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# **Business & Consumer Affairs Subcommittee**

**Tuesday, March 8, 2011  
1:00 PM – 3:00 PM  
12 HOB**

**Dean Cannon  
Speaker**

**Esteban L. Bovo, Jr.  
Chair**



# **The Florida House of Representatives**

## **Business & Consumer Affairs Subcommittee**

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Speaker

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**Meeting Agenda**  
**Tuesday, March 8, 2011**  
**12 House Office Building**  
**1:00 p.m. – 3:00 p.m.**

- I. Call to Order**
- II. Roll Call**
- III. Welcome and Opening Remarks**
- IV. HB 243 - Tangible Personal Property Taxation *by Rep. Workman***
- V. HB 259 – Beverage Law *by Rep. Hooper***
- VI. HB 311 – Local Business Taxes *by Rep. K. Roberson***
- VII. HB 4011 – Dance Studios *by Rep. Gaetz***
- VIII. HB 4105 – Contracting *by Rep. Plakon***
- IX. HB 4171 – Mold-Related Services *by Rep. Grant***
- X. Workshop on Business and Professional Regulations**
  - a. WS Discussion Issues**
  - b. WS Profiles**
- XI. Adjournment**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 243 Tangible Personal Property Taxation  
**SPONSOR(S):** Workman  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston	Creamer <i>JC</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The bill statutorily authorizes an equipment rental company that rents heavy equipment to collect a fee on the rental of the equipment as a method of recovering the cost of TPP taxes that are otherwise due.

The bill specifies that the recovery fee may not exceed the amount of the estimated prorated annual tax paid on the equipment. It requires the TPP tax to be paid, the transaction be covered by a short term rental agreement, the fee to be disclosed in the rental agreement, and reimbursement to the person renting the equipment if the rental business overcharged on the recovery fee in excess of the TPP taxes paid.

The bill defines the term "heavy equipment" to mean industrial or construction equipment and, by reference, includes equipment described under North American Industry Classification System code, such as, bulldozers or mining equipment. The bill specifies that "short term rental agreement" refers to rental agreements of less than one year, as well as, agreements that do not specify the length of time of the contract.

The bill is not anticipated to have a fiscal impact on state or local government funds.

The effective date of the bill is July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Florida law provides for ad valorem taxation of real and tangible personal property by local governments, including school districts and special districts authorized to levy ad valorem taxes (property taxes).

Currently, "personal property" for purposes of ad valorem taxation in Florida, is divided into four categories: "household goods," "intangible personal property," "inventory," and "tangible personal property" (also referred to as TPP). TPP as defined in s. 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

TPP is subject to property taxes. Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return with the local property appraiser by April 1 each year<sup>1</sup>. Property owners who lease, lend, or rent tangible personal property must file a tangible personal property return with the local property appraiser. The local property appraiser assesses the value of the property for tax purposes in that particular county.

The amount of tax owed by the owner of TPP is determined by multiplying the value of the TPP by the sum of the millage rates (tax rates) imposed by all the taxing authorities authorized to levy property taxes where the property is physically present on January 1. Special rules apply to TPP that may be in different locations throughout the year. Generally, the location for tax purposes is where the property is kept for use or storage or where it is consistently returned for use and storage.

Currently, chapter 196, F.S., does not contain a provision that grants specific authority to companies that rent heavy equipment property to charge a fee designed specifically to recover annual tangible personal property taxes paid upon the rental property.

##### Effect of proposed changes

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a "tangible personal property tax recovery fee" on the rental of heavy equipment. The bill states that "the purpose of the fee is to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed on such equipment."

The bill provides a method for determining the amount of the fee. The rate of the recovery fee must be based on the estimated pro rata annual TPP tax to be imposed on the equipment. The recovery fees collected may not exceed the TPP tax levied on the equipment. Any amounts collected in excess of the taxes levied must be reimbursed to the customer.

The bill specifies that the recovery fee may not exceed the amount of the estimated prorated annual tax paid on the equipment. It requires the TPP tax to be paid, the transaction be covered by a short term rental agreement, the fee to be disclosed in the rental agreement, and reimbursement to the person renting the equipment if the rental business overcharged on the recovery fee in excess of the TPP taxes paid.

