

Jobs & Entrepreneurship Council

**Thursday, March 6, 2008
1:00 PM – 2:15 PM
Morris Hall (17 HOB)**

**Marco Rubio
Speaker**

**Ron Reagan
Chair**



The Florida House of Representatives

Jobs & Entrepreneurship Council

Marco Rubio
Speaker

Ron Reagan
Chair

AGENDA


March 6, 2008

Morris Hall - 1:00 P.M. – 2:15 P.M.

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
 - HB 343 Financial Services by Carroll
 - HB 415 Cosmetology by Carroll
 - HB 477 Title Loans by Reagan
 - HB 573 Excavation & Demolition Notification System by Murzin
 - HB 743 Real Property Fraud by Lopez-Cantera
 - HB 797 Public Accountancy by Holder
- IV. Presentations by:
 - Ms. Christina Smith
 - Assistant Director of Accounting and Auditing
 - Department of Financial Services
- V. Chair's remarks
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 343 Financial Services
SPONSOR(S): Carroll and others
TIED BILLS: IDEN./SIM. BILLS: SB 818

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions	6 Y, 0 N	Holt/Bradford	Haug
2) Jobs & Entrepreneurship Council		Holt/Bradford Holt/Topp BT	Thorn 
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The bill creates a new insurance product that enables insurers to directly insure, rather than reinsure, banks and other entities against losses resulting from the writing of debt cancellation or debt suspension agreements. Debt cancellation products are lending transactions between a financial institution and a debtor wherein the financial institution, for a fee, agrees to cancel or suspend the debt upon the occurrence of certain events. The risk of default due to events such as death, disability, or unemployment, shifts from the debtor to the financial institution. These debt products are not regulated by the Office of Insurance Regulation. Additionally, it appears that almost every state recognizes and approves this type of insurance product as a viable way of protecting the financial institution against the business risk of debt cancellation products.

Also, the bill amends provisions relating to the capital requirements for new banks and trust companies. The capital requirement is increased to \$8 million from the current requirement of either \$4 million or \$6 million depending upon certain criteria. The bill also provides that the organizing directors of a proposed bank must own or control "at least the lesser of \$3 million or 25% of the bank's total capital accounts proposed at opening as approved" by the Office of Financial Regulation. Further, The bill clarifies that stock offerings used to raise capital for a new bank or trust company are subject to the same limitations/requirements as those followed by existing financial institutions.

The bill does not have a fiscal impact on state or local government. The impact to the private sector cannot be determined at this time.

This act takes effect October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: The bill provisions create an opportunity to enhance the financial stability for families in the event of unforeseen events.

B. EFFECT OF PROPOSED CHANGES:

Sections 1-2 of the bill provide amendments to Part I, Chapter 520, F.S., Motor Vehicle Sales Finance

Section 1: The bill amends s. 520.02, F.S., to renumber subsections in order to create a definition for the term "Guaranteed asset protection product" as follows:

(7) "Guaranteed asset protection product" means a loan, lease, or retail installment contract term, or modification or addendum to a loan, lease, or retail installment contract, under which a creditor agrees to waive a customer's liability for payment of some or all of the amount by which the debt exceeds the value of the collateral. Such a product is not insurance for purposes of the Florida Insurance Code. This subsection also applies to all guaranteed asset protection products issued before October 1, 2008.

Generally the term guaranteed asset protection (or GAP) is a supplemental coverage that provides protection from certain losses that are not covered by certain standard contractual agreements. For example, a GAP may be designed to cover the unpaid balance of an automobile loan in the event of a total loss of the vehicle. The GAP could cover the difference between the depreciated actual cash value and the outstanding loan balance on the vehicle.

Section 2: The bill amends s. 520.07, F.S., relating to Requirements and prohibitions as to retail installment contracts.—

The bill adds subsection (11) to section 520.07, F.S., to read in part:

(11) In conjunction with entering into any new retail installment contract or contract for a loan, a motor vehicle retail installment seller as defined in 520.02(10), sales finance company defined in s. 520.02(18), or retail lessors, as defined in s. 521.003(8) and their assignees may offer, for a fee or otherwise, optional debt cancellation products in accordance with this chapter and the rules adopted by the Commission. The motor vehicle retail installment seller, sales finance company, or retail lessor may not require the purchase of a debt cancellation product as a condition for making the loan.

In order to offer a GAP, the bill requires that the above described entities must comply with the following:

- (a) The cost of any GAP shall not exceed the amount of the indebtedness.
- (b) This section governs GAP contracts or agreements.
- (c) A GAP is considered an obligation of any person that purchases or otherwise acquires the loan contract covering such product.
- (d) Disclosure of the terms and conditions for a GAP must be detailed, easy to read, and readily understandable, including a plain description of its purchase being optional.
- (e) The entity bears the burden for proving an executed copy of a GAP contract or agreement is provided to the buyer.
- (f) No GAP conveys the right to unilaterally modify contract terms unless:
 1. The modification is favorable to the buyer without additional buyer charges; or

2. The buyer is notified of any proposed change and is provided a reasonable, no penalty cancellation option before the change goes into effect.

(g) If a GAP contract is terminated, the entity shall refund to the buyer, under certain conditions, any unearned paid fees, unless otherwise stipulated in the contract. Refund request are to be made within 90 days of the event terminating the contract.

Section 3 of the bill amends Part V, Chapter 624, F.S., Kinds of Insurance; Limits of Risk; Reinsurance

Section 3: The bill adds paragraph (r) to subsection (1) of section 624.605, F.S., to read in part:

(1) "Casualty insurance" includes:

(r) Insurance for debt cancellation products. Insurance that a creditor may purchase against the risk of financial loss from the use of debt cancellation products with consumer loans or leases or retail installment contracts.

This amendment provides that creditors may purchase insurance to protect against the risk of financial loss from the use of debt cancellation products. Also, the bill defines the term "debt cancellation products" for purposes of this paragraph.

As defined in this paragraph, debt cancellation products may be offered by financial institutions, as defined in s. 655.005(1)(h), including insured depository institutions as defined in 12 U.S.C. s. 1813(c) and subsidiaries of such institutions, as provided in the financial institution codes.

Also, this product may be offered by other business entities as may be specifically authorized by law, i.e. motor vehicle retail installment sellers, sales finance companies, or retail lessors. Moreover, these products do not constitute insurance for purposes of the Florida Insurance Code.

Sections 4-6 of the bill amend Chapter 627, Part V, Group Life Insurance Policies and Part IX, Credit Life and Disability Insurances

Sections 4-5: The bill amends ss. 627.553, and 627.679, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased. Additionally, the amendment to s. 627.679, F.S., further provides that the total amount of credit life insurance on the life of any debtor with respect to any loan or loans covered in one or more insurance policies shall at no time exceed the amount of the indebtedness.

Section 6: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.

Sections 7-11 of the bill amend TITLE XXXVIII, Banks and Banking, Chapter 655, Financial Institutions Generally

Section 7: Amends s. 655.005 to clarify the definition of a financial institution includes the various entities referenced throughout the Financial Institutions Codes.

This section also adds a definition for "debt cancellation products" to the Financial Institutions Codes. These products are currently authorized under an order of general application issued by the Office of Financial Regulation February 2006.

Section 8: Amends s. 655.79, F.S., in conformance to the Florida Supreme Court's recommendation that the section be clarified. See Beal Bank v. Almand and Associates, 780 So. 2d 45

(Fla. 2001). The bill provides that:

Any deposit or account made in the name of two persons who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified in writing.

Section 9: The bill creates 655.967, F.S., relating to state-funded endowments. Any state-mandated endowment funded through a general appropriations act prior to 1990 may be maintained in trusts accounts with national or state chartered banks.

Section 10: The bill creates 655.947, F.S., relating to debt cancellation products. Financial institutions, and their subsidiaries, are permitted to sell debt cancellation products, subject to the rules and orders of the Financial Service Commission. Provisions in the bill further require that the permitted entities manage all risks in accordance with prudent safety and soundness principles. Additionally, these entities are to establish and maintain effective risk management and control processes over the products and programs. The Financial Service Commission is granted rulemaking authority to administer this section. For purposes of this section, an installment payment option is not required for the amount of the debt cancellation product.

Section 11: Amends 655.954, F.S., to reference the newly created s. 655.947, F.S., which authorizes the sale of debt cancellation products. The bill reiterates that a financial institution may not require the purchase of a debt cancellation product as a condition for making the loan, line of credit, or loan extension. Other amendments in this section correct cross references.

Sections 12-15 of the bill amend Chapter 658, Banks and Trust Companies

Section 12: Section 658.21, F.S., relates to the organization of new banks and trust companies. Current law requires a bank to have a minimum capital requirement of either \$4 million or \$6 million depending upon its physical location. This section is being amended to raise this requirement to \$8 million dollars for all new institutions, regardless of location.

For the formation of a new trust company, current law requires \$2 million in capital. The bill increases this requirement to \$3 million.

The bill also provides that the organizing directors of a proposed bank must own or control "at least the lesser of \$3 million or 25% of the bank's total capital accounts proposed at opening as approved" by the Office of Financial Regulation (Office). Currently the requirement is 25% of the bank's total capital accounts.

Current law does not address minimum requirements for ownership or control of capital accounts by directors of a proposed bank when it will be owned by an existing multi-bank holding company. The bill provides that in such situations, the proposed directors must have a substantial investment in the holding company as determined by the Office. The investment required by the Office cannot exceed the lesser of 25% or 3 million dollars, which is a parity standard proposed in the bill for a one-bank holding company application.

The bill clarifies that stock offerings used to raise capital for a new bank or trust company are subject to the same limitations/requirements as those followed by existing financial institutions.

Section 13: Currently, banks and trust companies must obtain approval from the Office when they desire to increase capital. Section 658.34, F.S., reads in part:

658.34 Shares of capital stock.

(1) A bank or trust company shall issue its capital stock with par value of not more than \$100 nor less than \$1 per share.

The bill eliminates the range that a bank or trust company shall issue its capital stock to only read: "not less than \$1 per share" The bill also eliminates Office approval to increase capital, but it requires advance notice as provided under s. 658.36.

The bill creates a new subsection (5) to codify existing Office practices. The bill provides that no stock of the same class may be issued or sold by a financial institution that creates different rights, options, warrants, or benefits among the purchasers or stockholders of that class of stock. However, this does not prohibit a financial institution from creating uniform restrictions on the transfer of stock as permitted under the provisions dealing with corporations in general under s. 607.0627, F.S.

This change will create fairness for all shareholders. This provision also allows a financial institution flexibility to be structured as an S-corporation¹ or limited liability company and restricts stock transfers that would otherwise jeopardize that corporate structure.

Section 14: This provision correlates with amendments made in s. 658.34, F.S., and the elimination of the Office's approval relating to increasing capital requirements. In lieu of Office approval, the bill requires entities to provide the Office at least 15 days advance notice of intent to increase capital stock.

Section 15: The bill clarifies procedures as to who can assert dissenters' rights and the manner of determining fair value of their shares. The bill removes the Office from the process of resolving disagreements between appraisers and moves this function to an appropriate court.

Section 16: This act shall take effect October 1, 2008.

C. SECTION DIRECTORY:

- Section 1: Amends s. 520.02, F.S., to create a definition for the term "Guaranteed asset protection product"
- Section 2: Amends s. 520.07, F.S., relating to requirements and prohibitions as to retail installment contracts.
- Section 3: Amends s. 624.605, F.S. relating to kinds of insurance.
- Section 4: Amends s. 627.553, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased.
- Section 5: Amends s. Amends 627.679, F.S., to remove the limit on the amount and duration of credit life insurance that may be purchased. Additionally, the total amount of credit life insurance on the life of any debtor shall not exceed the amount of the indebtedness.
- Section 6: Amends s. 627.681, F.S., the bill provides that credit disability insurance may be purchased for the entire term of the loan.
- Section 7: Amends s. 655.005 to clarify the definition of financial institution. The bill adds a definition for debt cancellation products to the Financial Institutions Codes.
- Section 8: Amends s. 655.79, F.S., to conform with Florida Supreme Court's recommendation relating to certain husband and wife accounts.
- Section 9: Creates 655.967, F.S., relating to state-funded endowments
- Section 10: The bill creates 655.947, F.S., relating to debt cancellation products. Financial institutions, and their subsidiaries, are permitted to sell debt cancellation products. The Financial Service Commission is granted rulemaking authority.
- Section 11: Amends 655.954, F.S., to reference s. 655.947, F.S. Also, the bill provides that purchase of a debt cancellation product in not a condition for making the loan, line of credit, or loan extension.
- Section 12: Section 658.21, F.S., relates to the organization of new banks and trust companies and to stock offerings.

¹ Generally, an S corporation is exempt from federal income tax other than tax on certain capital gains and passive income. On their tax returns, the S corporation's shareholders include their share of the corporation's separately stated items of income, deduction, loss, and credit, and their share of nonseparately stated income or loss. <http://www.irs.gov/businesses/small/article/0,,id=98263,00.html>

- Section 13: Amends s. 658.34, F.S., eliminates Office approval to increase capital, but requires 15 day advance notice be provided to the Office under s. 658.36. The bill also creates a new subsection (5) to codify certain existing Office practices. This provision also allows flexibility relating to S-corporation or limited liability company structure.
- Section 14: This provision correlates with amendments made in s. 658.34 and the elimination of Office approval relating to increasing capital. In lieu of Office approval, the bill requires at least 15 days advance notice of intent to increase capital stock.
- Section 15: The bill clarifies procedures as to who can assert dissenters' rights and the manner of determining fair value of their shares.
- Section 16: This act shall take effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

The impact to the private sector cannot be determined at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority is granted to the Financial Services Commission.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0343**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Jobs & Entrepreneurship Council
2 Representative Carroll offered the following:

3
4 **Amendment**

5 Remove lines 303-307
6 effect as of January 31, 2008 ~~June 30, 1992~~.

7 (b) "Interest" means those charges considered a finance
8 charge under the federal Truth in Lending Act, 15 U.S.C. ss.
9 1601 et seq., as amended, and the associated regulations which
10 are in effect as of January 31, 2008 ~~June 30, 1992~~.

29 rules; specifying that periodic payment options are not
 30 required to be offered for certain debt cancellation
 31 products; amending s. 655.954, F.S.; authorizing certain
 32 institutions to offer optional debt cancellation products
 33 with certain financial transactions; prohibiting requiring
 34 such products as a condition of such transactions;
 35 updating definitions; amending s. 658.21, F.S.; revising
 36 ownership requirements for capital accounts at opening for
 37 a bank or trust company; providing capital investment
 38 requirements for owners of certain holding companies;
 39 amending s. 658.34, F.S.; revising requirements for shares
 40 of capital stock of banks and trust companies; providing
 41 restrictions on issuance or sale of certain stock under
 42 certain circumstances; amending s. 658.36, F.S.; requiring
 43 a state bank or trust company to file a written notice
 44 before increasing its capital stock; amending s. 658.44,
 45 F.S.; revising certain notice requirements relating to
 46 dissenting stockholders; revising criteria for determining
 47 the value of dissenting shares of certain entities;
 48 providing an effective date.

49

50 Be It Enacted by the Legislature of the State of Florida:

51

52 Section 1. Subsections (7) through (19) of section 520.02,
 53 Florida Statutes, are renumbered as subsections (8) through
 54 (20), respectively, and new subsection (7) is added to that
 55 section to read:

56 520.02 Definitions.--In this act, unless the context or

57 subject matter otherwise requires:

58 (7) "Guaranteed asset protection product" means a loan,
 59 lease, or retail installment contract term, or modification or
 60 addendum to a loan, lease, or retail installment contract, under
 61 which a creditor agrees to waive a customer's liability for
 62 payment of some or all of the amount by which the debt exceeds
 63 the value of the collateral. Such a product is not insurance for
 64 purposes of the Florida Insurance Code. This subsection also
 65 applies to all guaranteed asset protection products issued
 66 before October 1, 2008.

67 Section 2. Subsection (11) is added to section 520.07,
 68 Florida Statutes, to read:

69 520.07 Requirements and prohibitions as to retail
 70 installment contracts.--

71 (11) In conjunction with entering into any new retail
 72 installment contract or contract for a loan, a motor vehicle
 73 retail installment seller as defined in s. 520.02, a sales
 74 finance company as defined in s. 520.02, or a retail lessor as
 75 defined in s. 521.003, and any assignee of such an entity, may
 76 offer, for a fee or otherwise, optional guaranteed asset
 77 protection products in accordance with this chapter. The motor
 78 vehicle retail installment seller, sales finance company, retail
 79 lessor, or assignee may not require the purchase of a guaranteed
 80 asset protection product as a condition for making the loan. In
 81 order to offer any guaranteed asset protection product, a motor
 82 vehicle retail installment seller, sales finance company, or
 83 retail lessor, and any assignee of such an entity, shall comply
 84 with the following:

85 (a) The cost of any guaranteed asset protection product,
 86 with respect to any loan covered by the guaranteed asset
 87 protection product, shall not exceed the amount of the
 88 indebtedness.

89 (b) Any contract or agreement pertaining to a guaranteed
 90 asset protection product shall be governed by this section.

91 (c) A guaranteed asset protection product is considered an
 92 obligation of any person that purchases or otherwise acquires
 93 the loan contract covering such product.

94 (d) An entity providing guaranteed asset protection
 95 products shall provide readily understandable disclosures that
 96 explain in detail eligibility requirements, conditions, refunds,
 97 and exclusions. The disclosures must provide that the purchase
 98 of the product is optional. The disclosures must be in plain
 99 language and of a typeface and size that are easy to read.

100 (e) An entity must provide a copy of the executed
 101 guaranteed asset protection product contract to the buyer. The
 102 entity bears the burden of proving the contract was provided to
 103 the buyer.

104 (f) An entity may not offer a contract for a guaranteed
 105 asset protection products that contains terms giving the entity
 106 the right to unilaterally modify the contract unless:

107 1. The modification is favorable to the buyer and is made
 108 without additional charge to the buyer; or

109 2. The buyer is notified of any proposed change and is
 110 provided a reasonable opportunity to cancel the contract without
 111 penalty before the change goes in effect.

112 (g) If a contract for a guaranteed asset protection

113 product is terminated, the entity shall refund to the buyer any
 114 unearned fees paid for the contract unless the contract provides
 115 otherwise. A refund is not due to a consumer who receives a
 116 benefit under such product. In order to receive a refund, the
 117 buyer must notify the entity of the event terminating the
 118 contract and request a refund within 90 days after the
 119 occurrence of the event terminating the contract. An entity may
 120 offer a buyer a contract that does not provide for a refund only
 121 if the entity also offers that buyer a bona fide option to
 122 purchase a comparable contract that provides for a refund.

123 Section 3. Paragraph (r) is added to subsection (1) of
 124 section 624.605, Florida Statutes, to read:

125 624.605 "Casualty insurance" defined.--

126 (1) "Casualty insurance" includes:

127 (r) Insurance for debt cancellation products.--Insurance
 128 that a creditor may purchase against the risk of financial loss
 129 from the use of debt cancellation products with consumer loans
 130 or leases or retail installment contracts.

131 1. For purposes of this paragraph, the term "debt
 132 cancellation products" means loan, lease, or retail installment
 133 contract terms, or modifications to loan, lease, or retail
 134 installment contracts, under which a creditor agrees to cancel
 135 or suspend all or part of a customer's obligation to make
 136 payments upon the occurrence of specified events and includes,
 137 but is not limited to, debt cancellation contracts, debt
 138 suspension agreements, and guaranteed asset protection
 139 contracts. However, the term "debt cancellation products" does
 140 not include title insurance as defined in s. 624.608.

141 2. Debt cancellation products may be offered by financial
 142 institutions, as defined in s. 655.005(1)(h), insured depository
 143 institutions as defined in 12 U.S.C. s. 1813(c), and
 144 subsidiaries of such institutions, as provided in the financial
 145 institution codes, or by other business entities as may be
 146 specifically authorized by law, and such products shall not
 147 constitute insurance for purposes of the Florida Insurance Code.

148 Section 4. Subsection (3) of section 627.553, Florida
 149 Statutes, is amended to read:

150 627.553 Debtor groups.--The lives of a group of
 151 individuals may be insured under a policy issued to a creditor
 152 or its parent holding company, or to a trustee or trustees or
 153 agent designated by two or more creditors, which creditor,
 154 holding company, affiliate, trustee or trustees, or agent shall
 155 be deemed the policyholder, to insure debtors of the creditor or
 156 creditors, subject to the following requirements:

157 (3) The amount of insurance on the life of any debtor
 158 shall at no time exceed the amount owed by the debtor ~~her or him~~
 159 which is repayable in installments to the creditor ~~or \$50,000,~~
 160 ~~whichever is less, except that loans not exceeding 1 year's~~
 161 ~~duration shall not be subject to such limits. However, on such~~
 162 ~~loans not exceeding 1 year's duration, the limit of coverage~~
 163 ~~shall not exceed \$50,000 with any one insurer.~~

164 Section 5. Paragraph (b) of subsection (1) of section
 165 627.679, Florida Statutes, is amended to read:

166 627.679 Amount of insurance; disclosure.--

167 (1)

168 (b) The total amount of credit life insurance on the life

169 of any debtor with respect to any loan or loans covered in one
 170 or more insurance policies shall at no time exceed the amount of
 171 the indebtedness \$50,000 with any one creditor, except that
 172 ~~loans not exceeding 1 year's duration shall not be subject to~~
 173 ~~such limits, and on such loans not exceeding 1 year's duration,~~
 174 ~~the limits of coverage shall not exceed \$50,000 with any one~~
 175 ~~insurer.~~

176 Section 6. Subsection (2) of section 627.681, Florida
 177 Statutes, is amended to read:

178 627.681 Term and evidence of insurance.--

179 (2) The term of credit disability insurance on any debtor
 180 insured under this section shall not exceed the term of
 181 indebtedness 10 years, and for credit transactions that exceed
 182 ~~60 months, coverage shall not exceed 60 monthly indemnities.~~

183 Section 7. Paragraphs (g) and (h) of subsection (1) of
 184 section 655.005, Florida Statutes, are amended, and paragraph
 185 (t) is added to that subsection, to read:

186 655.005 Definitions.--

187 (1) As used in the financial institutions codes, unless
 188 the context otherwise requires, the term:

189 (g) "Federal financial institution" means a federally or
 190 nationally chartered or organized financial institution
 191 ~~association, bank, savings bank, or credit union.~~

192 (h) "Financial institution" means a state or federal
 193 savings or thrift association, bank, savings bank, trust
 194 company, international bank agency, international banking
 195 organization, international branch, international representative
 196 office, ~~or~~ international administrative office, or credit union,

197 or an agreement corporation operating pursuant to s. 25 of the
 198 Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act
 199 corporation organized pursuant to s. 25(a) of the Federal
 200 Reserve Act, 12 U.S.C. ss. 611 et seq.

201 (t) "Debt cancellation products" means loan, lease, or
 202 retail installment contract terms, or modifications or addenda
 203 to loan, lease, or retail installment contracts, under which a
 204 creditor agrees to cancel or suspend all or part of a customer's
 205 obligation to make payments upon the occurrence of specified
 206 events and includes, but is not limited to, debt cancellation
 207 contracts, debt suspension agreements, and guaranteed asset
 208 protection contracts offered by financial institutions, insured
 209 depository institutions as defined in 12 U.S.C. s. 1813(c), and
 210 subsidiaries of such institutions. However, the term "debt
 211 cancellation products" does not include title insurance as
 212 defined in s. 624.608.

