, 455.2273, 455.2275, 455.228, 455.2285, 455.229, 455.232, 455.236 and 455.241, F.S., to make technical and conforming changes.

Section 90. Amends s. 455.241, F.S. to resolve conflicting provisions of law created by chapter 92-33 and chapter 92-149, L.O.F., related to patient records.

Sections 91-93. Amends ss. 455.243, 455.245, and 455.26, F.S., to make technical and conforming changes.

Section 94. Amends s. 455.26, F.S., (effective July 1, 1994) to make technical and conforming changes and to resolve conflicting provisions of law created by chapter 92-33 and chapter 92-149, L.O.F., related to the impaired practitioners committee.

Sections 95-254. Amends ss. 455.303, 455.304, 455.306, 455.307, 455.309, 457.102, 457.103, 458.305, 458.307, 458.3125, 458.320, 458.346, 458.347, 459.003, 459.004, 459.0085, 459.022, 460.403, 460.404, 460.4104, 461.003, 461.004, 462.01, 463.002, 463.003, 464.003, 464.004, 465.003, 465.004, 465.017, 466.003, 466.004, 467.003, 467.004, 468.1125, 468.1135, 468.1315, 468.1655, , 468.1665, 468.352, 468.382, 468.384, 468.385, 468.392, 468.401, 468.413, 468.431, 468.453, 468.503, 468.520, 468.521, 468.530, 468.542, 468.603, 468.605, 471.005, 471.007, 472.005, 472.007, 473.302, 473.303, 474.202, 474.204, 475.01, 475.02, 475.045, 475.455, 475.611, 476.034, 476.054, 477.013, 477.015, 478.42, 480.033, 480.035, 481.203, 481.205, 481.303, 481.305, 483.803, 483.805, 484.002, 484.003, 484.041, 484.042, 486.021, 486.023, 487.0437, 489.105, 489.107, 489.113, 489.505, 489.507, 489.516, 490.003, 490.004, 491.003, 491.004, 492.101, 492.102, 492.103, 498.005, 499.028, 499.051, 500.10, 500.12, 509.013, 509.2112, 509.291, 548.003, 550.002, 550.0251, 550.135, 559.79, 559.791, 559.927, 561.02, 561.025, 561.111, 561.17, 561.29, 561.42, 561.68, 561.703, 562.44, 565.02, 569.002, 616.265, 626.989, 627.7842, 627.912, 633.70, 641.55, 713.06, 713.135, 718.111, 718.1255, 718.501, 718.5019, 718:508, 719:104, 719:1255, 719.501, 719.508, 721.05, 721.13, 723.003, 765.110, 766.101, 766.106, 766.1115, 766.308, 766.314, 828.055, 832.06, 849.094, 859.061, 865.09, 877.06 and 893.035, F.S., to make technical and conforming changes.

Section 255. Requires the DBPR to conduct a study, prepare a report, and provide recommendations relating to locating department functions in Orlando and consolidating the Division of Land Sales, Condominiums, and Mobile Homes with the Division of Real Estate. The report is due December 1, 1994.

Section 256. Provides an effective date (upon becoming a law), except as otherwise provided.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None identified.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:****V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The bill does not impose any fees or taxes.

**B. Private Sector Impact:**

Regulation is generally thought to result in higher fees for services due to the cost of regulation and potentially reduced competition by the exclusion of unlicensed practitioners within the occupational group. To the extent that the implementation of the provisions of the bill related to the “sunrise” process eliminate costs associated with the unnecessary or overly restrictive regulation of professions or occupations, consumers may save money.

To the extent the bill requires proponents of legislation to spend time in gathering and reproducing additional information for the committee and the appropriate state agency not currently required by the Sunrise Act, they may incur additional costs.

To the extent that the provisions in the bill clarify the financial, planning, and reporting requirements related to professional regulation, licensees and the public may benefit.

**C. Government Sector Impact:**

The bill’s provisions clarify the DBPR’s requirements for professional regulation. These requirements are essentially similar to those imposed on the former DPR and should not result in additional costs to the new DBPR.

There should be no cost associated with the required report since the department has already initiated an effort to examine if any changes are needed related to the merger, including the consolidation of the Division of Real Estate with the Division of Land Sales, Condominiums, and Mobile Homes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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