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<sup>1</sup> See s. 193.062, F.S.

The bill provides a definition of the term “heavy equipment” to mean “industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS) code 532412 . . . .”

Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing

This industry comprises establishments primarily engaged in renting or leasing one or more of the following without operators: heavy construction, off-highway transportation, mining, and forestry machinery and equipment. Establishments in this industry may rent or lease products, such as aircraft, railroad cars, steamships, tugboats, bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.<sup>2</sup>

Finally, the bill provides that “short-term rental agreement” means “only a lease or rental agreement entered into for a term of less than 365 days or an at-will contract that does not specify the length of time of the contract. The term does not include any extension or renewal of a lease contract with an original term of 1 year or more.”

**B. SECTION DIRECTORY:**

Section 1. Creates a provision of general law to authorize heavy equipment rental companies to charge and collect a fee to recover annual tangible personal property taxes imposed on the rental equipment.

Section 2. Effective date – July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None. The Department of Revenue anticipates no operational impact resulting from the provisions of the bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None. This charge is currently collected through the rental cost.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

<sup>2</sup> <http://www.naicscod.com/Search/MoreNAICSDetail.asp?N=532412>, viewed February 10, 2011.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to tangible personal property taxation;  
 3           providing definitions; authorizing collection of a  
 4           tangible personal property tax recovery fee by a person  
 5           engaging in the business of renting or leasing heavy  
 6           equipment; providing requirements for collection,  
 7           retention, and reimbursement of the recovery fee;  
 8           providing an effective date.

9

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

11

12           Section 1. Heavy equipment rental; tangible personal  
 13 property tax recovery fee.-

14           (1) As used in this section, the term:

15           (a) "Heavy equipment" means industrial or construction  
 16 equipment, including, but not limited to, equipment described in  
 17 the North American Industry Classification System (NAICS) Code  
 18 532412 as published in 2007 by the Office of Management and  
 19 Budget within the Executive Office of the President of the  
 20 United States.

21           (b) "Lessee" means the person who rents or leases the  
 22 heavy equipment.

23           (c) "Short-term rental agreement" means a lease or rental  
 24 agreement with a term of less than 365 days or an at-will  
 25 contract that does not specify a term; however, "short-term  
 26 rental agreement" does not include any extension or renewal of a  
 27 lease or rental agreement with an original term of 365 days or  
 28 more.



29 (2) For the purpose of recovering the tangible personal  
 30 property tax imposed on heavy equipment, a person engaging in  
 31 the business of leasing or renting heavy equipment may collect a  
 32 recovery fee in an amount equal to the estimated pro rata annual  
 33 tangible personal property tax that will be imposed. The  
 34 recovery fee may be collected and retained after payment of the  
 35 tax only if:

36 (a) The heavy equipment is subject to a short-term rental  
 37 agreement that discloses the amount and purpose for the  
 38 collection of the recovery fee; and

39 (b) Within 45 days after initial payment of the tax or  
 40 receipt of any refund of the initial payment, the person  
 41 engaging in the business of renting or leasing the heavy  
 42 equipment reimburses the lessee for any amount collected in  
 43 excess of the tax at a location described in the short-term  
 44 rental agreement or another location specified by the lessee.  
 45 The person engaging in the business of renting or leasing heavy  
 46 equipment:

47 1. Shall prorate reimbursements of the tax if more than  
 48 one person rented or leased the equipment during the applicable  
 49 period; and

50 2. May not seek any additional recoupment of the tax if  
 51 the actual tax paid is more than the amount collected.

52 Section 2. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 259 Beverage Law  
SPONSOR(S): Hooper  
TIED BILLS: IDEN./SIM. BILLS: SB 462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston <i>JA</i>	Creamer <i>JC</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill creates an exemption from being approved by the division as parties of interest in an alcoholic beverage license for the volunteer officers or directors of a performing arts center. The bill allows volunteer officers or directors to serve without having to be approved as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose the identity of the volunteer officers or directors.