213 Section 8. Subsection (1) of section 655.79, Florida
 214 Statutes, is amended to read:

215 655.79 Deposits and accounts in two or more names;
 216 presumption as to vesting on death.--

217 (1) Unless otherwise expressly provided in a contract,
 218 agreement, or signature card executed in connection with the
 219 opening or maintenance of an account, including a certificate of
 220 deposit, a deposit account in the names of two or more persons
 221 shall be presumed to have been intended by such persons to
 222 provide that, upon the death of any one of them, all rights,
 223 title, interest, and claim in, to, and in respect of such
 224 deposit account, less all proper setoffs and charges in favor of

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225 | the institution, vest in the surviving person or persons. Any
 226 | deposit or account made in the name of two persons who are
 227 | husband and wife shall be considered a tenancy by the entirety
 228 | unless otherwise specified in writing.

229 | Section 9. Section 655.967, Florida Statutes, is created
 230 | to read:

231 | 655.967 State-funded endowments.--Notwithstanding any
 232 | other provision of law, a state-mandated endowment funded
 233 | through a general appropriations act prior to 1990 may be
 234 | maintained in trust accounts in financial institutions.

235 | Section 10. Section 655.947, Florida Statutes, is created
 236 | to read:

237 | 655.947 Debt cancellation products.--

238 | (1) Debt cancellation products may be offered, and a fee
 239 | may be charged, by financial institutions and subsidiaries of
 240 | financial institutions subject to the provisions of this section
 241 | and the rules and orders of the commission or office. As used in
 242 | this section, the term "financial institutions" includes those
 243 | defined in s. 655.005(1)(h), insured depository institutions as
 244 | defined in 12 U.S.C. s. 1813, and subsidiaries of such
 245 | institutions.

246 | (2) A financial institution shall manage the risks
 247 | associated with debt cancellation products in accordance with
 248 | prudent safety and soundness principles. A financial institution
 249 | shall establish and maintain effective risk management and
 250 | control processes over its debt cancellation products and
 251 | programs. Such processes shall include appropriate recognition
 252 | and financial reporting of income, expenses, assets, and

253 liabilities and appropriate treatment of all expected and
 254 unexpected losses associated with the products. Each financial
 255 institution shall also assess the adequacy of its internal
 256 control and risk mitigation activities in view of the nature and
 257 scope of its debt cancellation products and programs.

258 (3) The commission shall adopt rules pursuant to ss.
 259 120.536(1) and 120.54 to administer this section, which rules
 260 must be consistent with 12 C.F.R. part 37, as amended.

261 (4) For the purposes of this section and any rules adopted
 262 pursuant to this section, a periodic payment option is not
 263 required to be offered for any debt cancellation product
 264 designed to protect a customer against a deficiency between the
 265 outstanding loan or lease amount and the value of the motor
 266 vehicle that is used as collateral for the loan or lease.

267 Section 11. Section 655.954, Florida Statutes, is amended
 268 to read:

269 655.954 Financial institution loans; credit cards.--

270 (1) Notwithstanding any other provision of law, a
 271 financial institution shall have the power to make loans or
 272 extensions of credit to any person on a credit card or overdraft
 273 financing arrangement and to charge, in any billing cycle,
 274 interest on the outstanding amount at a rate that is specified
 275 in a written agreement, between the financial institution and
 276 borrower, governing the credit card account. Such credit card
 277 agreement may modify any terms or conditions of such credit card
 278 account upon prior written notice of such modification as
 279 specified by the terms of the agreement governing the credit
 280 card account or by the Truth in Lending Act, 15 U.S.C. ss. 1601

281 et seq., as amended, and the rules and regulations adopted under
 282 such act. Any such notice provided by a financial institution
 283 shall specify that the borrower has the right to surrender the
 284 credit card whereupon the borrower shall have the right to
 285 continue to pay off the borrower's credit card account in the
 286 same manner and under the same terms and conditions as then in
 287 effect. The borrower's failure to surrender the credit card
 288 prior to the modifications becoming effective shall constitute a
 289 consent to the modifications.

290 (2) In conjunction with entering into any contract or
 291 agreement for a loan, line of credit, or loan extension, a
 292 financial institution, insured depository institution as defined
 293 in 12 U.S.C. s. 1813, and subsidiaries of such institutions may
 294 offer, for a fee or otherwise, optional debt cancellation
 295 products pursuant to s. 655.947 and rules adopted under that
 296 section. The financial institution may not require the purchase
 297 of a debt cancellation product as a condition for making the
 298 loan, line of credit, or loan extension.

299 ~~(3)~~ (2) For the purpose of this section, the term:

300 (a) "Billing cycle" has the same meaning as ascribed to it
 301 under the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et
 302 seq., as amended, and the associated regulations which are in
 303 effect as of June 30, 2008 ~~1992~~.

304 (b) "Interest" means those charges considered a finance
 305 charge under the federal Truth in Lending Act, 15 U.S.C. ss.
 306 1601 et seq., as amended, and the associated regulations which
 307 are in effect as of June 30, 2008 ~~1992~~.

308 Section 12. Subsection (2) of section 658.21, Florida

309 Statutes, is amended to read:

310 658.21 Approval of application; findings required.--The
 311 office shall approve the application if it finds that:

312 (2) The proposed capitalization is in such amount as the
 313 office deems adequate, but in no case may the total capital
 314 accounts at opening for a bank be less than \$8 ~~\$6~~ million ~~if the~~
 315 ~~proposed bank is to be located in any county which is included~~
 316 ~~in a metropolitan statistical area, or \$4 million if the~~
 317 ~~proposed bank is to be located in any other county.~~ The total
 318 capital accounts at opening for a trust company may not be less
 319 than \$3 ~~\$2~~ million. The organizing directors of the proposed
 320 bank shall directly own or control at least the lesser of \$3
 321 million or 25 percent of the bank's total capital accounts
 322 proposed at opening as approved by the office. When the proposed
 323 bank will be owned by a single-bank holding company, the
 324 organizing directors of the proposed bank collectively shall
 325 directly own or control at least an amount of the single-bank
 326 holding company's capital accounts equal to the lesser of \$3
 327 million or 25 percent of the proposed bank's total capital
 328 accounts proposed at opening as approved by the office. When the
 329 proposed bank will be owned by an existing multi-bank holding
 330 company, the proposed directors shall have a substantial capital
 331 investment in the holding company, as determined by the office;
 332 however, such investment shall not be required to exceed the
 333 amount otherwise required for a single-bank holding company
 334 application. ~~Of total capital accounts at opening, as noted in~~
 335 ~~the application or amendments or changes to the application, at~~
 336 ~~least 25 percent of the capital shall be directly owned or~~

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337 ~~controlled by the organizing directors of the bank. Directors of~~
 338 ~~banks owned by single bank holding companies shall have direct~~
 339 ~~ownership or control of at least 25 percent of the bank holding~~
 340 ~~company's capital accounts.~~ The office may disallow illegally
 341 obtained currency, monetary instruments, funds, or other
 342 financial resources from the capitalization requirements of this
 343 section. The proposed stock offering must comply with the
 344 requirements of ss. 658.23-658.25 and ss. 658.34-658.37.

345 Section 13. Section 658.34, Florida Statutes, is amended
 346 to read:

347 658.34 Shares of capital stock.--

348 (1) A bank or trust company shall issue its capital stock
 349 with par value of not ~~more than \$100 nor~~ less than \$1 per share.

350 (2) No bank or trust company shall issue any shares of
 351 capital stock at a price less than par value, and prior to
 352 issuance, any such shares must be fully paid in cash.

353 (3) With the approval of the office, a bank or trust
 354 company may issue preferred stock of one or more classes in an
 355 amount and with a par value as approved by the office.

356 (4) With the approval of the office, a bank or trust
 357 company may issue less than all the number of shares of any of
 358 its capital stock authorized by its articles of incorporation.
 359 Such authorized but unissued shares may be issued only for the
 360 following purposes:

361 (a) To provide for stock options and warrants as provided
 362 in s. 658.35.

363 (b) To declare or pay a stock dividend; however, any such
 364 stock dividend must comply with the provisions of this section

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365 and s. 658.37.

366 (c) To increase the capital of the bank or trust company,
 367 ~~with the approval of the office.~~

368 (5) Stock of the same class may not be issued or sold by
 369 the financial institution that creates different rights,
 370 options, warrants, or benefits among the purchasers or
 371 stockholders of that class of stock. Such prohibition does not
 372 restrict the financial institution from creating uniform
 373 restrictions on the transfer of stock as permitted in s.
 374 607.0627.

375 Section 14. Subsection (2) of section 658.36, Florida
 376 Statutes, is amended to read:

377 658.36 Changes in capital.--

378 (2) Any state bank or trust company may, ~~with the approval~~
 379 ~~of the office,~~ provide for an increase in its capital stock
 380 after filing a written notice at least 15 days prior to making
 381 such increase.

382 Section 15. Subsections (2) and (5) of section 658.44,
 383 Florida Statutes, are amended to read:

384 658.44 Approval by stockholders; rights of dissenters;
 385 preemptive rights.--

386 (2) Written notice of the meeting of, or proposed written
 387 consent action by, the stockholders of each constituent state
 388 bank or state trust company shall be given to each stockholder
 389 of record, whether or not entitled to vote, and whether the
 390 meeting is an annual or a special meeting or whether the vote is
 391 to be by written consent pursuant to s. 607.0704, and the notice
 392 shall state that the purpose or one of the purposes of the

393 meeting, or of the proposed action by the stockholders without a
 394 meeting, is to consider the proposed plan of merger and merger
 395 agreement. Except to the extent provided otherwise with respect
 396 to stockholders of a resulting bank or trust company pursuant to
 397 subsection (7), the notice shall also state that dissenting
 398 stockholders, including stockholders not entitled to vote but
 399 dissenting under paragraph (c), will be entitled to payment in
 400 cash of the value of only those shares held by the stockholders:

401 (a) Which at a meeting of the stockholders are voted
 402 against the approval of the plan of merger and merger agreement;

403 (b) As to which, if the proposed action is to be by
 404 written consent of stockholders pursuant to s. 607.0704, such
 405 written consent is not given by the holder thereof; or

406 (c) With respect to which the holder thereof has given
 407 written notice to the constituent state bank or trust company,
 408 at or prior to the meeting of the stockholders or on or prior to
 409 the date specified for action by the stockholders without a
 410 meeting pursuant to s. 607.0704 in the notice of such proposed
 411 action, that the stockholder dissents from the plan of merger
 412 and merger agreement, and which shares are not voted for
 413 approval of the plan or written consent given pursuant to
 414 paragraph (a) or paragraph (b).

415
 416 Hereinafter in this section, the term "dissenting shares" means
 417 and includes only those shares, which may be all or less than
 418 all the shares of any class owned by a stockholder, described in
 419 paragraphs (a), (b), and (c).

420 (5) The fair value, as defined in s. 607.1301(4), of

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421 | dissenting shares of each constituent state bank or state trust
 422 | company, the owners of which have not accepted an offer for such
 423 | shares made pursuant to subsection (3), shall be determined
 424 | pursuant to ss. 607.1326-607.1331 except as the procedures for
 425 | notice and demand are otherwise provided in this section as of
 426 | the effective date of the merger ~~by three appraisers, one to be~~
 427 | ~~selected by the owners of at least two thirds of such dissenting~~
 428 | ~~shares, one to be selected by the board of directors of the~~
 429 | ~~resulting state bank, and the third to be selected by the two so~~
 430 | ~~chosen. The value agreed upon by any two of the appraisers shall~~
 431 | ~~control and be final and binding on all parties. If, within 90~~
 432 | ~~days from the effective date of the merger, for any reason one~~
 433 | ~~or more of the appraisers is not selected as herein provided, or~~
 434 | ~~the appraisers fail to determine the value of such dissenting~~
 435 | ~~shares, the office shall cause an appraisal of such dissenting~~
 436 | ~~shares to be made which will be final and binding on all~~
 437 | ~~parties. The expenses of appraisal shall be paid by the~~
 438 | ~~resulting state bank or trust company.~~

439 | Section 16. This act shall take effect October 1, 2008.

\$233,920 with expenses of \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11. The department is requesting half (.50) of one Full-time Equivalent position for FY 2008-09 and two short-term part-time OPS positions.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires more education and the development and administration of exams for a new category of licensure, hair technician, as well as more education and the development and administration of exams for an esthetician license and a nail technician license. It also increases the educational hours for a cosmetologist license.

Promote personal responsibility - The bill allows for licensees from another country to apply for endorsement rather than by the current requirement of licensure by examination.

The bill allows licensees to provide services at special events (i.e., weddings, proms, corporate events, etc.). Individuals performing the services must be employed by a licensed salon and the scheduling of the event must be made through a licensed salon.

The bill allows individuals who hold a valid cosmetology license in any state or who are authorized to practice in another country, to perform services in conjunction with a department store demonstration and without the requirement that services be performed in a licensed salon.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (DBPR) is the agency responsible for the regulation of cosmetology under chapter 477, F.S. No person other than a duly licensed cosmetologist can practice cosmetology or use the name or title of a cosmetologist unless exempted under law.

Section 477.013(4), F.S., defines cosmetology to mean the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

In order to be licensed as a cosmetologist, a person must be at least 16 years of age or have received a high school diploma; must pay the required application fee; must satisfy an experience requirement by being authorized to practice cosmetology in another state or country for at least a year or an education requirement of 1,200 hours of training from a cosmetology program licensed pursuant to chapter 1005, F.S., a cosmetology program within the public school system, Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in the state. Finally, the person must pass the licensure examination.

Cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties, such as persons in the armed services.

Section 477.0263(3), F.S., allows a person who holds a cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photograph studio salon; a manufacturer trade show demonstration; or an educational seminar.

Effect of proposed changes

Section 1. Amends 477.013, F.S., to address the definition of "cosmetology" and the services allowed under the "hair technician" license, the "esthetician" license, and the "nail technician" license; clarify that an esthetician can tint eyebrows or eyelashes, clarify that a hair technician can weave or braid a person's hair; and clarify that a nail technician can manipulate the superficial tissue of a person's forearms, hands or legs below the knee or feet; moves the body wrapping service into the esthetician license; define "salon" and strike the definition of "specialty salon"; amend the definition of shampooing to mean "cleansing" of the hair rather than just "washing" of the hair; clarify the definition of hair braiding to mean "the weaving or interweaving of a person's own natural hair" rather than "the weaving or interweaving of natural human hair."

Section 2. Creates 477.0131, F.S., to specify categories of licensure to include hair technicians, estheticians, nail technicians, and cosmetologists which combines all three licenses.

Section 3. Amends 477.0132, F.S., to allow body wrappers who hold registrations issued before January 1, 2009, to continue to practice as a body wrapper and requires the board to adopt continuing education requirements for the renewal of body wrapping registrations.

Section 4. Amends 477.014, F.S., to prohibit the use of "cosmetologist", "hair technician", "esthetician", or "nail technician" and prohibit individuals from practicing as cosmetologists, hair technicians, estheticians or nail technicians without being properly licensed as such; allow cosmetologists licensed before January 1, 2009, to perform all services of a licensed cosmetologist; allow facial specialists and manicure/pedicure/nail extension specialists who are registered or enrolled in school before January 1, 2009, to take the exam for licensure; allow specialists registered before January 1, 2009, to continue to practice under the name of their respective specialty registration without taking the respective licensure exam; give the board rulemaking authority for renewal of registration existing before January 1, 2009.

Section 5. Amends 477.019, F.S., to expand the education requirements, set by the board, to make application for examination to include a GED, or has passed an ability-to-benefit test¹, in addition to being at least 16 years of age or having received a high school diploma; to require the following educational hour requirements:

- a. Hair Technician – 1,000 hours
- b. Esthetician – 600 hours (from 260 hours)
- c. Nail Technician – 350 hours (from 240 hours)
- d. Cosmetologist – 1,800 hours (from 1,200 hours)

The bill allows a student who has enrolled and begun his/her education before January 1, 2009, to take the exam to be licensed as a cosmetology upon completion of 1,200 hours; requires a student who begins his/her education on or after January 1, 2009, to comply with the new educational hours before taking the exam; eliminates the ability of a student to petition the board to sit for the examination after completing 1,000 educational hours; allows a graduate of a licensed cosmetology school or a program

¹ The "Ability to Benefit Test" or ATB is a list of tests, that are acceptable to DOE and the federal government that can be administered to determine that a person is at a high enough academic functioning level to benefit from instruction. Passage of the ATB will allow a student to obtain federal financial aid for their cost of attendance to the school. It is not administered by the school/institution but by a 3rd party, someone on DOE's test administration list. It is most often used for people who do not have a high school diploma. E-mail from Susan Lehr, VP Government Relations, Florida Community College, Jacksonville, and dated 1/26/2007.

within the public school system, after submitting a complete application for examination for licensure as a cosmetologist, hair technician, esthetician or nail technician to practice for a maximum of 60 days, the services are provided under the supervision of a licensed professional in a licensed salon; if the applicant fails the exam the first time, the applicant may continue to practice under the supervision of a licensed professional in a licensed salon for an additional 60 days, provided the applicant applies for the next available exam; failure of the examination on two occasions would void the temporary authority to conduct services under supervision; allows for the endorsement of current active out-of-country cosmetology licensees so long as those out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of applicants from Florida; allows for work experience to be substituted for required educational hours in the amount and manner provided by board rule; and removes the current 48 hour cap on the number of hours of continuing education refresher courses.

Section 6. Amends 477.0212, F.S., to require the board to adopt continuing education rules for license renewal.

Section 7. Amends 477.023, F.S., to add the allowance of the certification of grooming and salon services training programs to the already existing cosmetology training programs within the public school system and does not prevent the government operation of any other cosmetology program in this state.

Section 8. Amends 477.025, F.S., to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. to add hair technicians, estheticians, and nail technician categories to the current fee structures and to eliminate application and endorsement registration fees for specialists.

Section 10. Amends 477.0263, F.S., to exempt individuals conducting department store demonstrations who hold a valid cosmetology license in another state or country to provide cosmetology services outside of a license salon and allow licensees or registrants to perform services outside a licensed salon for special events so long as the person is employed by a licensed salon and appointments for such services are made through a licensed salon.

Section 11. Amends 477.0265, F.S., to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" and change references from "cosmetology" to "in the field of cosmetology."

Section 13. Amends 477.029, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" strike reference to "cosmetology" salon.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an appropriation of \$60,149 of nonrecurring funds from the Administrative Trust Fund of the DBPR upon becoming a law for fiscal year 2008-2009

Section 16. Provides an effective date of July 1, 2009.

C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definition of "cosmetology"; the services allowed under the "hair technician" license, the "esthetician" license, and the "nail technician" license."

Section 2. Creates 477.0131, F.S., specifying categories of licensure to include hair technician, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration.

Section 4. Amends 477.014, F.S., relating to qualifications for the practice of cosmetology.

Section 5. Amends 477.019, F.S., expanding the training requirements.

Section 6. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education.

Section 7. Amends 477.023, F.S., relating to schools of cosmetology licensure.

Section 8. Amends 477.025, F.S. relating to cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons, and to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. relating to fees, to add hair technicians, estheticians, and nail technician categories to the current fee structures

Section 10. Amends 477.0263, F.S., relating to cosmetology services to be performed in licensed salon with exceptions.

Section 11. Amends 477.0265, F.S., relating to prohibited acts to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., relating to disciplinary proceedings to add conforming language.

Section 13. Amends 477.029, F.S., relating to penalties to add conforming language.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an appropriation upon becoming a law for the 2008-2009 Fiscal Year.

Section 16. Provides effective dates of July 1, 2008 for the appropriation section and of July 1, 2009 for the remaining sections of the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department does not anticipate any revenues in FY 2008-09 and then annual revenues of \$233,920 thereafter.

REVENUE			
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Licensure by Endorsement Fees: 2,924 applicants	0	\$233,920	\$233,920
Application \$50, License \$25, Unlicensed Activity \$5			
TOTAL:	0	\$233,920	\$233,920

2. Expenditures:

The proposed legislation will cost approximately \$196,764 in its first year and will then drop off to \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Salaries/Benefits # of FTE's CIU .50 FTE	19,871	19,871	19,871
Salary Rate 14,719			
Other Personal Services Div. of Professions	15,845	15,845	0
Examination Testing Svcs for PR (Cat. 100106)-	7,000	7,000	7,000
Expenses	9,544	9,544	6,700
Contract Services	0	0	0
HR Services/TR/DMS	265	265	199
Subtotal	52,525	52,525	33,770

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Other Personal Services Testing & Education	15,845	0	0
Expense	3,388	0	0
Operating Capital Outlay	1,000	0	0
Examination Testing Svcs for PR (Cat. 100106)	23,940	0	0
Contracted Services - IT	50,000	0	0
HR Services/TR/DMS	66	0	0
Subtotal	94,239	0	0

Non-Operating Expenditures	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Service Charge to GR (7.3% of revenue)	0	17,076	17,076
Indirect Costs (DBPR Administrative Overhead)	50,000	5,000	5,000

Other/Transfers	0	0	0
Subtotal	0	17,076	17,076
TOTAL Expenditures	196,764	74,601	55,846

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed legislation increases education requirements, which will increase costs to students in the cosmetology, esthetician, nail technician, full specialist and body wrapper programs.

D. FISCAL COMMENTS:

The bill contains a nonrecurring appropriation of \$60,149 from the department's Administrative Trust Fund for fiscal year 2008-2009.

Per the department, the legislation will provide no new revenues in FY 08-09 and will cost approximately \$196,764. After FY 2008-09, the department anticipates annual revenues of approximately \$233,920 with expenses of \$75,000 in FY 2009-10 and \$56,000 in FY 2010-11. The department is requesting half (.50) of one Full-time Equivalent position for FY 2008-09 to be located in the Central Intake Unit to assist with increased applications and two short-term part-time OPS positions, one of which will be located in the Division of Professions for FY 2008-09 and FY 2009-10 and will assist with the increased workload in the board office, and the other of which will be located in the Division of Service Operations for FY 2008-09 and will assist with exam development.

Other expenditures are related to one-time costs of modifying the department's licensing by adding new license types required by the legislation and developing three new exam types for the new licenses. Less the nonrecurring appropriation of \$60,149 as provided in the bill, the department will operate at a deficit of \$136,615 for the first year, and the department believes that a Special Assessment on a four-year cycle would be required to support the costs of the changes proposed in this legislation. The Board of Cosmetology recently had to transfer \$800,000 from its Unlicensed Activity Account to its Operating Account because revenues have not been able to support current regulatory costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill requires the board to adopt rules restricting applicants from repeating duplicative training curricula between licensure categories. The bill gives the board authority to develop continuing education rules for the renewal of body wrapping registrations and all other registrations existing prior to January 1, 2009. The bill allows for work experience to substitute for required educational hours in the amount and manner provided by board rule. The bill provides rulemaking authority for the renewal or reactivation requirements for inactive licensees. There is rulemaking authority which currently exists to include the proposed allowance for hair technicians, estheticians, nail technicians or registered specialists to perform services in a location other than a licensed salon such as a nursing home, hospital or residence when a client, for reasons of ill health, is unable to go to a licensed salon. The bill grants rulemaking authority for the allowance of services outside a licensed salon for special events so long as the individual is employed by a licensed salon and schedules appointments through a licensed salon.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the 2007 legislative session, SB 920 relating to cosmetology and which was nearly identical to this bill, was passed and sent to the Governor. The legislation was vetoed by Governor Crist. The veto message states, in part,

"While I support efforts to protect the public, I am concerned that this bill provides too much regulation without a justifiable need. I believe that government exists to accomplish the will of the people, not to restrict economic or personal liberties. This bill dramatically increases the educational requirements that a person must meet before entering the workplace – in some cases, it more than doubles the current requirements. I am concerned that this bill is overly burdensome and would have negative impacts on peoples' livelihoods. Regulation should protect the public, but not limit competition or act as state sponsored protectionism against free enterprise.

D. STATEMENT OF THE SPONSOR

The Strike-All that I have submitted will compromise hours for cosmetologist to 1500 hours which is the national standard. This bill has the full support of the Florida Association of Beauty Professionals, Community Colleges, Salon Owners, and Private Beauty Schools. The current law has not been updated in 23 years which has created a need for health and safety of our public.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 21, 2008 the Business Regulation committee adopted a strike-everything amendment and passed the bill favorably, as amended. The strike-all amendment differs from the bill as filed in the following areas:

Reduces hours of education for new cosmetologist license 1800 to 1500 hours (current law is 1200);

Specifies cosmetologist scope of practice for new license is specified for: hair stylist services to include hair removal services (eyebrows and lip by waxing and tweezing); nail services for the natural nails for pedicure and manicure (excludes artificial nails); and facials (excludes expanded skin care treatments with chemicals and other extensive services);

Codifies, for nail and skin services, certain rules certain relating to health and safety requirements on contagious/communicable disease and infection and disinfection requirements;

Prohibits the use of a credo blade (razor for removing calluses);

Allows an applicant to schedule to take the licensure examination upon graduation when the student has 100 hours left before graduation;

Authorizes board and DBPR to evaluate the feasibility, processes and associated costs of utilizing a national exam for cosmetology licenses;

Changes the term from "hair technician" to "hair stylist;"

Removes the provision that allowing students to work without being licensed after they failed their licensure exam.

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Jobs & Entrepreneurship Council
2 Representative Carroll offered the following:

3

4 **Amendment to Strike-all Amendment (23933) by Representative**
5 **Carroll**

6 Remove lines 256-257 and insert:

7 (a) Maintenance of a clean and safe work area through
8 pedicure equipment disinfection

9

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Jobs & Entrepreneurship Council
2 Representative(s) Reagan offered the following:

3
4 **Amendment to Strike-All Amendment (1) by Representative**
5 **Carroll**

6 Remove line(s) 805-810 and insert:

7 Section 15. (1) For the 2008-2009 fiscal year, the sums of
8 \$22,712 in recurring funds and \$51,000 in nonrecurring funds are
9 appropriated from the Administrative Trust Fund of the
10 Department of Business and Professional Regulation and the sums
11 of \$18,755 in recurring funds and \$24,696 in nonrecurring funds
12 are appropriated from the Professional Regulation Trust Fund of
13 the Department of Business and Professional Regulation to carry
14 out the licensing and regulatory functions of this act.

29 477.023, F.S.; stipulating that the Department of
 30 Education is not prevented from issuing grooming and salon
 31 services certification; amending s. 477.025, F.S.,
 32 relating to cosmetology and specialty salons, requisites,
 33 licensure, inspection, and mobile cosmetology salons, to
 34 conform; amending s. 477.026, F.S.; revising fee
 35 provisions to conform; amending s. 477.0263, F.S., to
 36 conform; specifying circumstances under which cosmetology
 37 or specialty services may be practiced outside of a
 38 licensed salon; amending s. 477.0265, F.S., relating to
 39 prohibited acts, to conform; amending s. 477.028, F.S.,
 40 relating to disciplinary proceedings, to conform; amending
 41 s. 477.029, F.S., relating to penalties, to conform;
 42 repealing s. 477.0201, F.S., relating to specialty
 43 registration, qualifications, registration renewal, and
 44 endorsement; providing an appropriation; providing
 45 effective dates.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 477.013, Florida Statutes, is amended
 50 to read:

51 477.013 Definitions.--As used in this chapter, the term:

52 (1) "Board" means the Board of Cosmetology.

53 (2) "Department" means the Department of Business and
 54 Professional Regulation.

55 (3) "Cosmetologist" means a person who is licensed to
 56 engage in the practice of all cosmetology services in this state

57 under the authority of this chapter, including hair technician
 58 services, esthetician services, and nail technician services, or
 59 a person who is licensed prior to July 1, 2009, to engage in the
 60 practice of cosmetology in this state.

61 (4) "Cosmetology" means the practice of performing or
 62 offering to perform for compensation any of the following
 63 services for aesthetic rather than medical purposes:

64 (a) Hair technician services, which are:

65 1. Treating a person's hair by:

66 a. Providing any method of treatment as a primary service,
 67 including arranging, beautifying, lightening, cleansing,
 68 coloring, cutting, dressing, processing, shampooing, shaping,
 69 singeing, straightening, styling, tinting, or waving;

70 b. Providing a necessary service that is preparatory or
 71 ancillary to a service under sub-subparagraph a., including
 72 clipping, cutting, or trimming; or

73 c. Cutting a person's hair as a separate and independent
 74 service for which a charge is directly or indirectly made
 75 separately from charges for any other service.

76 2. Weaving or braiding a person's hair.

77 3. Shampooing and conditioning a person's hair.

78 4. Servicing a person's wig or artificial hairpiece on
 79 that person's head in any manner listed in subparagraph 1.

80 5. Treating a person's mustache or beard by coloring,
 81 processing, styling, or trimming.

82 (b) Esthetician services, which are:

83 1. Cleansing, exfoliating, or stimulating a person's skin
 84 by hand or by using a mechanical device, apparatus, or appliance

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85 with the use of any cosmetic preparation, antiseptic, lotion,
 86 powder, oil, clay, cream, or appliance.

87 2. Beautifying a person's skin using a cosmetic
 88 preparation, antiseptic, lotion, powder, oil, clay, cream, or
 89 appliance.

90 3. Administering facial treatments.

91 4. Removing superfluous hair from a person's body using
 92 depilatories, threading, waxing, sugaring, or tweezing.

93 5. Tinting eyebrows or eyelashes with products
 94 manufactured specifically for eyebrows or eyelashes.

95 6. Body wrapping, which is a treatment program that uses
 96 wraps for the purposes of cleansing and beautifying a person's
 97 skin for aesthetic rather than medical or weight-loss purposes
 98 and is the application of oils, lotions, or other fluids to the
 99 body using wraps. Body wrapping does not include manipulation of
 100 the body's superficial tissue, other than that resulting from
 101 the application of the wrap materials.

102 7. Submersing parts of the body in a bath of clay, oils,
 103 lotions, or other fluids.

104 (c) Nail technician services, which are:

105 1. Treating a person's nails by:

106 a. Cutting, trimming, polishing, painting, printing,
 107 tinting, coloring, cleansing, manicuring, or pedicuring; or

108 b. Affixing artificial nails, extensions, or capping.

109 2. Cleansing, treating, or beautifying a person's
 110 forearms, hands, legs below the knee, or feet ~~mechanical or~~
 111 ~~chemical treatment of the head, face, and scalp for aesthetic~~
 112 ~~rather than medical purposes, including, but not limited to,~~

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113 ~~hair shampooing, hair cutting, hair arranging, hair coloring,~~
 114 ~~permanent waving, and hair relaxing for compensation. This term~~
 115 ~~also includes performing hair removal, including wax treatments,~~
 116 ~~manicures, pedicures, and skin care services.~~

117 (5) "Salon" means a place of business where the practice
 118 of one or more cosmetology or specialty services are offered or
 119 performed for compensation.

120 ~~(6)-(5)~~ "Specialist" means any person registered under s.
 121 477.014(6) to practice one or more of the following specialties:
 122 ~~holding a specialty registration in one or more of the~~
 123 ~~specialties registered under this chapter.~~

124 ~~(6)~~ "Specialty" means the practice of one or more of the
 125 following:

126 (a) Manicuring, or the cutting, polishing, tinting,
 127 coloring, cleansing, adding, or extending of the nails, and
 128 massaging of the hands. This term includes any procedure or
 129 process for the affixing of artificial nails, except those nails
 130 which may be applied solely by use of a simple adhesive.

131 (b) Pedicuring, or the shaping, polishing, tinting, or
 132 cleansing of the nails of the feet, and massaging or beautifying
 133 of the feet.

134 (c) Facials, or the massaging or treating of the face or
 135 scalp with oils, creams, lotions, or other preparations, and
 136 skin care services, which means the treatment of the skin of a
 137 person's body, in addition to a person's head, face, and scalp,
 138 by the use of a sponge, brush, cloth, or similar device to apply
 139 or remove a chemical preparation or other substance without
 140 involving massage, as defined in s. 480.033(3), except that

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141 chemical peels may be removed by peeling an applied preparation
 142 from the skin by hand.

143 (7) "Shampooing" means the cleansing ~~washing~~ of the hair
 144 with soap and water or with a special preparation, ~~or applying~~
 145 ~~hair tonics.~~

146 ~~(8) "Specialty salon" means any place of business wherein~~
 147 ~~the practice of one or all of the specialties as defined in~~
 148 ~~subsection (6) are engaged in or carried on.~~

149 (8)-(9) "Hair braiding" means the weaving or interweaving
 150 of a person's own natural human hair for compensation without
 151 cutting, coloring, permanent waving, relaxing, removing, or
 152 chemical treatment and does not include the use of hair
 153 extensions or wefts.

154 (9)-(10) "Hair wrapping" means the wrapping of manufactured
 155 materials around a strand or strands of human hair, for
 156 compensation, without cutting, coloring, permanent waving,
 157 relaxing, removing, weaving, chemically treating, braiding,
 158 using hair extensions, or performing any other service defined
 159 as cosmetology.

160 (10)-(11) "Photography studio salon" means an establishment
 161 where the hair-arranging services and the application of
 162 cosmetic products are performed solely for the purpose of
 163 preparing the model or client for the photographic session
 164 without shampooing, cutting, coloring, permanent waving,
 165 relaxing, or removing of hair or performing any other service
 166 defined as cosmetology.

167 ~~(12) "Body wrapping" means a treatment program that uses~~
 168 ~~herbal wraps for the purposes of cleansing and beautifying the~~

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169 ~~skin of the body, but does not include:~~

170 ~~(a) The application of oils, lotions, or other fluids to~~
 171 ~~the body, except fluids contained in presoaked materials used in~~
 172 ~~the wraps, or~~

173 ~~(b) Manipulation of the body's superficial tissue, other~~
 174 ~~than that arising from compression emanating from the wrap~~
 175 ~~materials.~~

176 ~~(13) "Skin care services" means the treatment of the skin~~
 177 ~~of the body, other than the head, face, and scalp, by the use of~~
 178 ~~a sponge, brush, cloth, or similar device to apply or remove a~~
 179 ~~chemical preparation or other substance, except that chemical~~
 180 ~~peels may be removed by peeling an applied preparation from the~~
 181 ~~skin by hand. Skin care services must be performed by a licensed~~
 182 ~~cosmetologist or facial specialist within a licensed cosmetology~~
 183 ~~or specialty salon, and such services may not involve massage,~~
 184 ~~as defined in s. 480.033(3), through manipulation of the~~
 185 ~~superficial tissue.~~

186 Section 2. Section 477.0131, Florida Statutes, is created
 187 to read:

188 477.0131 Hair technician, esthetician, nail technician,
 189 and cosmetology licenses.--

190 (1) A person who is otherwise qualified by this chapter
 191 and who is authorized to practice all of the services listed in
 192 s. 477.013(4) (a) shall be licensed as a hair technician.

193 (2) A person who is otherwise qualified by this chapter
 194 and who is authorized to practice all of the services listed in
 195 s. 477.013(4) (b) shall be licensed as an esthetician.

196 (3) A person who is otherwise qualified by this chapter

197 and who is authorized to practice all of the services listed in
 198 s. 477.013(4)(c) shall be licensed as a nail technician.

199 (4) A person who is otherwise qualified by this chapter
 200 and who is authorized to practice all of the services listed in
 201 s. 477.013(4) shall be licensed as a cosmetologist.

202 Section 3. Section 477.0132, Florida Statutes, is amended
 203 to read:

204 477.0132 Hair braiding, hair wrapping, and body wrapping
 205 registration.--

206 (1) ~~(a)~~ A person ~~Persens~~ whose occupation or practice is
 207 confined solely to hair braiding shall ~~must~~ register with the
 208 department, shall pay the applicable registration fee, and shall
 209 take a two-day 16-hour course. The course shall be board
 210 approved and consist of 5 hours of instruction in HIV/AIDS and
 211 other communicable diseases, 5 hours of instruction in
 212 sanitation and sterilization, 4 hours of instruction in
 213 disorders and diseases of the scalp, and 2 hours of instruction
 214 in ~~studies regarding~~ laws affecting hair braiding.

215 (2) ~~(b)~~ A person ~~Persens~~ whose occupation or practice is
 216 confined solely to hair wrapping shall ~~must~~ register with the
 217 department, shall pay the applicable registration fee, and shall
 218 take a one-day 6-hour course. The course shall be board approved
 219 and consist of instruction ~~education~~ in HIV/AIDS and other
 220 communicable diseases, sanitation and sterilization, disorders
 221 and diseases of the scalp, and ~~studies regarding~~ laws affecting
 222 hair wrapping.

223 (3) ~~(c)~~ Unless otherwise licensed or exempted from
 224 licensure under this chapter, any person whose occupation or

225 practice is confined solely to body wrapping must register with
 226 the department, pay the applicable registration fee, and take a
 227 40-hour ~~two day 12 hour~~ course. The course shall be board
 228 approved and include, but not be limited to, body systems,
 229 contraindications, ~~consist of education in~~ HIV/AIDS and other
 230 communicable diseases, sanitation and sterilization, disorders
 231 and diseases of the skin, and studies regarding laws affecting
 232 body wrapping.

233 (4) ~~(4)~~ Only the board may review, evaluate, and approve a
 234 course and text required of an applicant for registration under
 235 this section ~~subsection~~ in the occupation or practice of hair
 236 braiding, hair wrapping, or body wrapping. A provider of such a
 237 course is not required to hold a license under chapter 1005.

238 (5) ~~(2)~~ Hair braiding, hair wrapping, and body wrapping are
 239 not required to be practiced in a ~~cosmetology~~ salon or ~~specialty~~
 240 ~~salon~~. When hair braiding, hair wrapping, or body wrapping is
 241 practiced outside a ~~cosmetology~~ salon or ~~specialty~~ salon,
 242 disposable implements shall ~~must~~ be used or all implements shall
 243 ~~must~~ be sanitized in a disinfectant approved for hospital use or
 244 approved by the federal Environmental Protection Agency.

245 (6) ~~(3)~~ Pending issuance of registration, a person is
 246 eligible to practice hair braiding, hair wrapping, or body
 247 wrapping upon submission of a registration application that
 248 includes proof of successful completion of the education
 249 requirements and payment of the applicable fees required by this
 250 chapter.

251 Section 4. Section 477.014, Florida Statutes, is amended
 252 to read:

253 477.014 Qualifications for practice.--

254 (1) On and after July January 1, 2009, a ~~1979~~, ~~no~~ person
 255 who is not ~~other than~~ a duly licensed or registered under this
 256 chapter may not ~~cosmetologist shall~~ practice in any of the
 257 cosmetology areas provided in s. 477.013(4) or use the name or
 258 title of cosmetologist, hair technician, esthetician, or nail
 259 technician.

260 (2) A person licensed or registered under this chapter on
 261 or after July 1, 2009, may not practice or hold himself or
 262 herself out as qualified to practice in an area in which he or
 263 she is not specifically licensed or registered under this
 264 chapter.

265 (3) A cosmetologist licensed before July 1, 2009, may
 266 perform all the services of a licensed cosmetologist as defined
 267 in this chapter.

268 (4) A facial specialist registered or enrolled in a
 269 cosmetology school before July 1, 2009, may take the examination
 270 for an esthetician license.

271 (5) A manicure, pedicure, or nail extension specialist
 272 registered or enrolled in a cosmetology school before July 1,
 273 2009, may take the examination for a nail technician license.

274 (6) A specialist registered under this chapter before July
 275 1, 2009, may continue to practice under the name of his or her
 276 specialty registration without taking the respective licensure
 277 examination. Renewal of all registrations, including a full
 278 specialty registration that includes facial, manicure, pedicure,
 279 and nail extension specialties, existing before July 1, 2009,
 280 shall be accomplished pursuant to rules adopted by the board.

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281 Section 5. Section 477.019, Florida Statutes, is amended
 282 to read:

283 477.019 Cosmetologists; hair technicians; estheticians;
 284 nail technicians; qualifications; licensure; supervised
 285 practice; license renewal; endorsement; continuing education.--

286 (1) A person desiring to be licensed in the field of
 287 cosmetology ~~as a cosmetologist~~ shall apply to the department for
 288 licensure.

289 (2) An applicant is ~~shall be~~ eligible for licensure by
 290 examination to practice cosmetology, hair technician services,
 291 esthetician services, or nail technician services if the
 292 applicant:

293 (a) Is at least 16 years of age or has received a high
 294 school diploma or graduate equivalency diploma or has passed an
 295 ability-to-benefit test, which is an independently administered
 296 test approved by the United States Secretary of Education as
 297 provided in 20 U.S.C. s. 1091(d).†

298 (b) Pays the required application fee, which is not
 299 refundable, and the required examination fee, which is
 300 refundable if the applicant is determined to not be eligible for
 301 licensure for any reason other than failure to successfully
 302 complete the licensure examination.†~~and~~

303 (c)1. Is authorized to practice cosmetology in another
 304 state or country, has been so authorized for at least 1 year,
 305 and does not qualify for licensure by endorsement as provided
 306 for in subsection (6); or

307 2.a. Has received a minimum number of hours of training as
 308 follows:

- 309 | (I) For a hair technician, 1,000 hours.
- 310 | (II) For an esthetician, 600 hours.
- 311 | (III) For a nail technician, 350 hours.
- 312 | (IV) For a cosmetologist, 1,800 hours, composed of
- 313 | training from the hair technician, esthetician, and nail
- 314 | technician curricula.

315 |

316 | The board shall adopt rules to prevent an applicant from having

317 | to repeat curricula components. A person who holds one or more

318 | licenses may obtain an additional license by completing training

319 | as determined by board rule. The board shall consult with the

320 | Department of Education and the Commission for Independent

321 | Education on the development of such rules.

322 | b. The training ~~Has received a minimum of 1,200 hours of~~

323 | ~~training as established by the board, which~~ shall include, but

324 | ~~need shall~~ not be limited to, the equivalent of completion of

325 | services directly related to the practice of cosmetology at one

326 | of the following:

327 | (I)a. A school of cosmetology licensed pursuant to chapter

328 | 1005.

329 | (II)b. A cosmetology program within the public school

330 | system.

331 | (III)c. The Cosmetology Division of the Florida School for

332 | the Deaf and the Blind, provided the division meets the

333 | standards of this chapter.

334 | (IV)d. A government-operated cosmetology program in this

335 | state.

336 | c. A person who has enrolled and begun his or her

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337 education before July 1, 2009, may take the examination to be
 338 licensed as a cosmetologist upon completion of 1,200 hours of
 339 education.

340 d. A person who begins his or her education on or after
 341 July 1, 2009, shall comply with the hour requirements in sub-
 342 subparagraph a. in order to qualify to take his or her
 343 respective examination.

344
 345 ~~The board shall establish by rule procedures whereby the school~~
 346 ~~or program may certify that a person is qualified to take the~~
 347 ~~required examination after the completion of a minimum of 1,000~~
 348 ~~actual school hours. If the person then passes the examination,~~
 349 ~~he or she shall have satisfied this requirement; but if the~~
 350 ~~person fails the examination, he or she shall not be qualified~~
 351 ~~to take the examination again until the completion of the full~~
 352 ~~requirements provided by this section.~~

353 (3) Upon an applicant receiving a passing grade, as
 354 established by board rule, on the examination and paying the
 355 initial licensing fee, the department shall issue a license to
 356 practice in the applicant's respective area of cosmetology
 357 provided in s. 477.013(4).

358 (4) After submitting a complete application to take the
 359 first available examination for licensure as a cosmetologist,
 360 hair technician, esthetician, or nail technician, a graduate of
 361 a licensed cosmetology school or a program within the public
 362 school system, which school or program is certified by the
 363 Department of Education, is eligible to practice in the
 364 graduate's respective area for a maximum period of 60 days,

365 provided such graduate practices under the supervision of a
 366 professional licensed under this chapter in a licensed salon. A
 367 graduate who fails to pass an examination the first time may
 368 continue to practice under the supervision of a professional
 369 licensed under this chapter in a licensed salon for an
 370 additional 60-day period, provided the graduate applies for the
 371 next available examination. A graduate may not continue to
 372 practice under this subsection if the graduate fails the
 373 examination twice. Following the completion of the first
 374 ~~licensing examination and pending the results of that~~
 375 ~~examination and issuance of a license to practice cosmetology,~~
 376 ~~graduates of licensed cosmetology schools or cosmetology~~
 377 ~~programs offered in public school systems, which schools or~~
 378 ~~programs are certified by the Department of Education, are~~
 379 ~~eligible to practice cosmetology, provided such graduates~~
 380 ~~practice under the supervision of a licensed cosmetologist in a~~
 381 ~~licensed cosmetology salon. A graduate who fails the first~~
 382 ~~examination may continue to practice under the supervision of a~~
 383 ~~licensed cosmetologist in a licensed cosmetology salon if the~~
 384 ~~graduate applies for the next available examination and until~~
 385 ~~the graduate receives the results of that examination. No~~
 386 ~~graduate may continue to practice under this subsection if the~~
 387 ~~graduate fails the examination twice.~~

388 (5) Renewal of license registration shall be accomplished
 389 pursuant to rules adopted by the board.

390 (6) The board shall adopt rules specifying procedures for
 391 the licensure by endorsement of practitioners desiring to be
 392 licensed in this state who hold a current active license in

393 another state or country and who have met qualifications
 394 substantially similar to, equivalent to, or greater than the
 395 qualifications required of applicants from this state. For
 396 purposes of this subsection, work experience may be substituted
 397 for required educational hours in the amount and manner provided
 398 by board rule.

399 (7) (a) The board shall prescribe by rule continuing
 400 education requirements for licensees and registered specialists
 401 that intended to ensure the protection of the public through
 402 updated training of licensees and registered specialists, not to
 403 exceed 16 hours biennially, as a condition for renewal of a
 404 license or registration as a specialist under this chapter.
 405 Continuing education courses shall include, but not be limited
 406 to, the following subjects as they relate to the practice of
 407 cosmetology: HIV/AIDS ~~human immunodeficiency virus and acquired~~
 408 ~~immune deficiency syndrome~~; Occupational Safety and Health
 409 Administration regulations; workers' compensation issues; state
 410 and federal laws and rules as they pertain to cosmetologists,
 411 the practice of cosmetology, salons, specialists, ~~specialty~~
 412 ~~salons~~, and booth renters; chemical makeup as it pertains to
 413 hair, skin, and nails; and environmental issues. Courses given
 414 at educational ~~cosmetology~~ conferences may be counted toward the
 415 number of continuing education hours required if approved by the
 416 board.