The bill is not anticipated to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Currently, subsection 561.01(17), F.S., of the alcoholic beverage laws, defines "performing arts center" to mean

a facility consisting of not less than 200 seats, owned and operated by a not-for-profit corporation qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986 or of the corresponding section of a subsequently enacted federal revenue act, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

In addition to other special licenses issued under the beverage law, the division is authorized to issue a special alcoholic beverage license for consumption on the premises to a performing arts center, provided that any consumption of alcoholic beverages under the license may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable type of event occurring on the premises under the authorization of the arts center as the licensee.

Upon application for licensure, officers, shareholders, and directors of a legal or business entity applying for a license must file a sworn application to determine whether or not requirements for licensure are met, such as good moral character and not being under the age of 21. The beverage law also restricts the issuance of an alcoholic beverage to persons with a specified criminal history, including businesses whose officers possess a disqualifying criminal history.

If the licensed entity is unable to qualify for or continue to hold an alcoholic beverage license because management personnel is disqualified due to a prior criminal conviction, the company must terminate its relationship with the individual in order to continue to qualify for an alcoholic beverage license.

By contract, the performing arts center may transfer the license to a qualified food and beverage service provider for the arts center. However, the license remains the exclusive property of the performing arts center, and upon termination of the contract concerning the furnishing of food and beverage service, the license reverts to the performing arts center by operation of law.

The beverage law exempts certain companies, such as insurers, banks, and savings and loan associations that have an interest in an alcoholic beverage license (usually associated to a lending and foreclosure circumstance), from having to obtain the division's approval of their officers, directors, or stockholders. This exemption does not apply to performing arts centers. If the license is held in the name of the performing arts center, its officers, shareholders or directors are required to submit a personal data questionnaire and at the discretion of the division may be fingerprinted.

If the license is used by a food and beverage service provider under a contract for services with the performing arts center, then the officers, shareholders or directors of the food and beverage provider are required to complete a personal data questionnaire and may be fingerprinted.

In both cases, changes to the officers, shareholders or directors are required to submit a change of officer application and new officers, shareholders or directors are required to submit a personal data questionnaire and may be required to submit fingerprints.

##### Effect of proposed changes

The bill amends the qualification requirements for an alcoholic beverage license in s. 561.15(3), F.S., and the license application requirements in s. 561.17(1), F.S., to provide an exemption for performing

arts centers from the requirement that all persons with an interest, directly or indirectly, in an alcoholic beverage license must obtain division approval. The exemption applies to the performing arts center's volunteer officers or directors or any change of volunteer personnel.

The bill permits volunteer officers or directors of a performing arts center to continue to serve without having to be approved as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose on the application the identity of volunteer officers or directors.

Since the volunteer officers and directors of a performing arts center would not be subject to division approval as a condition for a license, the division could not suspend, revoke, or refuse to issue an alcoholic beverage license based on any disqualifying criteria associated with a volunteer officer or director.

If a performing arts center changed a volunteer officer or director, the division could still require that the center identify the new officer by submitting a change of officer application to the division, but the officer would not have to submit a personal data questionnaire or be subject to fingerprinting.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 561.15, F.S. to create an exemption for the volunteer officers or directors of a performing arts center or changes in those positions from being approved by the division as parties of interest in a special alcoholic beverage license.

Section 2. Amends s. 561.17, F.S., to create an exemption for the volunteer officers or directors of a performing arts center or changes in those positions from being approved by the division on the application form and be subject to fingerprinting.

Section 3. Effective date – July 1, 2011.

### **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:**

The DBPR indicates that no fiscal impact is anticipated as a result of the provisions of the bill.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes:

As written, the changes in the bill will apply to performing arts centers as defined in Section 561.01(17), F.S. It is unclear if the intent of the bill was to provide the exemption exclusively to the performing arts centers as described in section 561.01(17), F.S., or to include the performing arts centers as described in 561.20(2)(j), F.S.

The DBPR suggests for clarification purposes that the bill include the language referring to s. 561.01, as contained in SB 0462.