417 (b) Any person whose occupation or practice is confined
 418 solely to hair braiding, hair wrapping, or body wrapping is
 419 exempt from the continuing education requirements of this
 420 subsection.

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421 (c) The board may, by rule, require any licensee in
 422 violation of a continuing education requirement to take a
 423 refresher course or refresher course and examination in addition
 424 to any other penalty. ~~The number of hours for the refresher~~
 425 ~~course may not exceed 48 hours.~~

426 Section 6. Section 477.0212, Florida Statutes, is amended
 427 to read:

428 477.0212 Inactive status.--

429 (1) A ~~cosmetologist's~~ license issued under this chapter
 430 which ~~that~~ has become inactive may be reactivated under s.
 431 477.019 upon application to the department.

432 (2) The board shall adopt ~~promulgate~~ rules relating to
 433 licenses that ~~which~~ have become inactive and for the renewal of
 434 inactive licenses. The board shall prescribe by rule a fee not
 435 to exceed \$50 for the reactivation of an inactive license and a
 436 fee not to exceed \$50 for the renewal of an inactive license.
 437 The board shall prescribe by rule the continuing education
 438 requirements to be met prior to license renewal or reactivation.

439 Section 7. Section 477.023, Florida Statutes, is amended
 440 to read:

441 477.023 Schools of cosmetology; licensure.--~~A~~ No private
 442 school of cosmetology may not ~~shall be permitted to~~ operate
 443 without a license issued by the Commission for Independent
 444 Education pursuant to chapter 1005. However, this chapter does
 445 not ~~nothing herein shall be construed to~~ prevent certification
 446 by the Department of Education of grooming and salon services
 447 and cosmetology training programs within the public school
 448 system or ~~to~~ prevent government operation of any other program

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449 of cosmetology in this state.

450 Section 8. Section 477.025, Florida Statutes, is amended
451 to read:

452 477.025 ~~Cosmetology salons; specialty Salons; requisites;~~
453 licensure; inspection; mobile ~~cosmetology~~ salons.--

454 (1) No ~~cosmetology salon or specialty~~ salon shall be
455 permitted to operate without a license issued by the department
456 except as provided in subsection (11).

457 (2) The board shall adopt rules governing the licensure
458 and operation of salons ~~and specialty salons~~ and their
459 facilities, personnel, and safety and sanitary requirements, and
460 the license application and granting process.

461 (3) Any person, firm, or corporation desiring to operate a
462 ~~cosmetology salon or specialty~~ salon in the state shall submit
463 to the department a salon an application form ~~upon forms~~
464 provided by the department, and ~~accompanied by~~ any relevant
465 information requested by the department, and ~~by~~ an application
466 fee.

467 (4) Upon receiving the application, the department may
468 cause an investigation to be made of the proposed ~~cosmetology~~
469 ~~salon or specialty~~ salon.

470 (5) When an applicant fails to meet all the requirements
471 provided in this section ~~herein~~, the department shall deny the
472 application in writing and shall list the specific requirements
473 not met. No applicant denied licensure because of failure to
474 meet the requirements of this section ~~herein~~ shall be precluded
475 from reapplying for licensure.

476 (6) When the department determines that the proposed

477 ~~cosmetology salon or specialty~~ salon may reasonably be expected
 478 to meet the requirements set forth in this section herein, the
 479 department shall grant the license upon such conditions as it
 480 shall deem proper under the circumstances and upon payment of
 481 the original licensing fee.

482 (7) No license for operation of a ~~cosmetology salon or~~
 483 ~~specialty~~ salon may be transferred from the name of the original
 484 licensee to another. It may be transferred from one location to
 485 another only upon approval by the department, which approval
 486 shall not be unreasonably withheld.

487 (8) Renewal of license registration for ~~cosmetology salons~~
 488 ~~or specialty~~ salons shall be accomplished pursuant to rules
 489 adopted by the board. The board is further authorized to adopt
 490 rules governing delinquent renewal of licenses and may impose
 491 penalty fees for delinquent renewal.

492 (9) The board is authorized to adopt rules governing the
 493 periodic inspection of ~~cosmetology salons and specialty~~ salons
 494 licensed under this chapter.

495 (10) (a) The board shall adopt rules governing the
 496 licensure, operation, and inspection of mobile ~~cosmetology~~
 497 salons, including their facilities, personnel, and safety and
 498 sanitary requirements.

499 (b) Each mobile salon must comply with all licensure and
 500 operating requirements specified in this chapter or chapter 455
 501 or rules of the board or department that apply to ~~cosmetology~~
 502 salons at fixed locations, except to the extent that such
 503 requirements conflict with this subsection or rules adopted
 504 pursuant to this subsection.

505 (c) A mobile ~~cosmetology~~ salon must maintain a permanent
 506 business address, located in the inspection area of the local
 507 department office, at which records of appointments,
 508 itineraries, license numbers of employees, and vehicle
 509 identification numbers of the licenseholder's mobile salon shall
 510 be kept and made available for verification purposes by
 511 department personnel, and at which correspondence from the
 512 department can be received.

513 (d) To facilitate periodic inspections of mobile
 514 ~~cosmetology~~ salons, prior to the beginning of each month, each
 515 mobile salon licenseholder must file with the board a written
 516 monthly itinerary listing the locations where and the dates and
 517 hours when the mobile salon will be operating.

518 (e) The board shall establish fees for mobile ~~cosmetology~~
 519 salons, not to exceed the fees for ~~cosmetology~~ salons at fixed
 520 locations.

521 (f) The operation of mobile ~~cosmetology~~ salons must be in
 522 compliance with all local laws and ordinances regulating
 523 business establishments, with all applicable requirements of the
 524 Americans with Disabilities Act relating to accommodations for
 525 persons with disabilities, and with all applicable OSHA
 526 requirements.

527 (11) Facilities licensed under part II of chapter 400 or
 528 under part I of chapter 429 are exempt from this section, and a
 529 cosmetologist licensed pursuant to s. 477.019 may provide salon
 530 services exclusively for facility residents.

531 Section 9. Section 477.026, Florida Statutes, is amended
 532 to read:

533 477.026 Fees; disposition.--

534 (1) The board shall set fees according to the following
535 schedule:

536 (a) For hair technicians, estheticians, nail technicians,
537 or cosmetologists, fees for original licensing, license renewal,
538 and delinquent renewal may shall not exceed \$25.

539 (b) For hair technicians, estheticians, nail technicians,
540 or cosmetologists, fees for endorsement application,
541 examination, and reexamination may shall not exceed \$50.

542 (c) For ~~cosmetology and specialty salons~~, fees for license
543 application, original licensing, license renewal, and delinquent
544 renewal may shall not exceed \$50.

545 ~~(d) For specialists, fees for application and endorsement~~
546 ~~registration shall not exceed \$30.~~

547 ~~(d)-(e)~~ For specialists, fees for ~~initial registration,~~
548 registration renewal, and delinquent renewal may shall not
549 exceed \$50.

550 ~~(e)-(f)~~ For hair braiders, hair wrappers, and body
551 wrappers, fees for registration may shall not exceed \$25.

552 (2) All moneys collected by the department from fees
553 authorized by this chapter shall be paid into the Professional
554 Regulation Trust Fund, which fund is created in the department,
555 and shall be applied in accordance with ss. 215.37 and 455.219.
556 The Legislature may appropriate any excess moneys from this fund
557 to the General Revenue Fund.

558 (3) The department, with the advice of the board, shall
559 prepare and submit a proposed budget in accordance with law.

560 Section 10. Section 477.0263, Florida Statutes, is amended

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561 to read:

562 477.0263 Cosmetology or specialty services to be performed
 563 in licensed salon; exceptions ~~exception~~.--

564 (1) Cosmetology or specialty services shall be performed
 565 only by licensed cosmetologists, hair technicians, estheticians,
 566 or nail technicians or registered specialists in licensed
 567 salons, except as otherwise provided in this section.

568 (2) Pursuant to rules established by the board,
 569 cosmetology or specialty services may be performed by a licensed
 570 cosmetologist, hair technician, esthetician, or nail technician
 571 or a registered specialist in a location other than a licensed
 572 salon, including, but not limited to, a nursing home, hospital,
 573 or residence, when a client for reasons of ill health is unable
 574 to go to a licensed salon. Arrangements for the performance of
 575 such cosmetology or specialty services in a location other than
 576 a licensed salon shall be made only through a licensed salon.

577 (3) Any person who holds a valid cosmetology license in
 578 any state or who is authorized to practice cosmetology in any
 579 country, territory, or jurisdiction of the United States may
 580 perform cosmetology services in a location other than a licensed
 581 salon when such services are performed in connection with the
 582 motion picture, fashion photography, theatrical, or television
 583 industry; a photography studio salon; a manufacturer trade show
 584 demonstration; a department store demonstration; or an
 585 educational seminar.

586 (4) Pursuant to rules established by the board,
 587 cosmetology, hair technician, esthetician, nail technician, or
 588 specialty services may be performed in a location other than a

589 licensed salon when such services are performed in connection
 590 with a special event and are performed by a person who is
 591 employed by a licensed salon and who holds the proper license or
 592 specialty registration. An appointment for the performance of
 593 such services in a location other than a licensed salon shall be
 594 made through a licensed salon.

595 Section 11. Section 477.0265, Florida Statutes, is amended
 596 to read:

597 477.0265 Prohibited acts.--

598 (1) It is unlawful for any person to:

599 (a) Engage in the practice of cosmetology or a specialty
 600 without an active license in the field of cosmetology unless
 601 authorized as a cosmetologist or registration as a specialist
 602 issued by the department pursuant to the provisions of this
 603 chapter.

604 (b) Own, operate, maintain, open, establish, conduct, or
 605 have charge of, either alone or with another person or persons,
 606 a ~~cosmetology salon or specialty salon~~:

607 1. That ~~Which~~ is not licensed under the provisions of this
 608 chapter; or

609 2. In which a person not licensed in the field of
 610 cosmetology or registered as a ~~cosmetologist or a specialist~~ is
 611 permitted to perform cosmetology services or any specialty.

612 (c) Engage in willful or repeated violations of this
 613 chapter or of any rule adopted by the board.

614 (d) Permit an employed person to engage in the practice of
 615 cosmetology or of a specialty unless such person holds a valid,
 616 active license in the field of cosmetology or is authorized as a

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617 cosmetologist or holds a registration as a specialist.

618 (e) Obtain or attempt to obtain a license or registration
619 for money, other than the required fee, or any other thing of
620 value or by fraudulent misrepresentations.

621 (f) Use or attempt to use a license to practice in the
622 field of cosmetology or a registration to practice a specialty,
623 which license or registration is suspended or revoked.

624 (g) Advertise or imply that skin care services or body
625 wrapping, as performed under this chapter, has ~~have~~ any
626 relationship to the practice of massage therapy as defined in s.
627 480.033(3), except those practices or activities defined in s.
628 477.013.

629 (h) In the practice of cosmetology or specialty services,
630 use or possess a cosmetic product containing a liquid nail
631 monomer containing any trace of methyl methacrylate (MMA).

632 (2) Any person who violates any provision of this section
633 commits a misdemeanor of the second degree, punishable as
634 provided in s. 775.082 or s. 775.083.

635 Section 12. Section 477.028, Florida Statutes, is amended
636 to read:

637 477.028 Disciplinary proceedings.--

638 (1) The board may ~~shall have the power to~~ revoke or
639 suspend the license of a cosmetologist, hair technician,
640 esthetician, or nail technician licensed under this chapter, or
641 the registration of a specialist registered under this chapter,
642 and may ~~to~~ reprimand, censure, deny subsequent licensure or
643 registration of, or otherwise discipline a cosmetologist, hair
644 technician, esthetician, nail technician, or a specialist

645 licensed or registered under this chapter in any of the
 646 following cases:

647 (a) Upon proof that a license or registration has been
 648 obtained by fraud or misrepresentation.

649 (b) Upon proof that the holder of a license or
 650 registration is guilty of fraud or deceit or of gross
 651 negligence, incompetency, or misconduct in the practice or
 652 instruction of cosmetology or a specialty.

653 (c) Upon proof that the holder of a license or
 654 registration is guilty of aiding, assisting, procuring, or
 655 advising any unlicensed person to practice in the field of
 656 cosmetology as a ~~cosmetologist~~.

657 (2) The board may ~~shall~~ have the power to revoke or
 658 suspend the license of a ~~cosmetology salon or a specialty salon~~
 659 licensed under this chapter; ~~to~~ deny subsequent licensure of
 660 such salon; ~~or~~ to reprimand, censure, or otherwise discipline
 661 the owner of such salon in either of the following cases:

662 (a) Upon proof that a license has been obtained by fraud
 663 or misrepresentation.

664 (b) Upon proof that the holder of a license is guilty of
 665 fraud or deceit or of gross negligence, incompetency, or
 666 misconduct in the operation of the salon so licensed.

667 (3) Disciplinary proceedings shall be conducted pursuant
 668 to the provisions of chapter 120.

669 (4) The department may ~~shall~~ not issue or renew a license
 670 or certificate of registration under this chapter to any person
 671 against whom or salon against which the board has assessed a
 672 fine, interest, or costs associated with investigation and

673 prosecution until the person or salon has paid in full such
 674 fine, interest, or costs associated with investigation and
 675 prosecution or until the person or salon complies with or
 676 satisfies all terms and conditions of the final order.

677 Section 13. Section 477.029, Florida Statutes, is amended
 678 to read:

679 477.029 Penalty.--

680 (1) It is unlawful for any person to:

681 (a) Hold himself or herself out as a cosmetologist, hair
 682 technician, esthetician, nail technician, specialist, hair
 683 wrapper, hair braider, or body wrapper unless duly licensed or
 684 registered, or otherwise authorized, as provided in this
 685 chapter.

686 (b) Operate any ~~cosmetology~~ salon unless it has been duly
 687 licensed as provided in this chapter.

688 (c) Permit an employed person to practice cosmetology or a
 689 specialty unless duly licensed or registered, or otherwise
 690 authorized, as provided in this chapter.

691 (d) Present as his or her own the license of another.

692 (e) Give false or forged evidence to the department in
 693 obtaining any license provided for in this chapter.

694 (f) Impersonate any other licenseholder of like or
 695 different name.

696 (g) Use or attempt to use a license that has been revoked.

697 (h) Violate any provision of s. 455.227(1), s. 477.0265,
 698 or s. 477.028.

699 (i) Violate or refuse to comply with any provision of this
 700 chapter or chapter 455 or a rule or final order of the board or

701 the department.

702 (2) Any person who violates the provisions of this section
 703 ~~is shall be~~ subject to one or more of the following penalties,
 704 as determined by the board:

705 (a) Revocation or suspension of any license or
 706 registration issued pursuant to this chapter.

707 (b) Issuance of a reprimand or censure.

708 (c) Imposition of an administrative fine not to exceed
 709 \$500 for each count or separate offense.

710 (d) Placement on probation for a period of time and
 711 subject to such reasonable conditions as the board may specify.

712 (e) Refusal to certify to the department an applicant for
 713 licensure.

714 Section 14. Section 477.0201, Florida Statutes, is
 715 repealed.

716 Section 15. (1) For the 2008-2009 fiscal year, the sum of
 717 \$60,149 in nonrecurring funds is appropriated from the
 718 Administrative Trust Fund of the Department of Business and
 719 Professional Regulation to carry out the central-service
 720 administrative support functions related to the licensing
 721 provisions of this act.

722 (2) This section shall take effect July 1, 2008.

723 Section 16. Except as otherwise expressly provided in this
 724 act and except for this section, which shall take effect July 1,
 725 2008, this act shall take effect July 1, 2009.

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Bill No. 0415

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

This amendment(s) is traveling with the bill: Action by the council is not required

1 Council/Committee hearing bill: Committee on Business
2 Regulation
3 Representative Carroll offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Effective July 1, 2009, section 477.013,

8 Florida Statutes, is amended to read:

9 477.013 Definitions.--As used in this chapter, the term:

10 (1) "Board" means the Board of Cosmetology.

11 (2) "Department" means the Department of Business and
12 Professional Regulation.

13 (3) "Cosmetologist" means a person who is licensed under
14 this chapter to engage in the practice of cosmetology in this
15 state ~~under the authority of this chapter.~~

16 (4) "Cosmetology" means the mechanical or chemical
17 treatment of the head, face, and scalp for aesthetic rather than
18 medical purposes, including, but not limited to, hair
19 shampooing, hair cutting, hair arranging, hair coloring,
20 permanent waving, and hair relaxing for compensation. This term
21 also includes performing all the services of a hair stylist; the
22 services of a nail technician, including manicures and pedicures

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23 of the natural nails, but not related to artificial nails; basic
24 hair removal by use of waxing and tweezing; and, basic skin care
25 services for facials with use of oils, creams and lotions but
26 not the use of chemical peels and other skin treatments ~~hair~~
27 ~~removal, including wax treatments, manicures, pedicures, and~~
28 ~~skin care services.~~

29 (5) "Esthetician" means a person who is licensed under the
30 authority of this chapter to perform or offer to perform for
31 compensation the following services:

32 (a) Cleansing, exfoliating, or stimulating a person's skin
33 by hand or by using a mechanical device, apparatus, or appliance
34 with the use of any cosmetic preparation, antiseptic, lotion,
35 powder, oil, clay, cream, or appliance.

36 (b) Beautifying a person's skin using a cosmetic
37 preparation, antiseptic, lotion, powder, oil, clay, cream, or
38 appliance.

39 (c) Administering facial treatments.

40 (d) Removing superfluous hair from a person's body using
41 depilatories, threading, waxing, sugaring, or tweezing.

42 (e) Tinting eyebrows or eyelashes with products
43 manufactured specifically for eyebrows or eyelashes.

44 (f) Body wrapping, which is a treatment program that uses
45 wraps for the purposes of cleansing and beautifying a person's
46 skin for aesthetic rather than medical or weight-loss purposes
47 and is the application of oils, lotions, or other fluids to the
48 body using wraps. Body wrapping does not include manipulation of
49 the body's superficial tissue, other than that resulting from
50 the application of the wrap materials.

51 (g) Submersing parts of the body in a bath of clay, oils,
52 lotions, or other fluids.

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53 (6) "Hair stylist" means a person who is licensed under
54 this chapter to perform or offer to perform for compensation the
55 following services:

56 (a) Treating a person's hair by:

57 1. Providing any method of treatment as a primary service,
58 including arranging, beautifying, lightening, cleansing,
59 coloring, cutting, dressing, processing, shampooing, shaping,
60 singeing, straightening, styling, tinting, or waving;

61 2. Providing a necessary service that is preparatory or
62 ancillary to a service under subparagraph 1., including
63 clipping, cutting, or trimming; or

64 3. Cutting a person's hair as a separate and independent
65 service for which a charge is directly or indirectly made
66 separately from charges for any other service.

67 (b) Weaving or braiding a person's hair.

68 (c) Shampooing and conditioning a person's hair.

69 (d) Servicing a person's wig or artificial hairpiece on
70 that person's head in any manner listed in paragraph (a).

71 (e) Treating a person's mustache or beard by coloring,
72 processing, styling, or trimming.

73 (f) Providing basic hair removal by use of waxing or
74 tweezing of the eyebrows and upper and lower lip.

75 (7) "Nail technician" means a person who is licensed under
76 this chapter to perform or offer to perform for compensation the
77 following services:

78 (a) Treating a person's nails by:

79 1. Cutting, trimming, polishing, painting, printing,
80 tinting, coloring, cleansing, manicuring, or pedicuring;

81 2. Affixing artificial nails, acrylic nails, gel nails,
82 extensions, or capping; or

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83 3. Utilizing drills and other mechanical devices on the
84 nails and cuticles.

85 (b) Cleansing, treating, or beautifying a person's
86 forearms, hands, legs below the knee, or feet.

87 (8) "Salon" means a place of business where the practice
88 of one or more cosmetology, hair stylist, esthetician, nail
89 technician or specialty services are offered or performed for
90 compensation.

91 (9)-(5) "Specialist" means any person registered under s.
92 477.014(6) to practice one or more of the following specialties:
93 holding a specialty registration in one or more of the
94 specialties registered under this chapter.

95 ~~(6) "Specialty" means the practice of one or more of the~~
96 ~~following:~~

97 (a) Manicuring, or the cutting, polishing, tinting,
98 coloring, cleansing, adding, or extending of the nails, ~~and~~
99 ~~massaging of the hands. This term includes any procedure or~~
100 ~~process for the affixing of artificial nails, except those nails~~
101 ~~that which may be applied solely by use of a simple adhesive,~~
102 and massaging of the hands.

103 (b) Pedicuring, or the shaping, polishing, tinting, or
104 cleansing of the nails of the feet, and massaging or beautifying
105 of the feet.

106 (c) Facials, or the massaging or treating of the face or
107 scalp with oils, creams, lotions, or other preparations, and
108 skin care services without involving massage, as defined in s.
109 480.033(3).

110 (10)-(7) "Shampooing" means the cleansing washing of the
111 hair with soap and water or with a special preparation,~~or~~
112 ~~applying hair tonics.~~

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113 ~~(8) "Specialty salon" means any place of business wherein~~
114 ~~the practice of one or all of the specialties as defined in~~
115 ~~subsection (6) are engaged in or carried on.~~

116 (11)(9) "Hair braiding" means the weaving or interweaving
117 of a person's own natural human hair for compensation without
118 cutting, coloring, permanent waving, relaxing, removing, or
119 chemical treatment and does not include the use of hair
120 extensions or wefts.

121 (12)(10) "Hair wrapping" means the wrapping of
122 manufactured materials around a strand or strands of human hair,
123 for compensation, without cutting, coloring, permanent waving,
124 relaxing, removing, weaving, chemically treating, braiding,
125 using hair extensions, or performing any other service defined
126 as cosmetology.

127 (13)(11) "Photography studio salon" means an establishment
128 where the hair-arranging services and the application of
129 cosmetic products are performed solely for the purpose of
130 preparing the model or client for the photographic session
131 without shampooing, cutting, coloring, permanent waving,
132 relaxing, or removing of hair or performing any other service
133 defined as cosmetology.

134 (14)(12) "Body wrapping" means a treatment program that
135 uses herbal wraps for the purposes of cleansing and beautifying
136 the skin of the body, but does not include:

137 (a) The application of oils, lotions, or other fluids to
138 the body, except fluids contained in presoaked materials used in
139 the wraps; or

140 (b) Manipulation of the body's superficial tissue, other
141 than that arising from compression emanating from the wrap
142 materials.