Definitions:

Section 561.01(17), F.S. - "Performing arts center" means a facility consisting of not less than 200 seats, owned and operated by a not-for-profit corporation qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986 or of the corresponding section of a subsequently enacted federal revenue act, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts through:

(a) The preparation, production, public presentation, or public exhibition of dramatic or musical works, dance, opera, motion pictures, television, music, recordings, or works of fine, performing, or visual arts of any nature; (b) The conducting of lectures, seminars, classes, or workshops for development of skills or techniques related to the practice or appreciation of any or all of these arts; (c) The broadcast or telecast of the performing or visual arts through whatever means is desirable, including, but not limited to, television, radio, cable, or the latest state-of-the-art media, equipment, or techniques; (d) The reproduction of the performing, visual, or fine arts through motion pictures, videotapes, video disks, delayed presentations, sound recordings, or whatever in the future becomes a viable means or state-of-the-art; (e) The provision of banquet, concession, or other on-premises food and alcoholic and nonalcoholic beverage activities; (f) The conduct of retail activities reasonably related to the other uses of the facility; (g) The conduct of fundraising activities reasonably related to the arts; (h) The provision of auxiliary services for performing or visual artists, educators, students, or the public which are necessary or desirable to promote or facilitate the foregoing uses, including, but not limited to, the publication and dissemination of any or all materials related to the foregoing; (i) The conduct of rehearsals, conventions, meetings, or commercial or other activities; or (j) Such other activities for the promotion and development of the arts not described in paragraphs (a)-(i) as the not-for-profit corporation determines, provided that no such activity is inconsistent with or otherwise violates any applicable statute, ordinance, or regulation.

Definitions continued:

Section 561.20(2)(j), F.S. - In addition to any special licenses issued under the Beverage Law, the division may issue a special license for consumption on the premises only to a performing arts center,

provided that any consumption of alcoholic beverages under this license, except as part of food and beverage service for banquets or receptions, may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable event occurring on the premises under the authorization of or offered directly by the performing arts center. The license may be transferred to a qualified applicant authorized by contract with the performing arts center to provide food and beverage service for the center. The license shall at all times remain the exclusive property of the performing arts center, and upon termination by any manner of the contract between the performing arts center and the applicant concerning the furnishing of food and beverage service, the license shall revert to the performing arts center by operation of law. The division shall not charge a fee in excess of \$400 for the license authorized by this paragraph.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





29 | or his license; or

30 |       (c) Any person who is or has been an officer of a  
 31 | corporation, or who was interested directly or indirectly in a  
 32 | corporation, the license of which has been revoked or abandoned  
 33 | after written notice that revocation or suspension proceedings  
 34 | had been or would be brought against the license.

35 |  
 36 | Any license issued to a person, firm, or corporation that would  
 37 | not qualify for the issuance of a new license or the transfer of  
 38 | an existing license may be revoked by the division. However, any  
 39 | company regularly traded on a national securities exchange and  
 40 | not over the counter; any insurer, as defined in the Florida  
 41 | Insurance Code; or any bank or savings and loan association  
 42 | chartered by this state, another state, or the United States  
 43 | which has an interest, directly or indirectly, in an alcoholic  
 44 | beverage license is ~~shall~~ not be required to obtain the  
 45 | division's ~~division~~ approval of its officers, directors, or  
 46 | stockholders or any change of such positions or interests. Any  
 47 | such company, insurer, bank, or savings and loan association  
 48 | which has a direct or indirect interest or which has an  
 49 | ownership interest in the business sought to be licensed, but  
 50 | which does not operate that business, may elect to place the  
 51 | license solely in the name of the operator. The operator's  
 52 | license application shall list the direct, indirect, or  
 53 | ownership interest and the names of the officers, directors,  
 54 | stockholders, or partners of such company, insurer, bank, or  
 55 | association. A shopping center with five or more stores, one or  
 56 | more of which has an alcoholic beverage license and is required

57 | under a lease common to all shopping center tenants to pay no  
 58 | more than 10 percent of the gross proceeds of the business  
 59 | holding the license to the shopping center, shall not be  
 60 | considered as having an interest, directly or indirectly, in the  
 61 | license. A performing arts center that has an interest, directly  
 62 | or indirectly, in an alcoholic beverage license is not required  
 63 | to obtain the division's approval of its volunteer officers or  
 64 | directors or any change of such positions or interests.