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143 ~~(13) "Skin care services" means the treatment of the skin~~
144 ~~of the body, other than the head, face, and scalp, by the use of~~
145 ~~a sponge, brush, cloth, or similar device to apply or remove a~~
146 ~~chemical preparation or other substance, except that chemical~~
147 ~~peels may be removed by peeling an applied preparation from the~~
148 ~~skin by hand. Skin care services must be performed by a licensed~~
149 ~~cosmetologist or facial specialist within a licensed cosmetology~~
150 ~~or specialty salon, and such services may not involve massage,~~
151 ~~as defined in s. 480.033(3), through manipulation of the~~
152 ~~superficial tissue.~~

153 Section 2. Effective July 1, 2009, section 477.0131,
154 Florida Statutes, is created to read:

155 477.0131 Cosmetologist, hair stylist, esthetician, and
156 nail technician licenses.--

157 (1) A person who is otherwise qualified by this chapter
158 and who is authorized to practice all of the services listed in
159 s. 477.013(4) shall be licensed as a cosmetologist.

160 (2) A person who is otherwise qualified by this chapter
161 and who is authorized to practice all of the services listed in
162 s. 477.013(6) shall be licensed as a hair stylist.

163 (3) A person who is otherwise qualified by this chapter
164 and who is authorized to practice all of the services listed in
165 s. 477.013(5) shall be licensed as an esthetician.

166 (4) A person who is otherwise qualified by this chapter
167 and who is authorized to practice all of the services listed in
168 s. 477.013(7) shall be licensed as a nail technician.

169 Section 3. Effective July 1, 2009, section 477.0132,
170 Florida Statutes, is amended to read:

171 477.0132 Hair braiding, hair wrapping, and body wrapping
172 registration.--

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173 (1)(a) A person ~~Persons~~ whose occupation or practice is
174 confined solely to hair braiding shall ~~must~~ register with the
175 department, shall pay the applicable registration fee, and shall
176 take a two-day 16-hour course. The course shall be board
177 approved and consist of 5 hours of instruction in HIV/AIDS and
178 other communicable diseases, 5 hours of instruction in
179 sanitation and sterilization, 4 hours of instruction in
180 disorders and diseases of the scalp, and 2 hours of instruction
181 in studies regarding laws affecting hair braiding.

182 (2)(b) A person ~~Persons~~ whose occupation or practice is
183 confined solely to hair wrapping shall ~~must~~ register with the
184 department, shall pay the applicable registration fee, and shall
185 take a one-day 6-hour course. The course shall be board approved
186 and consist of instruction ~~education~~ in HIV/AIDS and other
187 communicable diseases, sanitation and sterilization, disorders
188 and diseases of the scalp, and ~~studies regarding~~ laws affecting
189 hair wrapping.

190 (3)(c) Unless otherwise licensed or exempted from
191 licensure under this chapter, any person whose occupation or
192 practice is confined solely to body wrapping must register with
193 the department, pay the applicable registration fee, and take a
194 40-hour ~~two-day 12-hour~~ course. The course shall be board
195 approved and include, but not be limited to, instruction in body
196 systems, contraindications, ~~consist of education in~~ HIV/AIDS and
197 other communicable diseases, sanitation and sterilization,
198 disorders and diseases of the skin, and studies regarding laws
199 affecting body wrapping.

200 (4)(d) Only the board may review, evaluate, and approve a
201 course and text required of an applicant for registration under
202 this section ~~subsection~~ in the occupation or practice of hair

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203 braiding, hair wrapping, or body wrapping. A provider of such a
204 course is not required to hold a license under chapter 1005.

205 ~~(5)~~(2) Hair braiding, hair wrapping, and body wrapping are
206 not required to be practiced in a ~~cosmetology~~ salon ~~or specialty~~
207 ~~salon~~. When hair braiding, hair wrapping, or body wrapping is
208 practiced outside a ~~cosmetology~~ salon ~~or specialty~~ salon,
209 disposable implements shall ~~must~~ be used or all implements shall
210 ~~must~~ be sanitized in a disinfectant approved for hospital use or
211 approved by the federal Environmental Protection Agency.

212 ~~(6)~~(3) Pending issuance of registration, a person is
213 eligible to practice hair braiding, hair wrapping, or body
214 wrapping upon submission of a registration application that
215 includes proof of successful completion of the education
216 requirements and payment of the applicable fees required by this
217 chapter.

218 Section 4. Effective July 1, 2009, section 477.014,
219 Florida Statutes, is amended to read:

220 477.014 Qualifications for practice.--

221 (1) On and after July January 1, 2009, a 1979, no person
222 who is not ~~other than~~ a duly licensed or registered under this
223 chapter may not ~~cosmetologist~~ shall practice in any of the areas
224 provided in s. 477.013(4), (5), (6), or (7) ~~cosmetology~~ or use
225 the name or title of cosmetologist, hair stylist, esthetician,
226 or nail technician.

227 (2) A person licensed or registered under this chapter on
228 or after July 1, 2009, may not practice or hold himself or
229 herself out as qualified to practice in an area in which he or
230 she is not specifically licensed or registered under this
231 chapter.

232 (3) A cosmetologist licensed before July 1, 2009, may
233 perform all the services of a licensed cosmetologist as defined

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234 in s. 477.013(4), including manicures and pedicures related to
235 artificial nails.

236 (4) A facial specialist registered or enrolled in a
237 cosmetology school before July 1, 2009, may take the examination
238 for an esthetician license.

239 (5) A manicure, pedicure, or nail extension specialist
240 registered or enrolled in a cosmetology school before July 1,
241 2009, may take the examination for a nail technician license.

242 (6) A specialist registered under this chapter before July
243 1, 2009, may continue to practice under the name of his or her
244 specialty registration without taking the respective licensure
245 examination. Renewal of all registrations, including a full
246 specialty registration that includes facial, manicure, pedicure,
247 and nail extension specialties, existing before July 1, 2009,
248 shall be accomplished pursuant to rules adopted by the board.

249 Section 5. Subsections (3) and (4) are added to section
250 477.016, Florida Statutes, to read:

251 477.016 Rulemaking.--

252 (3) To further the protection of the health of persons
253 authorized by this chapter to perform natural or artificial nail
254 services and their clients, the board shall adopt rules to
255 require and enforce the following:

256 (a) Maintenance of a clean and safe work area by following
257 Environmental Protection Agency pedicure equipment disinfection
258 requirements after each client's pedicure to include use of
259 hospital grade bactericidal, fungicidal, and pseudomonacidal
260 disinfectant for at least 10 minutes.

261 (b) Maintenance of clean and infection-free equipment by
262 ensuring standards for drills and other mechanical equipment
263 that require them to either be disposable or disinfected between
264 clients to prevent the transmission of infections and diseases.

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265 (c) Provision of notice to and education of clients with
266 visible skin diseases, fungal or other types of infections, or
267 contagious conditions that services cannot be provided without a
268 signed statement by a physician indicating that there is no
269 public health problem to the clients themselves, to the
270 technicians, or to other clients.

271 (4) To further the protection of the health of persons
272 authorized by this chapter to provide basic facials or advanced
273 skin treatment services involving chemicals and their clients,
274 the board shall adopt rules to require and enforce the
275 following:

276 (a) Maintenance of a clean and safe work area according to
277 standards adopted by the board.

278 (b) Provision of notice to and education of clients with
279 visible skin diseases, fungal or other types of infections, or
280 contagious conditions that services cannot be provided without a
281 signed statement by a physician indicating that there is no
282 public health problem to the clients themselves, to the
283 estheticians, or to other clients.

284 Section 6. Paragraph (c) of subsection (2) of section
285 477.019, Florida Statutes, is amended, subsections (3) through
286 (7) of that section are renumbered as subsections (4) through
287 (8), respectively, and a new subsection (3) is added to that
288 section, to read:

289 477.019 Cosmetologists; qualifications; licensure;
290 supervised practice; license renewal; endorsement; continuing
291 education.--

292 (2) An applicant shall be eligible for licensure by
293 examination to practice cosmetology if the applicant:

294 (c)1. Is authorized to practice cosmetology in another
295 state or country, has been so authorized for at least 1 year,

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296 and does not qualify for licensure by endorsement as provided
297 for in subsection (7) ~~(6)~~; or

298 2. Has received a minimum of 1,200 hours of training as
299 established by the board, which shall include, but shall not be
300 limited to, the equivalent of completion of services directly
301 related to the practice of cosmetology at one of the following:

302 a. A school of cosmetology licensed pursuant to chapter
303 1005.

304 b. A cosmetology program within the public school system.

305 c. The Cosmetology Division of the Florida School for the
306 Deaf and the Blind, provided the division meets the standards of
307 this chapter.

308 d. A government-operated cosmetology program in this
309 state.

310
311 The board shall establish by rule procedures whereby the school
312 or program may certify that a person is qualified to take the
313 required examination after the completion of a minimum of 1,000
314 actual school hours. If the person then passes the examination,
315 he or she shall have satisfied this requirement; but if the
316 person fails the examination, he or she shall not be qualified
317 to take the examination again until the completion of the full
318 requirements provided by this section.

319 (3) An application for the licensure examination for any
320 license under this section may be submitted for examination
321 approval in the last 100 hours of training by a pregraduate of a
322 licensed cosmetology school or a program within the public
323 school system, which school or program is certified by the
324 Department of Education with fees as required in paragraph
325 (2) (b). Upon approval, the applicant may schedule the
326 examination on a date when the training hours are completed. An

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327 applicant shall have 6 months from the date of approval to take
328 the examination. After the 6 months have passed, if the
329 applicant failed to take the examination, the applicant must
330 reapply. The board shall establish by rule the procedures for
331 the pregraduate application process.

332 Section 7. Effective July 1, 2009, section 477.019,
333 Florida Statutes, as amended by this act, is amended to read:

334 477.019 Cosmetologists; hair stylists; estheticians; nail
335 technicians; qualifications; licensure; supervised practice;
336 license renewal; endorsement; continuing education.--

337 (1) A person desiring to be licensed under this chapter as
338 a cosmetologist shall apply to the department for licensure.

339 (2) An applicant is ~~shall be~~ eligible for licensure by
340 examination to provide practice cosmetology, hair stylist,
341 esthetician, or nail technician services if the applicant:

342 (a) Is at least 16 years of age or has received a high
343 school diploma or graduate equivalency diploma or has passed an
344 ability-to-benefit test, which is an independently administered
345 test approved by the United States Secretary of Education as
346 provided in 20 U.S.C. s. 1091(d).†

347 (b) Pays the required application fee, which is not
348 refundable, and the required examination fee, which is
349 refundable if the applicant is determined to not be eligible for
350 licensure for any reason other than failure to successfully
351 complete the licensure examination.† ~~and~~

352 (c)1. Is authorized to practice cosmetology in another
353 state or country, has been so authorized for at least 1 year,
354 and does not qualify for licensure by endorsement as provided
355 for in subsection (7); or

356 2.a. Has received a minimum number of hours of training as
357 follows:

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358 (I) For a hair stylist, 1,000 hours.

359 (II) For an esthetician, 600 hours.

360 (III) For a nail technician, 350 hours.

361 (IV) For a cosmetologist, 1,500 hours.

362
363 The board shall adopt rules to prevent an applicant from having
364 to repeat curricula components. A person who holds one or more
365 licenses may obtain an additional license by completing training
366 as determined by board rule. The board shall consult with the
367 Department of Education and the Commission for Independent
368 Education on the development of such rules.

369 b. The training ~~Has received a minimum of 1,200 hours of~~
370 ~~training as established by the board, which shall include, but~~
371 ~~need shall~~ not be limited to, the equivalent of completion of
372 services directly related to the practice of cosmetology at one
373 of the following:

374 (I)a. A school of cosmetology licensed pursuant to chapter
375 1005.

376 (II)b. A cosmetology program within the public school
377 system.

378 (III)c. The Cosmetology Division of the Florida School for
379 the Deaf and the Blind, provided the division meets the
380 standards of this chapter.

381 (IV)d. A government-operated cosmetology program in this
382 state.

383 c. A person who has enrolled and begun his or her
384 education before July 1, 2009, may take the examination to be
385 licensed as a cosmetologist upon completion of 1,200 hours of
386 education.

387 d. A person who begins his or her education on or after
388 July 1, 2009, shall comply with the hour requirements in sub-

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389 subparagraph a. in order to qualify to take his or her
390 respective examination.

391
392 ~~The board shall establish by rule procedures whereby the school~~
393 ~~or program may certify that a person is qualified to take the~~
394 ~~required examination after the completion of a minimum of 1,000~~
395 ~~actual school hours. If the person then passes the examination,~~
396 ~~he or she shall have satisfied this requirement; but if the~~
397 ~~person fails the examination, he or she shall not be qualified~~
398 ~~to take the examination again until the completion of the full~~
399 ~~requirements provided by this section.~~

400 (3) An application for the licensure examination for any
401 license under this section may be submitted for examination
402 approval in the last 100 hours of training by a pregraduate of a
403 licensed cosmetology school or a program within the public
404 school system, which school or program is certified by the
405 Department of Education with fees as required in paragraph
406 (2)(b). Upon approval, the applicant may schedule the
407 examination on a date when the training hours are completed. An
408 applicant shall have 6 months from the date of approval to take
409 the examination. After the 6 months have passed, if the
410 applicant failed to take the examination, the applicant must
411 reapply. The board shall establish by rule the procedures for
412 the pregraduate application process.

413 (4) Upon an applicant receiving a passing grade, as
414 established by board rule, on the examination and paying the
415 initial licensing fee, the department shall issue a license to
416 practice in the applicant's respective area provided in s.
417 477.013(4), (5), (6), or (7) cosmetology.

418 (5) If an applicant passes all parts of the licensure
419 examination for a cosmetologist, hair stylist, esthetician, or

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420 nail technician the first time he or she takes the examination,
421 the passing applicant may practice until receipt of his or her
422 license, provided that he or she practices under the supervision
423 of an individual who holds the same active license or a
424 cosmetologist licensed prior to July 1, 2009. An applicant who
425 fails any part of the examination the first time he or she takes
426 the examination shall not practice as a cosmetologist, hair
427 stylist, esthetician, or nail technician and may immediately
428 reapply for reexamination.

429 ~~(5) Following the completion of the first licensing~~
430 ~~examination and pending the results of that examination and~~
431 ~~issuance of a license to practice cosmetology, graduates of~~
432 ~~licensed cosmetology schools or cosmetology programs offered in~~
433 ~~public school systems, which schools or programs are certified~~
434 ~~by the Department of Education, are eligible to practice~~
435 ~~cosmetology, provided such graduates practice under the~~
436 ~~supervision of a licensed cosmetologist in a licensed~~
437 ~~cosmetology salon. A graduate who fails the first examination~~
438 ~~may continue to practice under the supervision of a licensed~~
439 ~~cosmetologist in a licensed cosmetology salon if the graduate~~
440 ~~applies for the next available examination and until the~~
441 ~~graduate receives the results of that examination. No graduate~~
442 ~~may continue to practice under this subsection if the graduate~~
443 ~~fails the examination twice.~~

444 (6) Renewal of license registration shall be accomplished
445 pursuant to rules adopted by the board.

446 (7) The board shall adopt rules specifying procedures for
447 the licensure by endorsement of practitioners desiring to be
448 licensed in this state who hold a current active license in
449 another state or country and who have met qualifications
450 substantially similar to, equivalent to, or greater than the

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451 qualifications required of applicants from this state. For
452 purposes of this subsection, work experience may be substituted
453 for required educational hours in the amount and manner provided
454 by board rule.

455 (8) (a) The board shall prescribe by rule continuing
456 education requirements for licensees and registered specialists
457 that intended to ensure the protection of the public through
458 updated training of licensees and registered specialists, not to
459 exceed 16 hours biennially, as a condition for renewal of a
460 license or registration as a specialist under this chapter.
461 Continuing education courses shall include, but not be limited
462 to, the following subjects as they relate to the practice of
463 cosmetology: HIV/AIDS ~~human immunodeficiency virus and acquired~~
464 ~~immune deficiency syndrome~~; Occupational Safety and Health
465 Administration regulations; workers' compensation issues; state
466 and federal laws and rules as they pertain to cosmetologists,
467 the practice of cosmetology, salons, specialists, specialty
468 ~~salons,~~ and booth renters; chemical makeup as it pertains to
469 hair, skin, and nails; and environmental issues. Courses given
470 at educational ~~cosmetology~~ conferences may be counted toward the
471 number of continuing education hours required if approved by the
472 board.

473 (b) Any person whose occupation or practice is confined
474 solely to hair braiding, hair wrapping, or body wrapping is
475 exempt from the continuing education requirements of this
476 subsection.

477 (c) The board may, by rule, require any licensee in
478 violation of a continuing education requirement to take a
479 refresher course or refresher course and examination in addition
480 to any other penalty. ~~The number of hours for the refresher~~
481 ~~course may not exceed 48 hours.~~

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482 Section 8. Section 477.0212, Florida Statutes, is amended
483 to read:

484 477.0212 Inactive status.--

485 (1) A ~~cosmetologist's~~ license issued under this chapter
486 which that has become inactive may be reactivated under s.
487 477.019 upon application to the department.

488 (2) The board shall adopt ~~promulgate~~ rules relating to
489 licenses that which have become inactive and for the renewal of
490 inactive licenses. The board shall prescribe by rule a fee not
491 to exceed \$50 for the reactivation of an inactive license and a
492 fee not to exceed \$50 for the renewal of an inactive license.
493 The board shall prescribe by rule the continuing education
494 requirements to be met prior to license renewal or reactivation.

495 Section 9. Section 477.023, Florida Statutes, is amended
496 to read:

497 477.023 Schools of cosmetology; licensure.--~~A~~ ~~No~~ private
498 school of cosmetology may not ~~shall be permitted to~~ operate
499 without a license issued by the Commission for Independent
500 Education pursuant to chapter 1005. However, this chapter does
501 not ~~nothing herein shall be construed to~~ prevent certification
502 by the Department of Education of grooming and salon services
503 and cosmetology training programs within the public school
504 system or ~~to~~ prevent government operation of any other program
505 of cosmetology in this state.

506 Section 10. Section 477.025, Florida Statutes, is amended
507 to read:

508 477.025 ~~Cosmetology salons; specialty Salons; requisites;~~
509 ~~licensure; inspection; mobile cosmetology salons.--~~

510 (1) No ~~cosmetology salon or specialty~~ salon shall be
511 permitted to operate without a license issued by the department
512 except as provided in subsection (11).

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513 (2) The board shall adopt rules governing the licensure
514 and operation of salons ~~and specialty salons~~ and their
515 facilities, personnel, and safety and sanitary requirements, and
516 the license application and granting process.

517 (3) Any person, firm, or corporation desiring to operate a
518 ~~cosmetology salon or specialty~~ salon in the state shall submit
519 to the department a salon ~~an~~ application form ~~upon forms~~
520 provided by the department, ~~and accompanied by~~ any relevant
521 information requested by the department, ~~and by~~ an application
522 fee.

523 (4) Upon receiving the application, the department may
524 cause an investigation to be made of the proposed ~~cosmetology~~
525 ~~salon or specialty~~ salon.

526 (5) When an applicant fails to meet all the requirements
527 provided in this section ~~herein~~, the department shall deny the
528 application in writing and shall list the specific requirements
529 not met. No applicant denied licensure because of failure to
530 meet the requirements of this section ~~herein~~ shall be precluded
531 from reapplying for licensure.

532 (6) When the department determines that the proposed
533 ~~cosmetology salon or specialty~~ salon may reasonably be expected
534 to meet the requirements set forth in this section ~~herein~~, the
535 department shall grant the license upon such conditions as it
536 shall deem proper under the circumstances and upon payment of
537 the original licensing fee.

538 (7) No license for operation of a ~~cosmetology salon or~~
539 ~~specialty~~ salon may be transferred from the name of the original
540 licensee to another. It may be transferred from one location to
541 another only upon approval by the department, which approval
542 shall not be unreasonably withheld.

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543 (8) Renewal of license registration for ~~cosmetology salons~~
544 ~~or specialty~~ salons shall be accomplished pursuant to rules
545 adopted by the board. The board is further authorized to adopt
546 rules governing delinquent renewal of licenses and may impose
547 penalty fees for delinquent renewal.

548 (9) The board is authorized to adopt rules governing the
549 periodic inspection of ~~cosmetology salons and specialty~~ salons
550 licensed under this chapter.

551 (10)(a) The board shall adopt rules governing the
552 licensure, operation, and inspection of mobile ~~cosmetology~~
553 salons, including their facilities, personnel, and safety and
554 sanitary requirements.

555 (b) Each mobile salon must comply with all licensure and
556 operating requirements specified in this chapter or chapter 455
557 or rules of the board or department that apply to ~~cosmetology~~
558 salons at fixed locations, except to the extent that such
559 requirements conflict with this subsection or rules adopted
560 pursuant to this subsection.

561 (c) A mobile ~~cosmetology~~ salon must maintain a permanent
562 business address, located in the inspection area of the local
563 department office, at which records of appointments,
564 itineraries, license numbers of employees, and vehicle
565 identification numbers of the licenseholder's mobile salon shall
566 be kept and made available for verification purposes by
567 department personnel, and at which correspondence from the
568 department can be received.

569 (d) To facilitate periodic inspections of mobile
570 ~~cosmetology~~ salons, prior to the beginning of each month, each
571 mobile salon licenseholder must file with the board a written
572 monthly itinerary listing the locations where and the dates and
573 hours when the mobile salon will be operating.

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574 (e) The board shall establish fees for mobile ~~cosmetology~~
575 salons, not to exceed the fees for ~~cosmetology~~ salons at fixed
576 locations.

577 (f) The operation of mobile ~~cosmetology~~ salons must be in
578 compliance with all local laws and ordinances regulating
579 business establishments, with all applicable requirements of the
580 Americans with Disabilities Act relating to accommodations for
581 persons with disabilities, and with all applicable OSHA
582 requirements.

583 (11) Facilities licensed under part II of chapter 400 or
584 under part I of chapter 429 are exempt from this section, and a
585 cosmetologist licensed pursuant to s. 477.019 may provide salon
586 services exclusively for facility residents.

587 Section 11. Effective July 1, 2009, section 477.026,
588 Florida Statutes, is amended to read:

589 477.026 Fees; disposition.--

590 (1) The board shall set fees according to the following
591 schedule:

592 (a) For hair stylists, estheticians, nail technicians, or
593 cosmetologists, fees for original licensing, license renewal,
594 and delinquent renewal may shall not exceed \$25.

595 (b) For hair stylists, estheticians, nail technicians, or
596 cosmetologists, fees for endorsement application, examination,
597 and reexamination may shall not exceed \$50.

598 (c) For ~~cosmetology and specialty~~ salons, fees for license
599 application, original licensing, license renewal, and delinquent
600 renewal may shall not exceed \$50.

601 ~~(d) For specialists, fees for application and endorsement~~
602 ~~registration shall not exceed \$30.~~

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603 ~~(d)~~(e) For specialists, fees for ~~initial registration,~~
604 registration renewal, and delinquent renewal ~~may shall~~ not
605 exceed \$50.

606 ~~(e)~~(f) For hair braiders, hair wrappers, and body
607 wrappers, fees for registration ~~may shall~~ not exceed \$25.

608 (2) All moneys collected by the department from fees
609 authorized by this chapter shall be paid into the Professional
610 Regulation Trust Fund, which fund is created in the department,
611 and shall be applied in accordance with ss. 215.37 and 455.219.
612 The Legislature may appropriate any excess moneys from this fund
613 to the General Revenue Fund.

614 (3) The department, with the advice of the board, shall
615 prepare and submit a proposed budget in accordance with law.

616 Section 12. Effective July 1, 2009, section 477.0263,
617 Florida Statutes, is amended to read:

618 477.0263 Cosmetology, hair stylist, esthetician, nail
619 technician, or specialty services to be performed in licensed
620 salon; exceptions exception.--

621 (1) Cosmetology, hair stylist, esthetician, nail
622 technician, or specialty services shall be performed only by
623 licensed cosmetologists, hair stylists, estheticians, or nail
624 technicians or registered specialists in licensed salons, except
625 as otherwise provided in this section.

626 (2) Pursuant to rules established by the board,
627 cosmetology, hair stylist, esthetician, nail technician, or
628 specialty services may be performed by a licensed cosmetologist,
629 hair stylist, esthetician, or nail technician or a registered
630 specialist in a location other than a licensed salon, including,
631 but not limited to, a nursing home, hospital, or residence, when
632 a client for reasons of ill health is unable to go to a licensed
633 salon. Arrangements for the performance of such cosmetology,

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634 hair stylist, esthetician, nail technician, or specialty
635 services in a location other than a licensed salon shall be made
636 only through a licensed salon.

637 (3) Any person who holds a valid cosmetology license in
638 any state or who is authorized to practice cosmetology in any
639 country, territory, or jurisdiction of the United States may
640 perform cosmetology services in a location other than a licensed
641 salon when such services are performed in connection with the
642 motion picture, fashion photography, theatrical, or television
643 industry; a photography studio salon; a manufacturer trade show
644 demonstration; a department store demonstration; or an
645 educational seminar.

646 (4) Pursuant to rules established by the board,
647 cosmetology, hair stylist, esthetician, nail technician, or
648 specialty services may be performed in a location other than a
649 licensed salon when such services are performed in connection
650 with a special event and are performed by a person who is
651 employed by a licensed salon and who holds the proper license or
652 specialty registration. An appointment for the performance of
653 such services in a location other than a licensed salon shall be
654 made through a licensed salon.

655 Section 13. Paragraph (i) is added to subsection (1) of
656 section 477.0265, Florida Statutes, to read:

657 477.0265 Prohibited acts.--

658 (1) It is unlawful for any person to:

659 (i) In the practice of cosmetology, use or possess a
660 device containing a razor blade, commonly referred to as a
661 credo, to remove, scrape, and cut calluses from the hands or
662 feet.

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663 (2) Any person who violates any provision of this section
664 commits a misdemeanor of the second degree, punishable as
665 provided in s. 775.082 or s. 775.083.

666 Section 14. Effective July 1, 2009, section 477.0265,
667 Florida Statutes, as amended by this act, is amended to read:
668 477.0265 Prohibited acts.--

669 (1) It is unlawful for any person to:

670 (a) Engage in ~~the practice of~~ cosmetology, hair stylist,
671 esthetician, or nail technician services or a specialty without
672 an active license as a cosmetologist, hair stylist, esthetician,
673 or nail technician or registration as a specialist issued by the
674 department pursuant to the provisions of this chapter.

675 (b) Own, operate, maintain, open, establish, conduct, or
676 have charge of, either alone or with another person or persons,
677 a ~~cosmetology salon or specialty~~ salon:

678 1. That ~~which~~ is not licensed under the provisions of this
679 chapter; or

680 2. In which a person not licensed as a cosmetologist, hair
681 stylist, esthetician, or nail technician or registered as a
682 ~~cosmetologist or a specialist~~ is permitted to perform
683 cosmetology, hair stylist, esthetician, or nail technician
684 services or any specialty.

685 (c) Engage in willful or repeated violations of this
686 chapter or of any rule adopted by the board.

687 (d) Permit an employed person to engage in ~~the practice of~~
688 cosmetology, hair stylist, esthetician, or nail technician
689 services or ~~of~~ a specialty unless such person holds a valid,
690 active license as a cosmetologist, hair stylist, esthetician, or
691 nail technician or holds a registration as a specialist.

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692 (e) Obtain or attempt to obtain a license or registration
693 for money, other than the required fee, or any other thing of
694 value or by fraudulent misrepresentations.

695 (f) Use or attempt to use a license to provide practice
696 cosmetology, hair styling, esthetician, or nail technician
697 services or a registration to practice a specialty, which
698 license or registration is suspended or revoked.

699 (g) Advertise or imply that skin care services or body
700 wrapping, as performed under this chapter, has ~~have~~ any
701 relationship to the practice of massage therapy as defined in s.
702 480.033(3), except those practices or activities defined in s.
703 477.013.

704 (h) In the provision practice of cosmetology, nail
705 technician, or specialty services, use or possess a cosmetic
706 product containing a liquid nail monomer containing any trace of
707 methyl methacrylate (MMA).

708 (i) In the provision practice of cosmetology, nail
709 technician, or manicure or pedicure specialty services, use or
710 possess a device containing a razor blade, commonly referred to
711 as a credo, to remove, scrape, and cut calluses from the hands
712 or feet.

713 (2) Any person who violates any provision of this section
714 commits a misdemeanor of the second degree, punishable as
715 provided in s. 775.082 or s. 775.083.

716 Section 15. Effective July 1, 2009, section 477.028,
717 Florida Statutes, is amended to read:

718 477.028 Disciplinary proceedings.--

719 (1) The board may ~~shall have the power to~~ revoke or
720 suspend the license of a cosmetologist, hair stylist,
721 esthetician, or nail technician licensed under this chapter, or
722 the registration of a specialist registered under this chapter,

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723 and may ~~to~~ reprimand, censure, deny subsequent licensure or
724 registration of, or otherwise discipline a cosmetologist, hair
725 stylist, esthetician, nail technician, or a specialist licensed
726 or registered under this chapter in any of the following cases:

727 (a) Upon proof that a license or registration has been
728 obtained by fraud or misrepresentation.

729 (b) Upon proof that the holder of a license or
730 registration is guilty of fraud or deceit or of gross
731 negligence, incompetency, or misconduct in the practice or
732 instruction of cosmetology or a specialty.

733 (c) Upon proof that the holder of a license or
734 registration is guilty of aiding, assisting, procuring, or
735 advising any unlicensed person to practice as a cosmetologist,
736 hair stylist, esthetician, or nail technician.

737 (2) The board may ~~shall have the power to~~ revoke or
738 suspend the license of a ~~cosmetology salon or a specialty salon~~
739 licensed under this chapter; ~~to~~ deny subsequent licensure of
740 such salon; ~~or~~ ~~to~~ reprimand, censure, or otherwise discipline
741 the owner of such salon in either of the following cases:

742 (a) Upon proof that a license has been obtained by fraud
743 or misrepresentation.

744 (b) Upon proof that the holder of a license is guilty of
745 fraud or deceit or of gross negligence, incompetency, or
746 misconduct in the operation of the salon so licensed.

747 (3) Disciplinary proceedings shall be conducted pursuant
748 to the provisions of chapter 120.

749 (4) The department may ~~shall~~ not issue or renew a license
750 or certificate of registration under this chapter to any person
751 against whom or salon against which the board has assessed a
752 fine, interest, or costs associated with investigation and
753 prosecution until the person or salon has paid in full such

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754 fine, interest, or costs associated with investigation and
755 prosecution or until the person or salon complies with or
756 satisfies all terms and conditions of the final order.

757 Section 16. Effective July 1, 2009, section 477.029,
758 Florida Statutes, is amended to read:

759 477.029 Penalty.--

760 (1) It is unlawful for any person to:

761 (a) Hold himself or herself out as a cosmetologist, hair
762 stylist, esthetician, nail technician, specialist, hair wrapper,
763 hair braider, or body wrapper unless duly licensed or
764 registered, or otherwise authorized, as provided in this
765 chapter.

766 (b) Operate any ~~cosmetology~~ salon unless it has been duly
767 licensed as provided in this chapter.

768 (c) Permit an employed person to provide practice
769 cosmetology, hairstyling, esthetician, nail technician, or a
770 specialty services unless duly licensed or registered, or
771 otherwise authorized, as provided in this chapter.

772 (d) Present as his or her own the license of another.

773 (e) Give false or forged evidence to the department in
774 obtaining any license provided for in this chapter.

775 (f) Impersonate any other licenseholder of like or
776 different name.

777 (g) Use or attempt to use a license that has been revoked.

778 (h) Violate any provision of s. 455.227(1), s. 477.0265,
779 or s. 477.028.

780 (i) Violate or refuse to comply with any provision of this
781 chapter or chapter 455 or a rule or final order of the board or
782 the department.

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783 (2) Any person who violates the provisions of this section
784 ~~is shall be~~ subject to one or more of the following penalties,
785 as determined by the board:

786 (a) Revocation or suspension of any license or
787 registration issued pursuant to this chapter.

788 (b) Issuance of a reprimand or censure.

789 (c) Imposition of an administrative fine not to exceed
790 \$500 for each count or separate offense.

791 (d) Placement on probation for a period of time and
792 subject to such reasonable conditions as the board may specify.

793 (e) Refusal to certify to the department an applicant for
794 licensure.

795 Section 17. Effective July 1, 2009, section 477.0201,
796 Florida Statutes, is repealed.

797 Section 18. The Department of Business and Professional
798 Regulation in conjunction with the Board of Cosmetology shall
799 evaluate the feasibility, processes, and associated costs of
800 using a national examination for cosmetology, hair stylist,
801 esthetician, and nail technician services licenses that would
802 improve reciprocity with other states. The findings of the
803 evaluation shall be made available to the Legislature and to the
804 public no later than January 1, 2009.

805 Section 19. For the 2008-2009 fiscal year, the sum of
806 \$60,149 in nonrecurring funds is appropriated from the
807 Administrative Trust Fund of the Department of Business and
808 Professional Regulation to carry out the central-service
809 administrative support functions related to the licensing
810 provisions of this act.

811 Section 20. Except as otherwise expressly provided in this
812 act, this act shall take effect July 1, 2008.

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T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to cosmetology ; amending s. 477.013, F.S.;
providing and revising definitions; redefining "cosmetology" to
include specified services and exclude artificial nails and use
of certain skin treatments; defining "hair stylist,"
"esthetician," and "nail technician"; including body wrapping
within esthetician services; removing a distinction between
specialty salons and other salons; creating s. 477.0131, F.S.;
authorizing licensure for cosmetologists, hair stylists,
estheticians, and nail technicians; amending s. 477.0132, F.S.;
authorizing renewal of current body wrapping registrations;
increasing length of required course; specifying that only the
Board of Cosmetology may review, evaluate, and approve required
course and text; amending s. 477.014, F.S.; revising
requirements for qualification to practice under ch. 477, F.S.;
authorizing current specialists to sit for licensure
examinations in certain circumstances; providing for the renewal
of current specialty registrations; amending s. 477.016, F.S.;
requiring the Board of Cosmetology to adopt rules relating to
protection of health of clients, nail technicians, and
estheticians; amending s. 477.019, F.S.; revising qualification,
education, licensure and renewal, supervised practice, and
endorsement requirements to include and differentiate such
requirements for cosmetologists, hair stylists, estheticians,
and nail technicians; requiring the board to adopt certain
procedures relating to licensure by endorsement; amending s.

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845 477.0212, F.S.; requiring the board to adopt certain rules
846 relating to license renewal or continuing education; amending s.
847 477.023, F.S.; stipulating that the Department of Education is
848 not prevented from issuing certain grooming and salon services
849 certification; amending s. 477.025, F.S., relating to
850 cosmetology and specialty salons, requisites, licensure,
851 inspection, and mobile cosmetology salons, to conform; amending
852 s. 477.026, F.S.; revising fee provisions to conform; amending
853 s. 477.0263, F.S.; specifying circumstances under which
854 cosmetology, hair stylist, esthetician, nail technician, or
855 specialty services may be practiced outside of a licensed salon;
856 amending s. 477.0265, F.S., relating to prohibited acts, to
857 conform; prohibiting the use or possession of a credo in the
858 provision of cosmetology, nail technician, or manicure or
859 pedicure specialty services; amending s. 477.028, F.S., relating
860 to disciplinary proceedings, to conform; amending s. 477.029,
861 F.S., relating to penalties, to conform; repealing s. 477.0201,
862 F.S., relating to specialty registration, qualifications,
863 registration renewal, and endorsement; requiring a report to the
864 Legislature on the use of a national examination for certain
865 licenses in order to improve reciprocity with other states;
866 providing an appropriation; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 477
SPONSOR(S): Reagan
TIED BILLS:

Title Loans

IDEN./SIM. BILLS: SB 874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions	6 Y, 0 N	Holt/Bradford	Haug
2) Jobs & Entrepreneurship Council		Holt /Topp BDT	Thorn ET
3)			
4)			
5)			

SUMMARY ANALYSIS

Enactment of Chapter 537, F.S., in 2000, was in response to end user consumer abuses in the title loan industry. Recently, provisions of Chapter 537 have been applied to instances involving commercial transactions, and addressing this unintended consequence is the bill's objective. The Florida Title Loan Act was intended to protect consumers from the excesses of title loan companies and was not intended to include commercial transactions.

There appears to be no fiscal impact on state or local government.

This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to address any House principle.

B. EFFECT OF PROPOSED CHANGES:

Sections 1 and 2 of the bill amend Part I, Chapter 193, F.S., Title Loans

Background

Enactment of Chapter 537, F.S., in 2000 was in response to end user consumer abuses in the title loan industry. Recently, provisions of Chapter 537 have been applied to instances involving commercial transactions, and addressing this unintended consequence is the bill's objective. The Florida Title Loan Act was intended to protect consumers from the excesses of title loan companies and was not intended to include commercial transactions.

Section 1: Amends 537.002, F.S., Legislative intent. The bill clarifies that the regulation of title loans to consumers is the specific purpose for the creation of chapter 537, F.S. Further, this act supersedes any other conflicting provisions of state law.

Section 2: Amends 537.003, F.S., Definitions. The bill adds the following definition for the term "consumer":

(3) "Consumer" means an individual borrowing money for personal, family, or household purposes.

The definition defines the scope of Chapter 537's applicability to only end use consumer.

Additionally, the definition for "Title loan" or "loan" is amended to conform to the definition of "consumer."

Section 3: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Legislative intent.

Section 2: Definitions.

Section 3: Effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill's clarification of scope and purpose for Chapter 537, F.S., is to avoid its misapplication involving commercial transactions and to avert the probability of litigation that could adversely impact the lending process.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 477

2008

1 A bill to be entitled
 2 An act relating to title loans; amending s. 537.002, F.S.;
 3 revising legislative intent to specify application of ch.
 4 537, F.S., the Florida Title Loan Act, to title loans to
 5 consumers; amending s. 537.003, F.S.; defining the term
 6 "consumer" for purposes of ch. 537, F.S.; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

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 11 Section 1. Section 537.002, Florida Statutes, is amended
 12 to read:

13 537.002 Legislative intent.--It is the intent of the
 14 Legislature in the creation of this chapter that title loans to
 15 consumers ~~shall~~ be regulated by the provisions of this act. The
 16 provisions of this act ~~shall~~ supersede any other provisions of
 17 state law affecting title loans to the extent of any conflict.

18 Section 2. Section 537.003, Florida Statutes, is amended
 19 to read:

20 537.003 Definitions.--As used in this act, unless the
 21 context otherwise requires:

22 (1) "Commercially reasonable" has the same meaning as used
 23 in part V of chapter 679. In addition, nonpublic sales or
 24 disposal of personal property between a title loan lender and
 25 any business affiliates of a title loan lender or a member of a
 26 title loan lender's family are presumed not to be made in a
 27 commercially reasonable manner.

28 (2) "Commission" means the Financial Services Commission.

CODING: Words stricken are deletions; words underlined are additions.

29 (3) "Consumer" means an individual borrowing money for
 30 personal, family, or household purposes.

31 ~~(4)~~~~(3)~~ "Office" means the Office of Financial Regulation
 32 of the commission.

33 ~~(5)~~~~(4)~~ "Executive officer" means the president, chief
 34 executive officer, chief financial officer, chief operating
 35 officer, executive vice president, senior vice president,
 36 secretary, and treasurer.

37 ~~(6)~~~~(5)~~ "Identification" means a government-issued
 38 photographic identification.

39 ~~(7)~~~~(6)~~ "Interest" means the cost of obtaining a title loan
 40 and includes any profit or advantage of any kind whatsoever that
 41 a title loan lender may charge, contract for, collect, receive,
 42 or in any way obtain as a result of a title loan.

43 ~~(8)~~~~(7)~~ "License" means a permit issued under this act to
 44 make or service title loans in accordance with this act at a
 45 single title loan office.

46 ~~(9)~~~~(8)~~ "Licensee" means a person who is licensed as a
 47 title loan lender.

48 ~~(10)~~~~(9)~~ "Loan property" means any motor vehicle
 49 certificate of title that is deposited with a title loan lender
 50 as a security for a title loan in the course of the title loan
 51 lender's business.

52 ~~(11)~~~~(10)~~ "Motor vehicle" means an automobile, motorcycle,
 53 mobile home, truck, trailer, semitrailer, truck tractor and
 54 semitrailer combination, or any other vehicle operated on the
 55 public highways and streets of this state, used to transport
 56 persons or property, and propelled by power other than muscular

57 power, but excluding a vehicle which runs only upon a track and
 58 a mobile home that is the primary residence of the owner.

59 (12)~~(11)~~ "Title loan" or "loan" means a loan of money to a
 60 consumer secured by bailment of a certificate of title to a
 61 motor vehicle, except such loan made by a person licensed under
 62 chapter 516, chapter 520, chapter 655, chapter 657, chapter 658,
 63 chapter 660, chapter 663, chapter 665, or chapter 667 or a
 64 person who complies with s. 687.03.

65 (13)~~(12)~~ "Title loan agreement" or "agreement" means a
 66 written agreement in which a title loan lender agrees to make a
 67 title loan to a borrower.

68 (14)~~(13)~~ "Title loan lender" or "lender" means any person
 69 who engages in the business of making or servicing title loans.

70 (15)~~(14)~~ "Title loan office" means the location at which,
 71 or premises from which, a title loan lender regularly conducts
 72 business under this chapter or any other location that is held
 73 out to the public as a location at which a lender makes or
 74 services title loans.

75 (16)~~(15)~~ "Titled personal property" means a motor vehicle
 76 that has as evidence of ownership a state-issued certificate of
 77 title except for a mobile home that is the primary residence of
 78 the borrower.

79 (17)~~(16)~~ "Ultimate equitable owner" means a person who,
 80 directly or indirectly, owns or controls an ownership interest
 81 in a corporation, a foreign corporation, an alien business
 82 organization, or any other form of business organization,
 83 regardless of whether such person owns or controls such
 84 ownership interest through one or more persons or one or more

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85 | proxies, powers of attorney, nominees, corporations,
86 | associations, partnerships, trusts, joint stock companies, or
87 | other entities or devices, or any combination thereof.

88 | Section 3. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes-The bill prohibits an operator of underground facilities from charging an excavator any costs or expenses associated with the operator's compliance with the Underground Facility Damage Prevention and Safety Act. The bill also prohibits an excavator from charging an operator of underground facilities any costs or expenses associated with the excavator's compliance with the Act.

Promote Personal Responsibility/Maintain Public Security-The bill removes a possible disincentive for excavators to have the location of underground facilities marked prior to excavation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities¹ prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.² All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.³

The not-for-profit corporation is Sunshine State One-Call of Florida, Inc. (SSOCOF), which operates the notice system through its board of directors.⁴ The system is required to provide a single toll-free telephone number within Florida which excavators can use to notify member operators of planned excavation or demolition activities.⁵ The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.⁶ The person

¹ Section 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

² S. 556.101(2), F.S.

³ S. 556.103(1), F.S.

⁴ S. 556.103, F.S.

⁵ S. 556.104, F.S.

⁶ Section 556.105, F.S., provides an exception for excavation beneath the waters of the state where the member operator has 10 days to mark the facilities.

must also provide specified identification, location, and operational information.⁷ Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification and a notification number which specifies the date and time of the notification.⁸

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.⁹ Within two full business days after the time the notification is received by the system, potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period, the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and should not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.¹⁰

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided the excavator does so with reasonable care, and provided, further, that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not demolish until all member operators' underground facilities have been marked and located or removed.¹¹

The Act establishes civil liability for violations of certain provisions. The Act also establishes violations of certain provisions as noncriminal infractions that are enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector or code enforcement officer.¹² The Act provides that it is a misdemeanor in the second degree for any person to knowingly and willfully remove or otherwise destroy valid stakes or other valid physical markings.¹³

SSOCOF is funded through monthly assessments made to each member operator for a proportional share of system operating costs. If a member operator receives fewer than 10 notifications in a month, it is not assessed for that month.¹⁴

The one-call notification system has been marketed as a free service.¹⁵ According to SSOCOF, one municipality passed ordinances in September 2007 providing for specific charges to excavators for marking underground water, sewer, and gas lines. In apparent response to these ordinances, a telecommunications carrier in the same area filed a tariff with the Public Service Commission in January 2008 to charge a reciprocal marking fee to SSOCOF members that impose a marking fee on it.

⁷ S. 556.105(1), F.S.

⁸ S. 556.105(3), F.S.

⁹ S. 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

¹⁰ S. 556.105(5), F.S.

¹¹ S. 556.105(6), F.S.

¹² S. 556.107(1), F.S.

¹³ S. 556.107(2), F.S.

¹⁴ S. 556.110, F.S.

¹⁵ Sunshine State One-Call of Florida's website contains various marketing materials and links to radio and television spots.

According to the Common Ground Alliance,¹⁶ forty states do not specify options for charging to mark underground facilities, four states (Iowa, Wyoming, Colorado, and Minnesota) expressly prohibit such charges, and one state (Maryland) gives municipalities the right to impose such charges. The Common Ground Alliance is currently considering a proposed "best practice" that would require, once a call-center is notified, that locations of underground facilities be provided by operators at no cost to the excavator.¹⁷

Effect of the Bill

The bill creates s. 556.105(13), F.S., to provide that any costs or expenses associated with compliance by an excavator with s. 556.105, F.S., shall not be charged to any member operator, and that any costs or expenses associated with compliance by a member operator with s. 556.105, F.S., shall not be charged to any excavator. The bill provides that no person shall charge the prohibited costs or expenses after the effective date of this act. The bill also provides that this new subsection shall not excuse a member operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1 Creates s. 556.105(13), F.S., amending procedures related to the Sunshine State One-Call of Florida.
- Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Local governments will not realize a source of revenue for locating or marking underground lines.

¹⁶The Common Ground Alliance is a member-driven association that promotes effective damage prevention practices and has established itself as the leading organization in an effort to reduce damages to all underground facilities in North America through a shared responsibility among all stakeholders. (www.commongroundalliance.com).

¹⁷ Common Ground Alliance, summary of November 14, 2007, Best Practices Committee Meeting, page 7 and proposal form for specific proposal.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities will not realize a source of revenue for locating or marking underground lines.

D. FISCAL COMMENTS:

As noted above, SSOCOF reports that one municipality (a city) passed three separate rate increase ordinances (gas, water, and sewer) in September 2007 which authorize the city to charge excavators for locating or marking underground lines. SSOCOF indicates that this particular city received an average of 75 "tickets" per month during 2007. A "ticket" is the notice of intent to excavate. SSOCOF estimates that about one-third of the tickets received by a utility might result in a need to locate or mark underground lines. Because this particular city operates three utilities, there is a potential opportunity to charge excavators about \$3,750 per month for locating or marking lines (25 tickets x 3 utility services x \$50.00 minimum per marking).

As also noted above, the local exchange telephone company that serves that city filed a tariff with the PSC in January 2008 "to impose fees to SSOCOF members who charge for locating underground facilities." SSOCOF states that because utility companies act as both excavators and member operators within this program, the filing of tariffs such as this one could lead to both parties charging each other for underground line location or marking in order to offset the charges. In addition, it is not known how much this city (or any other municipality in the state of Florida for that matter) has charged other individuals, entities, or utilities for locating or marking underground lines.

Current law provides for a not-for-profit corporation (SSOCOF) to administer a free-access notification system (commonly referred to as "Call Before You Dig"). This bill provides that the location or marking of underground lines is also part of this free system. It appears that the intent of this bill is to maximize use of the system, the purpose of which is to prevent injury to persons or property and interruption of services resulting to damage to underground facilities.¹⁸ In doing so, this bill also provides that no one will gain a positive fiscal impact in complying with the requirements of s. 556.105, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

While the bill would prohibit municipalities and counties from charging fees associated with marking underground facilities, this prohibition would apply to all entities with underground facilities. Therefore, this bill may be an exception to the mandates provision since it applies to all similarly situated persons.

¹⁸ S. 556.101(3).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None

1 A Bill to be entitled
 2 An act relating to the excavation and demolition
 3 notification system; amending s. 556.105, F.S.;
 4 prohibiting charging a member operator for the costs or
 5 expenses associated with compliance with system procedures
 6 by an excavator; prohibiting charging an excavator for the
 7 costs or expenses associated with compliance with system
 8 procedures by a member operator; providing for
 9 application; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (13) is added to section 556.105,
 Florida Statutes, to read:
 556.105 Procedures.--

(13) Any costs or expenses associated with compliance by
 an excavator with the requirements in this section applicable to
 excavators shall not be charged to any member operator. Any
 costs or expenses associated with compliance by a member
 operator with the requirements in this section applicable to
 member operators shall not be charged to any excavator. No
 person shall charge the costs or expenses prohibited by this
 subsection after the effective date of this act. This subsection
 shall not excuse a member operator or excavator from liability
 for any damage or injury for which it would be responsible under
 applicable law.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 Real Property Fraud
SPONSOR(S): Lopez-Cantera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1116

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>		<u>Holt/Topp</u> <i>BDT</i>	<u>Thorn</u> <i>EC</i>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

Currently, Florida Statutes do not address the appraisal reassessment of real property involved in the crime of mortgage fraud.

HB 743 creates s. 193.133, F.S., and amends s. 817.545, F.S., related to the effect of mortgage fraud on property assessments. Provisions in the bill require law enforcement agencies, upon an incident of fraud, to notify the appropriate county property appraiser of the alleged fraudulent activity relating to real property. The appraiser of the county in which such property or properties are located is required to revisit the property assessment and consider the effect of the fraud on the property value. The property appraiser may use the information to adjust his assessment of the property retroactively. However, if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, it may be postponed until a more appropriate time to convey. Also, a criminal penalty of a second degree felony is created by the bill for certain mortgage fraud violations.

The fiscal impact is indeterminate. This bill creates a second degree felony offense which may have an impact on prison beds. While the Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections, this analysis will be updated when CJIC has considered the bill.

This act takes effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security: Criminal penalties are increased for certain incidents of mortgage fraud.

B. EFFECT OF PROPOSED CHANGES:

HB 743 provides several whereas clauses, but its focus is conveyed in the following clauses:

WHEREAS, certain types of mortgage fraud result in an artificial inflation in the value of residential property, which is directly correlated with an increase in the number of foreclosure filings, and

WHEREAS, this state is ranked number one in incidents of mortgage fraud and also has one of the highest foreclosure rates in the nation

Section 1 of the bill amends Part I, Chapter 193, F.S., Assessments, General Provisions

Section 1: The bill creates s. 193.133, F.S., related to the effect of mortgage fraud on property assessments. Provisions in the bill require law enforcement agencies, upon an incident of fraud, to notify the appropriate county property appraiser of the alleged fraudulent activity relating to real property. The appraiser of the county in which such property or properties are located is required to revisit the property assessment and consider the effect of the fraud on the property value. The property appraiser may use the information to adjust his assessment of the property value retroactively. However, if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, it may be postponed until a more appropriate time to convey.

Section 2 of the bill amends Part I, Chapter 817, False Pretenses and Fraud, Generally

Section 2: The bill amends s. 817.545, Mortgage Fraud.

Currently, subsection (5) of s. 817.545, F.S., reads:

(5) Any person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Subsection (2) of s. 817.545, F.S., reads:

(2) A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a

mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a document involved in the mortgage lending process which contains a material misstatement, misrepresentation, or omission.

HB 473 amends subsection (5) of s. 817.545, F.S., to provide that a person who violates subsection (2) and the loan value stated on documents used in the mortgage lending process exceeds \$100,000, commits a felony of the second degree, punishable as provided in 775.082¹, 775.083², or s. 775.084³.

Section 3: This act takes effect July 1, 2008,

C. SECTION DIRECTORY:

Section 1: Provides for law enforcement notification and property appraiser reassessment of real property.

Section 2: Provides for penalties.

Section 3: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The fiscal impact is indeterminate. This bill creates a second degree felony offense which may have an impact on prison beds. While the Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections, this analysis will be updated when CJIC has considered the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

¹ (3) A person who has been convicted of any other designated felony may be punished as follows:

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

² (1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(b) \$10,000, when the conviction is of a felony of the first or second degree.

³ 775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 21, 2008, the Committee on Financial Institutions adopted an amendment and an amendment to the amendment. The amendment removed sections 1-4 of the bill. The amendment provided in Section 1 deletion of the mandate on property appraisers to reassess upon notification by law enforcement of an incident of mortgage fraud. Additionally, this section changed the law enforcement reporting threshold from an "incident" to a "finding of probable cause." Section 2 of the amendment removed the two or more parcel provision regarding increased penalties. Section 3 of the amendment deleted the seven regional mortgage fraud councils and the statewide toll free mortgage fraud hotline.

The amendment to the amendment deleted Section 3 which provided for the creation of a statewide mortgage fraud council.

A bill to be entitled

An act relating to real property fraud; creating s. 193.133, F.S.; requiring law enforcement agencies to notify property appraisers of incidents of mortgage fraud; requiring property appraisers to reconsider property assessments under certain circumstances; amending s. 817.545, F.S.; increasing penalties for certain types of mortgage fraud; creating a Statewide Mortgage Fraud Council within the Department of Legal Affairs; providing for membership; providing duties of the council; providing for establishing regional mortgage fraud councils; providing for membership; providing duties of regional councils; providing for reimbursement of members' per diem and travel expenses; providing an effective date.

WHEREAS, mortgage fraud is a significant problem throughout the United States and is having a particularly damaging affect on mortgage investors and homeowners in this state, and

WHEREAS, certain types of mortgage fraud result in an artificial inflation in the value of residential property, which is directly correlated with an increase in the number of foreclosure filings, and

WHEREAS, this state is ranked number one in incidents of mortgage fraud and also has one of the highest foreclosure rates in the nation, and

27 WHEREAS, the escalation of property values also causes an
 28 increase in property taxes further making homeownership less
 29 affordable in this state, and

30 WHEREAS, providing enhanced penalties for multiple or more
 31 egregious instances of mortgage fraud, providing a uniform form
 32 for quitclaim deeds, establishing a statewide and regional
 33 councils to coordinate investigations of and solutions to
 34 mortgage fraud, and allowing county property appraisers to
 35 disqualify fraudulent property appraisals when deriving just
 36 valuation will help combat and reduce the effect of mortgage
 37 fraud, NOW, THEREFORE,

38

39 Be It Enacted by the Legislature of the State of Florida:

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41 Section 1. Section 193.133, Florida Statutes, is created
 42 to read:

43 193.133 Effect of mortgage fraud on property
 44 assessments.--

45 (1) Any state or local law enforcement agency shall
 46 provide notification of an incident of mortgage fraud, as
 47 defined in s. 817.545, or other fraud involving real property
 48 which may artificially inflate the value of the property, to the
 49 property appraiser of the county in which the property is
 50 located within 7 business days after learning of such incident.

51 (2) Upon notification of an incident of mortgage fraud or
 52 any other fraud involving real property which may artificially
 53 inflate the value of the property, the property appraiser shall

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54 revisit the property assessment and consider the effect of the
 55 fraud on the just valuation of the property.

56 (3) The property appraiser may adjust his or her
 57 assessment of the property retroactive to the initial date of
 58 the occurrence of the mortgage fraud.

59 Section 2. Subsection (5) of section 817.545, Florida
 60 Statutes, is amended to read:

61 817.545 Residential mortgage fraud.--

62 (5) (a) If only one parcel of real property is subject to
 63 the mortgage lending process or the total value of the loan is
 64 \$100,000 or less, a any person who violates subsection (2)
 65 commits a felony of the third degree, punishable as provided in
 66 s. 775.082, s. 775.083, or s. 775.084.

67 (b) If two or more parcels of real property are subject to
 68 the mortgage lending process or the total value of the loan is
 69 greater than \$100,000, a person who violates subsection (2)
 70 commits a felony of the second degree, punishable as provided in
 71 s. 775.082, s. 775.083, or s. 775.084.

72 Section 3. Statewide Mortgage Fraud Council.--

73 (1) INTENT.--The Legislature finds that there is a need to
 74 develop and implement a statewide strategy to address mortgage
 75 fraud within or affecting this state.

76 (2) ESTABLISHMENT.--The Statewide Mortgage Fraud Council
 77 is established within the Department of Law Enforcement for the
 78 purpose of combating mortgage fraud throughout the state.

79 (a) The council shall have an executive director appointed
 80 by the executive director of the department who shall carry out

81 the tasks of the council as directed by the council. The
 82 department shall provide administrative support to the council.

83 (b) The council shall be composed of the following
 84 members:

85 1. The executive director of the Department of Law
 86 Enforcement, who shall be the chair of the council.

87 2. The statewide prosecutor.

88 3. The Attorney General or a designee who is knowledgeable
 89 about economic crimes.

90 4. The Commissioner of Financial Regulation or a designee
 91 who is knowledgeable about mortgage lending and related
 92 financial institutions.

93 5. The executive director of the Department of Revenue or
 94 a designee who is knowledgeable about ad valorem property
 95 valuation.

96 6. A member of the Florida Real Estate Appraisal Board.

97 (3) DUTIES.--The council may:

98 (a) Collect data about and serve as a resource and
 99 clearinghouse for information relating to mortgage fraud,
 100 including ongoing investigations and prosecutions around the
 101 state which involve mortgage fraud.

102 (b) Coordinate and initiate statewide or regional mortgage
 103 fraud investigations through the statewide prosecutor or local
 104 state attorneys.

105 (c) Subject to appropriation, establish a statewide toll-
 106 free hotline for reporting mortgage fraud, providing information
 107 and resources to the public regarding mortgage fraud, and
 108 routing reports of mortgage fraud to the appropriate law

109 enforcement and prosecutorial agencies and the regional
 110 councils.

111 (d) In conjunction with state agencies responsible for
 112 determining training needs and establishing training standards
 113 for law enforcement officers, state attorneys, and regulatory
 114 personnel, identify and make recommendations relating to
 115 equipment and training, including continued training for state
 116 licensure or certification, to ensure that the needs of this
 117 state with regard to preparing, equipping, and training law
 118 enforcement officers, state attorneys, and regulatory personnel
 119 to combat mortgage fraud are identified and addressed. In making
 120 such recommendations, the council shall identify all resources
 121 and funding sources that may be available to support and fund
 122 such efforts.

123 (e) Propose legislation to eliminate and prevent mortgage
 124 fraud, including measures that close loopholes in procedures for
 125 making mortgage loans and prevent practices by property
 126 appraisers which provide opportunities for mortgage fraud.

127 (f) Establish regional mortgage fraud councils as provided
 128 in subsection (4).

129 (4) REGIONAL COUNCILS.--A regional mortgage fraud council
 130 shall be established in each of the seven operational regions of
 131 the Department of Law Enforcement. The department shall provide
 132 dedicated staff to support the functions and activities of the
 133 regional councils.

134 (a) Each regional council shall be co-chaired by the
 135 department's special agent in charge of the operational region

136 in which the council is located and by a local sheriff or chief
 137 of police from within the operational region.

138 (b) Regional council membership may include
 139 representatives of local law enforcement agencies, the state
 140 attorney's office, the county property appraiser, industry
 141 professionals, including property appraisers, mortgage brokers
 142 and bankers, and other affected professions, and business
 143 leaders.

144 (c) The co-chairs of a regional council may appoint
 145 committees and committee chairs as necessary to address issues
 146 related to the various disciplines represented on the council,
 147 including a law enforcement, regulatory, business partnership,
 148 education, or victims assistance committee. The committee chair
 149 shall serve at the pleasure of the co-chairs.

150 (d) Each regional council, with oversight and direction
 151 from the Statewide Mortgage Fraud Council, shall:

152 1. Organize, with local law enforcement agencies,
 153 sheriff's departments, and state attorneys, coordinated local
 154 initiatives to address mortgage fraud.

155 2. Coordinate efforts to enforce s. 817.545, Florida
 156 Statutes, and other related state and federal laws to ensure
 157 that such efforts are not fragmented or unnecessarily
 158 duplicative.

159 3. Coordinate training for local and state personnel
 160 relating to ss. 193.133 and 817.545, Florida Statutes, and other
 161 related state and federal laws.

162 4. Coordinate the collection and dissemination of state
 163 and local investigative information relating to mortgage fraud
 164 within each region.

165 5. Incorporate other objectives reasonably related to the
 166 goal of enhancing the state's ability to detect, prevent, and
 167 respond to mortgage fraud within or affecting this state. Each
 168 regional council shall take into account the unique conditions
 169 and resources within its region.

170 (5) MEMBER EXPENSES.--Members of the statewide and
 171 regional councils shall serve without compensation, but, in
 172 accordance with s. 112.061, Florida Statutes, are entitled to
 173 reimbursement for per diem and travel expenses incurred in
 174 carrying out the duties of the council.

175 Section 4. This act shall take effect July 1, 2008.

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

**This amendment is traveling with the bill:
Action by the Council is not required.**

1 Council/Committee hearing bill: Committee on Financial

2 Institutions

3 Representative Lopez-Cantera offered the following:

4
5 **Amendment to amendment amendmentdraft23960 by Representative**
6 **Lopez-Cantera (with title amendment)**

7 Remove lines 66-151 and insert:

8 Section 3. This act shall take effect July 1, 2008.

9
10
11 -----
12 **T I T L E A M E N D M E N T**

13 Remove line(s) 163-171 and insert:

14 certain types of mortgage fraud;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0743

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

**This amendment is traveling with the bill:
Action by the Council is not required.**

1 Council/Committee hearing bill: Committee on Financial
 2 Institutions
 3 Representative Lopez-Cantera offered the following:
 4

Amendment (with directory and title amendments)

Remove line(s) 41-175 and insert:

7
 8 Section 1. Section 193.133, Florida Statutes, is created
 9 to read:

10 193.133 Effect of mortgage fraud on property
 11 assessments.--

12 (1) Upon the finding of probable cause of any person for
 13 the crime of mortgage fraud, as defined in s. 817.545, or any
 14 other fraud involving real property which may have artificially
 15 inflated or could artificially inflate the value of property
 16 affected by such fraud, the arresting agency shall promptly
 17 notify the property appraiser of the county in which such
 18 property or properties are located of the nature of the alleged
 19 fraud and the property or properties affected. If notification
 20 as required in this section would jeopardize or negatively

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

21 impact a continuing investigation, notification may be delayed
22 until such time as notice may be made without such effect.

23 (2) The property appraiser may adjust the assessment of
24 any affected real property.

25 (3) Upon the conviction of fraud as defined in subsection
26 (1), the property appraiser of the county in which such property
27 or properties are located shall, if necessary, reassess such
28 property or properties affected by such fraud.

29 Section 2. Subsection (5) of section 817.545, Florida
30 Statutes, is amended to read:

31 817.545 Mortgage fraud.--

32 (2) A person commits the offense of mortgage fraud if,
33 with the intent to defraud, the person knowingly:

34 (a) Makes any material misstatement, misrepresentation, or
35 omission during the mortgage lending process with the intention
36 that the misstatement, misrepresentation, or omission will be
37 relied on by a mortgage lender, borrower, or any other person or
38 entity involved in the mortgage lending process; however,
39 omissions on a loan application regarding employment, income, or
40 assets for a loan which does not require this information are
41 not considered a material omission for purposes of this
42 subsection.

43 (b) Uses or facilitates the use of any material
44 misstatement, misrepresentation, or omission during the mortgage
45 lending process with the intention that the material
46 misstatement, misrepresentation, or omission will be relied on
47 by a mortgage lender, borrower, or any other person or entity
48 involved in the mortgage lending process; however, omissions on
49 a loan application regarding employment, income, or assets for a

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50 loan which does not require this information are not considered
51 a material omission for purposes of this subsection.

52 (c) Receives any proceeds or any other funds in connection
53 with the mortgage lending process that the person knew resulted
54 from a violation of paragraph (a) or paragraph (b).

55 (d) Files or causes to be filed with the clerk of the
56 circuit court for any county of this state a document involved
57 in the mortgage lending process which contains a material
58 misstatement, misrepresentation, or omission.

59 (5)(a) Any person who violates subsection (2) commits a
60 felony of the third degree, punishable as provided in s.
61 775.082, s. 775.083, or s. 775.084.

62 (b) Any person who violates subsection (2), and the loan
63 value stated on documents used in the mortgage lending process
64 exceeds \$100,000, commits a felony of the second degree,
65 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

66 Section 3. Mortgage Fraud Council.--

67 (1) CREATION.--The Mortgage Fraud Council is created as an
68 adjunct to the Office of the Attorney General. The council is
69 subject to s. 20.052, Florida Statutes.

70 (2) PURPOSE.--The purpose of the council is to develop and
71 make recommendations to the Office of the Attorney General to
72 reduce incidents of mortgage fraud in this state.

73 (3) MEMBERSHIP.--The council shall consist of 10 members
74 who shall be appointed by and serve at the pleasure of the
75 Attorney General, the Speaker of the House of Representatives,
76 and the President of the Senate, as follows:

77 (a) Four members shall be appointed by and serve for a
78 term of 2 years at the pleasure of the Attorney General. At
79 least one member must be an active member of a consumer advocacy

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80 group and the other three members must have experience in real
81 estate, finance, law enforcement, or the legal profession.

82 (b) Three members shall be appointed by and serve for a
83 term of 2 years at the pleasure of the Speaker of the House of
84 Representatives and must have experience in real estate,
85 finance, law enforcement, or the legal profession.

86 (c) Three members shall be appointed by and serve for a
87 term of 2 years at the pleasure of the President of the Senate
88 and must have experience in real estate, finance, law
89 enforcement, or the legal profession.

90 (d) Members shall serve until their successors are
91 appointed. A vacancy shall be filled for the remainder of the
92 unexpired term.

93 (e) Council members shall serve without compensation;
94 however, each council member is entitled to reimbursement for
95 per diem and travel expenses pursuant to s. 112.061, Florida
96 Statutes.

97 (f) The Office of the Attorney General shall provide
98 administrative and staff support to the council.

99 (4) MEETINGS; PROCEDURES; RECORDS.--

100 (a) The business of the council shall be presented to the
101 council in the form of an agenda. The agenda shall be set by the
102 Attorney General and shall include items of business requested
103 by the council members.

104 (b) A majority of the members constitutes a quorum, and
105 action by a majority of a quorum shall be official.

106 (c) The minutes for each meeting shall be submitted to the
107 Attorney General within 14 days after the date of each meeting.

108 (5) POWERS AND DUTIES.--The council shall:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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109 (a) Collect data about and serve as a resource and
110 clearinghouse for information relating to mortgage fraud.

111 (b) In conjunction with state agencies responsible for
112 determining training needs and standards for law enforcement
113 officers, state attorneys, and regulatory personnel, identify
114 and make recommendations for training relating to combating
115 mortgage fraud.

116 (c) Propose legislation to detect and prevent mortgage
117 fraud.

118 (6) FUNDING; RESOURCES.--

119 (a) The council may apply for and accept funds, grants,
120 gifts, and services from the state, the government of the United
121 States or any of its agencies, or any other public or private
122 source for the purpose of defraying clerical and administrative
123 costs as necessary to carry out its duties under this section.
124 All sums received by the council shall be deposited into the
125 Administrative Trust Fund of the Office of the Attorney General.
126 The moneys received and deposited into the trust fund are
127 appropriated for use by the council in carrying out its duties
128 as prescribed by this section.

129 (b) The council shall seek out and, wherever possible, use
130 the talents, expertise, and resources within the state, and
131 especially those of the community college and state university
132 systems, in furtherance of its mission.

133 (c) The council may procure information and assistance
134 from any state agency, political subdivision, municipal
135 corporation, or public officer.

136 (d) The council may coordinate with any state agency, any
137 political subdivision, or any school district of the state in
138 the furtherance of its mission.

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139 (7) REPORTS.--Beginning December 31, 2008, the council
140 shall report annually on December 31 to the Attorney General,
141 the Speaker of the House of Representatives, and the President
142 of the Senate on the activities carried out under this section,
143 including expenditures and funding.

144 (8) TERMINATION.--The council is terminated December 31,
145 2010. Upon termination, any funds remaining in the
146 Administrative Trust Fund of the Office of the Attorney General
147 from deposits made pursuant to paragraph (6)(a) shall be
148 appropriated to the Attorney General to fund the activities the
149 Attorney General has implemented pursuant to the recommendations
150 of the council.

151 Section 4. This act shall take effect July 1, 2008.

152
153 -----
154 **T I T L E A M E N D M E N T**

155 Remove line(s) 2-37 and insert:

156 An act relating to mortgage fraud; creating s. 193.133, F.S.;

157 requiring law enforcement agencies to notify property appraisers

158 of incidents of mortgage fraud under certain circumstances;

159 authorizing property appraisers to adjust property assessments

160 under certain circumstances; requiring property appraisers to

161 reassess certain properties under certain circumstances;

162 amending s. 817.545, F.S.; providing an increased penalty for

163 certain types of mortgage fraud; creating the Mortgage Fraud

164 Council as an adjunct to the Office of the Attorney General;

165 providing a purpose; providing for membership; requiring the

166 Office of the Attorney General to provide administrative and

167 staff support; providing for council meetings, procedures, and

168 records; providing powers and duties of the council; providing

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169 for funding and resources for the council; requiring the council
170 to submit annual reports; providing for termination of the
171 council; providing for disposition of certain remaining funds;
172 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797
SPONSOR(S): Holder
TIED BILLS:

Public Accountancy

IDEN./SIM. BILLS: SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	11 Y, 0 N	<u>Livingston/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>		<u>Livingston/Topp</u> <i>BDT</i>	<u>Thorn</u> <i>CT</i>
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR), Division of Certified Public Accountants. Qualifications for "licensure" include meeting the requirements for good moral character, formal education, and successful completion of a comprehensive licensure examination.

In order to take the CPA examination, certain education qualifications must be met including a baccalaureate degree plus at least 30 semester or 45 quarter hours of formal education in excess of the hours required for a degree. This is commonly referred to as the 5th year/150 hour requirement. An applicant for licensure may substitute five years of work experience for the extra education credits required beyond the baccalaureate degree.

- The **bill** allows an applicant (often a student) to sit for the examination for licensure prior to achieving a college degree. The applicant is required to have completed 120 semester hours (or equivalent number of quarter hours). Though this is the normal number of hours for a degree, the applicant is not required to actually receive the degree or to complete the 5th year/150 hour requirement (to apply and sit for the examination) (these standards, and others, are required to be met for eventual "licensure").

Currently, an applicant to take the CPA examination must, in addition to education, meet statutory "good moral character" requirements.

- The **bill** removes the good moral character standard from the requirements to qualify for the examination and requires the good moral character standard as a quality to be approved for "licensure."
- The **bill** creates a new standard to be met in order to be "licensed." Beginning on January 1, 2009, an applicant for "licensure" must have one year of work experience to go along with the other requirements for "licensure." The board is authorized to establish work experience guidelines (similar to the authority of the board to approve work experience guidelines as an alternative to the 5th year/150 hour education standard).

Per the department, costs associated with this legislation would be minimal and existing staff would absorb any additional workload.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility/ Provide Limited Government

The bill is designed to facilitate the procedures for an individual to qualify to become a certified public accountant and to allow for a more efficient processing of applications by the DBPR within current resources.

The bill creates a work experience standard that is not currently required for licensure.

B. EFFECT OF PROPOSED CHANGES:

Present situation

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy (board) within the Department of Business and Professional Regulation (DBPR), Division of Certified Public Accountants. Qualifications for "licensure" include meeting the requirements for good moral character, formal education, and successful completion of a comprehensive licensure examination.

In order to take the CPA examination, certain education qualifications must be met including a baccalaureate degree plus at least 30 semester or 45 quarter hours of formal education in excess of the hours required for a degree. This is commonly referred to as the 5th year/150 hour requirement. An applicant for licensure may substitute five years of work experience for the extra education credits required beyond the baccalaureate degree.

Currently, an applicant to take the CPA examination must, in addition to education, meet statutory "good moral character" requirements.

Effect of proposed changes

The bill allows an individual to sit for the CPA examination for licensure prior to achieving a college degree. The applicant is required to have completed 120 semester hours (or equivalent number of quarter hours). Though this is the normal number of hours for a degree, the applicant is not required to actually receive the degree or to complete the 5th year/150 hour requirement (to apply and sit for the examination) (these standards, and others, are required to be met for eventual "licensure").

The bill removes the good moral character standard from the requirements to qualify for the examination and requires the good moral character standard as a quality to be approved for "licensure."

The bill creates a new standard to be met in order to be "licensed." Beginning on January 1, 2009, an applicant for "licensure" must have one year of work experience to go along with the other requirements for "licensure." The board is authorized to establish the work experience guidelines by rule.

C. SECTION DIRECTORY:

Section 1. Amends s. 473.306, F.S., to allow individuals to sit for the uniform CPA examination upon completion of 120 semester hours or 160 quarter hours of education from an accredited institution.

Section 2. Amends s. 473.308, F.S., to include conditions for licensure of one year of work experience in addition to other requirements; authorizes the board, by rule, to determine the specific business and

accounting courses and to determine the standards providing for the review and approval of the work experience.

Section 3. Amends s. 473.323, F.S., to conform a cross-reference.

Section 4. Effective date - July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain but likely minimal.

D. FISCAL COMMENTS:

Per the department, any costs associated with this legislation would be minimal and existing staff would absorb any additional workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

NA

B. RULE-MAKING AUTHORITY:

The bill requires the board to amend Rule 61H1-27.002 Florida Administrative Code regarding courses that qualify as a concentration in accounting and business. Also the board is required to adopt rules to specify standards providing for the review and approval of work experience.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes:

- "The addition of the one year work experience will make Florida substantially equivalent to other states under the Uniform Accountancy Act."
- "In the short term there should not be an increase in the number of licensees or associated fees. Long term effect of this bill should increase the number of licensees and associated fees. The Board of Accountancy feels by allowing students to sit for the exam as undergraduates they are vested in the profession at a much earlier age and are much more likely to complete the steps to obtain licensure."

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public accountancy; amending s. 473.306, F.S.; revising prerequisites for taking the examination for licensure as a certified public accountant; eliminating certain obsolete provisions; amending s. 473.308, F.S.; revising and updating the requirements for education and work experience; requiring the Board of Accountancy to adopt rules governing requirements for work experience; clarifying provisions that specify what constitutes good moral character for purposes of qualifying for licensure as a certified public accountant; revising provisions governing licensure by endorsement; amending s. 473.323, F.S.; correcting a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 473.306, Florida Statutes, is amended to read:

473.306 Examinations.--

(1) A person desiring to be licensed as a Florida certified public accountant shall apply to the department to take the ~~for~~ licensure examination.

(2) An applicant is entitled to take the licensure examination to practice in this state as a certified public accountant if the applicant has completed 120 semester hours or 160 quarter hours from an accredited college or university with

28 a concentration in accounting and business courses as specified
 29 by the board by rule.+

30 ~~(a) Is of good moral character, and~~

31 ~~(b) Has met the following educational requirements from an~~
 32 ~~accredited college or university.~~

33 ~~1. If application is made prior to August 2, 1983, a~~
 34 ~~baccalaureate degree with a major in accounting or its~~
 35 ~~equivalent with a concentration in accounting and business to~~
 36 ~~the extent specified by the board.~~

37 ~~2. If application is made after August 1, 1983, a~~
 38 ~~baccalaureate degree with a major in accounting or its~~
 39 ~~equivalent plus at least 30 semester or 45 quarter hours in~~
 40 ~~excess of those required for a 4-year baccalaureate degree, with~~
 41 ~~a concentration in accounting and business in the total~~
 42 ~~educational program to the extent specified by the board.~~

43 (3) The board shall have the authority to establish the
 44 standards for determining and shall determine:

45 (a) What constitutes a passing grade for each subject or
 46 part of the licensure examination;

47 (b) Which educational institutions, in addition to the
 48 universities in the State University System of Florida, shall be
 49 deemed to be accredited colleges or universities;

50 (c) What courses and number of hours constitute a major in
 51 accounting; and

52 (d) What courses and number of hours constitute additional
 53 accounting courses acceptable under s. 473.308(3) ~~subparagraph~~

54 ~~(2)(b)2.~~

55 ~~(4)(a) "Good moral character" means a personal history of~~
 56 ~~honesty, fairness, and respect for the rights of others and for~~
 57 ~~the laws of this state and nation.~~

58 ~~(b) The board may refuse to certify an applicant for~~
 59 ~~failure to satisfy this requirement if:~~

60 ~~1. The board finds a reasonable relationship between the~~
 61 ~~lack of good moral character of the applicant and the~~
 62 ~~professional responsibilities of a certified public accountant,~~
 63 ~~and~~

64 ~~2. The finding by the board of lack of good moral~~
 65 ~~character is supported by competent substantial evidence.~~

66 ~~(c) When an applicant is found to be unqualified for a~~
 67 ~~license because of a lack of good moral character, the board~~
 68 ~~shall furnish the applicant a statement containing the findings~~
 69 ~~of the board, a complete record of the evidence upon which the~~
 70 ~~determination was based, and a notice of the rights of the~~
 71 ~~applicant to a rehearing and appeal.~~

72 ~~(4)(5)~~ The board may adopt an alternative licensure
 73 examination for persons who have been licensed to practice
 74 public accountancy or its equivalent in a foreign country so
 75 long as the International Qualifications Appraisal Board of the
 76 National Association of State Boards of Accountancy has ratified
 77 an agreement with that country for reciprocal licensure.

78 ~~(5)(6)~~ For the purposes of maintaining the proper
 79 educational qualifications for licensure under this chapter, the
 80 board may appoint an Educational Advisory Committee, which shall
 81 be composed of one member of the board, two persons in public

82 | practice who are licensed under this chapter, and four
 83 | academicians on faculties of universities in this state.

84 | Section 2. Section 473.308, Florida Statutes, is amended
 85 | to read:

86 | 473.308 Licensure.--

87 | (1) A person desiring to be licensed as a Florida
 88 | certified public accountant in this state shall apply to the
 89 | department for licensure and the department shall license any
 90 | applicant who the board certifies is qualified to practice
 91 | public accounting.

92 | (2) The board shall certify for licensure any applicant
 93 | who successfully passes the licensure examination and satisfies
 94 | the requirements of subsections (3), (4), and (5), s. 473.306
 95 | and shall certify for licensure any firm that ~~which~~ satisfies
 96 | the requirements of ss. 473.309 and 473.3101. The board may
 97 | refuse to certify any applicant or firm that has violated any of
 98 | the provisions of s. 473.322.

99 | (3) An applicant for licensure must have received a
 100 | baccalaureate degree with a major in accounting or its
 101 | equivalent plus at least 30 semester hours or 45 quarter hours
 102 | in excess of those required for a 4-year baccalaureate degree,
 103 | with a concentration in accounting and business in the total
 104 | educational program to the extent specified by the board.

105 | (4) An applicant for licensure after December 31, 2008,
 106 | must show that he or she has had 1 year of work experience. This
 107 | experience shall include providing any type of service or advice
 108 | involving the use of accounting, attest, compilation, management
 109 | advisory, financial advisory, tax, or consulting skills, all of

110 which must be verified by a certified public accountant who is
 111 licensed by a state or territory of the United States and who
 112 has supervised the applicant. This experience is acceptable if
 113 it was gained through employment in government, industry,
 114 academia, or public practice; constituted a substantial part of
 115 the applicant's duties; and was under the supervision of a
 116 certified public accountant licensed by a state or territory of
 117 the United States. The board shall adopt rules specifying
 118 standards and providing for the review and approval of the work
 119 experience required by this section.

120 (5) An applicant for licensure shall show that the
 121 applicant has good moral character.

122 (6) (a) "Good moral character" means a personal history of
 123 honesty, fairness, and respect for the rights of others and for
 124 the laws of this state and nation.

125 (b) The board may refuse to certify an applicant for
 126 failure to satisfy this requirement if:

127 1. The board finds a reasonable relationship between the
 128 lack of good moral character of the applicant and the
 129 professional responsibilities of a certified public accountant;
 130 and

131 2. The finding by the board of lack of good moral
 132 character is supported by competent substantial evidence.

133 (c) When an applicant is found to be unqualified for a
 134 license because of a lack of good moral character, the board
 135 shall furnish to the applicant a statement containing the
 136 findings of the board, a complete record of the evidence upon
 137 which the determination was based, and a notice of the rights of

138 the applicant to a rehearing and appeal.

139 ~~(7)~~~~(3)~~ The board shall certify as qualified for a license
 140 by endorsement an applicant who:

141 (a)1. Is not licensed and has not been licensed in another
 142 state or territory and who has met the requirements of this
 143 section for education, work experience, and good moral character
 144 ~~qualifies to take the examination as set forth in s. 473.306 and~~
 145 has passed a national, regional, state, or territorial licensing
 146 examination that ~~which~~ is substantially equivalent to the
 147 examination required by s. 473.306; and

148 2. Has completed such continuing education courses as the
 149 board deems appropriate, within the limits for each applicable
 150 2-year period as set forth in s. 473.312, but at least such
 151 courses as are equivalent to the continuing education
 152 requirements for a Florida certified public accountant licensed
 153 ~~licensee~~ in this state during the 2 years immediately preceding
 154 her or his application for licensure by endorsement; or

155 (b)1.a. Holds a valid license to practice public
 156 accounting issued by another state or territory of the United
 157 States, if the criteria for issuance of such license were
 158 substantially equivalent to the licensure criteria that ~~which~~
 159 existed in this state at the time the license was issued; or

160 b. Holds a valid license to practice public accounting
 161 issued by another state or territory of the United States but
 162 the criteria for issuance of such license did not meet the
 163 requirements of sub-subparagraph a.; has met the requirements of
 164 this section for education, work experience, and good moral
 165 character; ~~who qualifies to take the examination as set forth~~

166 ~~in s. 473.306~~ and has passed a national, regional, state, or
 167 territorial licensing examination that ~~which~~ is substantially
 168 equivalent to the examination required by s. 473.306; and

169 2. Has completed continuing education courses that ~~which~~
 170 are equivalent to the continuing education requirements for a
 171 Florida certified public accountant licensed licensee in this
 172 state during the 2 years immediately preceding her or his
 173 application for licensure by endorsement.

174 (8)(4) If the applicant has at least 5 years of experience
 175 in the practice of public accountancy in the United States or in
 176 the practice of public accountancy or its equivalent in a
 177 foreign country that the International Qualifications Appraisal
 178 Board of the National Association of State Boards of Accountancy
 179 has determined has licensure standards that are substantially
 180 equivalent to those in the United States, or has at least 5
 181 years of work experience that meets the requirements of
 182 subsection (4) ~~as an auditor or accountant in the employment of~~
 183 ~~a unit of federal, state, or local government and that~~
 184 ~~employment required the use of accounting skills as a~~
 185 ~~substantial part of the applicant's duties and was under the~~
 186 ~~supervision of a certified public accountant licensed by a state~~
 187 ~~or territory of the United States, the board shall waive the~~
 188 requirements of subsection (3) which s. 473.306(2)(b)2. that are
 189 in excess of a baccalaureate degree. All experience that is used
 190 as a basis for waiving the requirements of subsection (3) s.
 191 ~~473.306(2)(b)2.~~ must be while licensed as a certified public
 192 accountant by another state or territory of the United States or
 193 while licensed in the practice of public accountancy or its

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194 equivalent in a foreign country that the International
 195 Qualifications Appraisal Board of the National Association of
 196 State Boards of Accountancy has determined has licensure
 197 standards that are substantially equivalent to those in the
 198 United States. The board shall have the authority to establish
 199 the standards for experience that meet this requirement.

200 (9)~~(5)~~ The board may refuse to certify for licensure any
 201 applicant who is under investigation in another state for any
 202 act that ~~which~~ would constitute a violation of this act or
 203 chapter 455, until such time as the investigation is complete
 204 and disciplinary proceedings have been terminated.

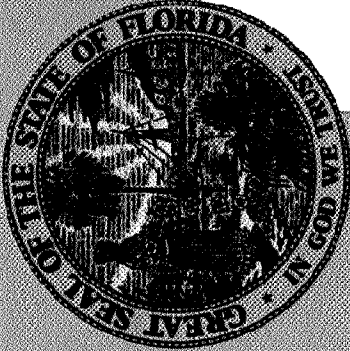
205 Section 3. Paragraph (1) of subsection (1) of section
 206 473.323, Florida Statutes, is amended to read:

207 473.323 Disciplinary proceedings.--

208 (1) The following acts constitute grounds for which the
 209 disciplinary actions in subsection (3) may be taken:

210 (1) Failing to maintain a good moral character as provided
 211 in s. 473.308 ~~473.306~~.

212 Section 4. This act shall take effect July 1, 2008.



ALEX SINK
Chief Financial Officer
State of Florida

Guaranteed Energy Performance Savings Contracting



Prepared by Department of Financial Services and presented to the Jobs and Entrepreneurship
Council on 03/06/08

Purpose

Invest in energy conservation measures that reduce energy consumption and produce a cost savings.

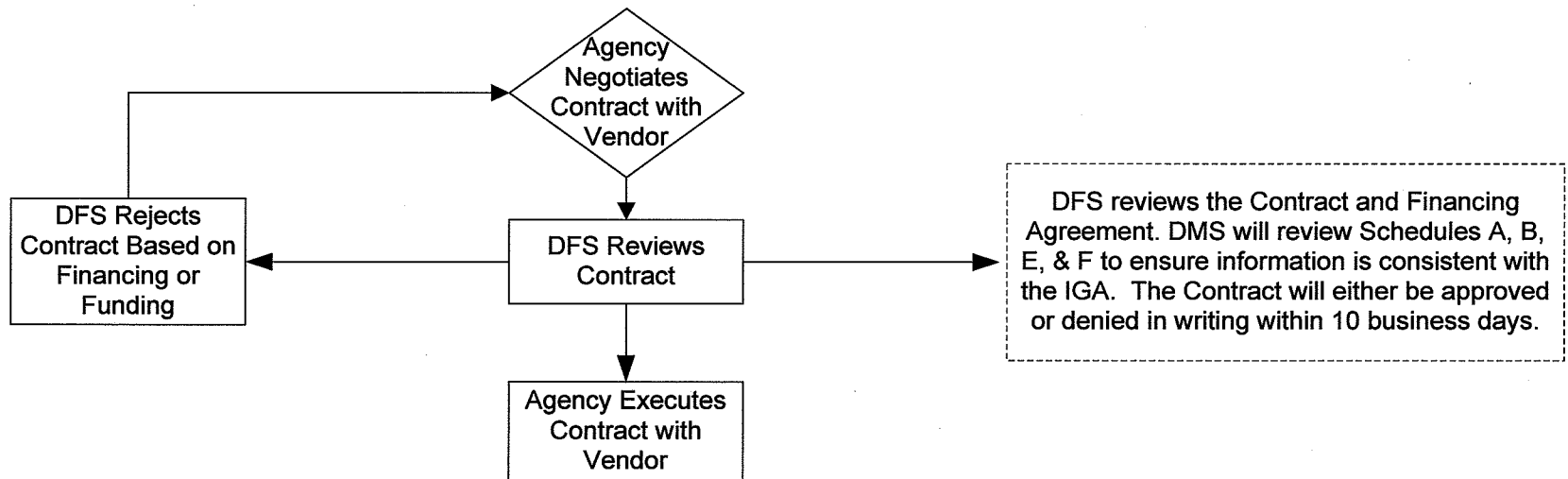
History

- 2001 Law Revision – added Guarantee and specified Performance and Conservation measures
- 2002 DMS entered into a State Term Contract with 7 Guaranteed Energy Performance Savings Contractors (ESCOs)
- 2007 - Proposed Law Change passed but vetoed
- Current Law, Chapter 489.145, F.S.

Program Components

- Agency Contacts 3 Most Qualified ESCO's for Proposals and Selects 1 to Perform Investment Grade Audit
- Investment Grade Audit (Sent to DMS for Approval)
- Agency Drafts Contract and Financing Agreement Including ESCO's Written Guarantee for Energy Cost Savings
- DFS Reviews Contract and Financing
- Agency Monitors Measurement and Verification

DFS Contract Review



Process Improvements

- Emphasized Agency involvement
- Defined DMS and DFS roles and responsibilities
- Formalized a Process
 - Defined Project Selection
 - Clarified DMS Requirements for Investment Grade Audit
 - Clarified DFS Requirements for Contract and Financing
- Established targets for DFS review periods

Program Status

- 6 Contract Reviews by DFS Since 7/1/2007
 - 2 Approved and Executed
 - 3 Returned for Deficiencies
 - 1 Withdrawn by Agency After DFS Approval

- 3 Contracts Approved by DFS Before 7/1/2007

Program Plans

- Train Agencies on Best Practices for Energy Savings Contracting and Financing
- Leverage Consolidated Equipment Financing for Energy Savings Contracts to Lower Costs and Make Process More Efficient
- Improve Accounting and Budgetary Control Related to Energy Savings Contracts

Proposed Legislation 2008

- HB 37 – Specifically adds water and wastewater efficiency or conservation measures in Sec. 489.145
- SB 412 – Amends Sec. 489.145, 287.063, and 287.064
- SB 308 - Amends Sec. 489.145 and 287.064
- SB 312 – Amends Sec. 287.063 and 287.064

Proposed Legislation 2008

287.064 Consolidated financing of deferred-payment purchases

- Exclude cost of training, operation, and maintenance from the financing for energy conservation measure
- Extend term of lease to a maximum of 20 years for energy conservation measures

Proposed Legislation 2008

287.063 Deferred Payment Commodity Contracts

- Delete requirement for recurring OCO to allow energy contract savings in special categories to fund the energy contracts

Proposed Legislation 2008

489.145 Guaranteed energy performance savings contracting

- Remove training program as a energy conservation measure
- Operating cost included in the energy reduction calculation must be energy-related
- Annual savings may include allowable cost avoidance (i.e., cost for replacement equipment)

Proposed Legislation 2008

489.145 Guaranteed energy performance savings contracting

- Baseline adjustments used in the calculation for cost savings must be specified in the contract
- Allow use of the Consolidate Equipment Financing program for guaranteed energy performance savings contracts

Proposed Legislation 2008

489.145 Guaranteed energy performance savings contracting

- Requires straight-line amortization for the term of the loan
- Proposed Contracts must include:
documentation supporting recurring funds,
approval by agency head or designee, agency
measurement and verification plan for
monitoring cost savings

Questions?

- Christina Smith, Assistant Director
- Molly Merry, Chief of Accounting

Division of Accounting and Auditing
Department of Financial Services

Contracts Reviewed by DFS Since 7/1/2007

Agency	ESCO	Buildings	Total Contract	Review Letter to Agency	DFS Review Status	Pay Term (years)	Interest Rate
Department of Children and Families	Trane	Northeast Florida State Hospital	\$4,160,359	07/20/07	Withdrawn by Agency After DFS Approval	15	4.05%
Department of Children and Families	Trane	Northeast Florida State Hospital	\$4,551,849	10/11/07	Approved	15	4.45%
Department of Juvenile Justice	Siemens' Business Technology	Dozier, Jackson, Boward, Falkenburg, Les Peters, Okeechobee, Pensacola, Polk, Sago, Sunland, Wildwood	\$3,231,444	10/30/07	Returned for Deficiencies	14	4.39%
Department of Management Services	Siemens' Business Technology	Chappie James, Turlington, DEP Lab/Twin Towers, New Records Storage Building	\$3,234,123	11/08/07	Returned for Deficiencies	15	*
Department of Corrections	Florida Power and Light	Arcadia RP, Big Pine Key WRC, Bradenton WRC, Charlotte CI dorm A, Ft Meyers WC, Ft Pierce WRC, Hardee CI, Indian River CI, Martin CI, Okeechobee CI, SFRC	\$8,391,823	10/24/07	Returned for Deficiencies	12	4.39%
Department of Corrections	Florida Power and Light	Arcadia RP, Big Pine Key WRC, Bradenton WRC, Charlotte CI dorm A, Ft Meyers WC, Ft Pierce WRC, Hardee CI, Indian River CI, Martin CI, Okeechobee CI, SFRC	\$11,320,541	11/30/07	Approved	11	4.32%
					* Undetermined		

Contracts Approved by DFS Before 7/1/2007

Agency	ESCO	Buildings	Total Contract	Review Letter to Agency	DFS Review Status	Pay Term (years)	Interest Rate
Department of Highway Safety and Motor Vehicles	Siemens' Business Technology	Neil Kirkman Building, Hillsborough FHP, Duval FHP, Miami-Dade FHP, Bay FHP	\$1,219,656	07/29/05	Approved	11	4.62%
Department of Children and Families	Trane	Roberts Building	\$368,000	03/30/05	Approved	20	4.88%
Department of Corrections	Florida Power and Light	Brevard CI, Glades CI, Martin CI, Pompano WRC, Miami North WRC, Loxahatchee RP, Atlantic WRC	\$7,349,359	03/30/05	Approved	15	4.50% +

+ Approximate rate

Proposed ESCO Flowchart Draft