65 | Section 2. Subsection (1) of section 561.17, Florida  
 66 | Statutes, is amended to read:

67 | 561.17 License and registration applications; approved  
 68 | person.—

69 | (1) Any person, before engaging in the business of  
 70 | manufacturing, bottling, distributing, selling, or in any way  
 71 | dealing in alcoholic beverages, shall file, with the district  
 72 | licensing personnel of the district of the division in which the  
 73 | place of business for which a license is sought is located, a  
 74 | sworn application in the format prescribed by the division. The  
 75 | applicant must be a legal or business entity, person, or persons  
 76 | and must include all persons, officers, shareholders, and  
 77 | directors of such legal or business entity that have a direct or  
 78 | indirect interest in the business seeking to be licensed under  
 79 | this part. However, the applicant does not include any person  
 80 | that derives revenue from the license solely through a  
 81 | contractual relationship with the licensee, the substance of  
 82 | which contractual relationship is not related to the control of  
 83 | the sale of alcoholic beverages. Before any application is  
 84 | approved, the division may require the applicant to file a set

85 of fingerprints on regular United States Department of Justice  
 86 forms for herself or himself and for any person or persons  
 87 interested directly or indirectly with the applicant in the  
 88 business for which the license is being sought, when required by  
 89 the division. If the applicant or any person who is interested  
 90 with the applicant either directly or indirectly in the business  
 91 or who has a security interest in the license being sought or  
 92 has a right to a percentage payment from the proceeds of the  
 93 business, either by lease or otherwise, is not qualified, the  
 94 division shall deny the application. However, any company  
 95 regularly traded on a national securities exchange and not over  
 96 the counter; any insurer, as defined in the Florida Insurance  
 97 Code; or any bank or savings and loan association chartered by  
 98 this state, another state, or the United States which has an  
 99 interest, directly or indirectly, in an alcoholic beverage  
 100 license is not required to obtain the division's approval of its  
 101 officers, directors, or stockholders or any change of such  
 102 positions or interests. A shopping center with five or more  
 103 stores, one or more of which has an alcoholic beverage license  
 104 and is required under a lease common to all shopping center  
 105 tenants to pay no more than 10 percent of the gross proceeds of  
 106 the business holding the license to the shopping center, is not  
 107 considered as having an interest, directly or indirectly, in the  
 108 license. A performing arts center that has an interest, directly  
 109 or indirectly, in an alcoholic beverage license is not required  
 110 to obtain the division's approval of its volunteer officers or  
 111 directors or any change of such positions or interests.

112 Section 3. This act shall take effect July 1, 2011.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 311 Local Business Taxes  
SPONSOR(S): Roberson  
TIED BILLS: IDEN./SIM. BILLS: SB 582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston	Creamer <i>je</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The bill removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

For purposes of the application of the provisions relating to local business taxes, the bill specifies that an employee does not include an independent contractor. The bill specifies that "independent contractor" means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the bill. Additionally, the bill further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent contractor and not an employee based on consideration of 7 specified work conditions created in the bill.

The Revenue Estimating Conference has not yet estimated the revenue impact of this bill.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted. See Mandates section of the analysis.

The effective date of the bill is July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the "Local Occupational License Act."<sup>1</sup>

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.<sup>2</sup> Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of profession and business qualification to engage in a specified activity.<sup>3</sup> Chapter 2006-152, L.O.F., renamed the act as the "Local Business Tax Act" to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.<sup>4</sup> The legislation removed the term "occupational license" and added the terms "local business tax" and "local business tax receipt."

Currently, "local business tax" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.<sup>5</sup> It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>6</sup> Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of chapter 205, F.S.<sup>7</sup>

"Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.<sup>8</sup>

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.<sup>9</sup> The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of chapter 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company's permanent business location or branch office is maintained.<sup>10</sup>

Section 205.194, F.S., prohibits local governments from imposing a "local business tax" for professions regulated by the DBPR without the local government verifying that the person has satisfied the DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by the DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that

<sup>1</sup> 2010 Florida Tax Handbook, Florida Revenue Estimating Conference, Local Business Taxes, pg. 227.

<sup>2</sup> 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> s. 205.022(5), F.S.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> s. 205.022(1), F.S.

<sup>9</sup> ss. 205.032 and 205.042, F.S.

<sup>10</sup> s. 205.065, F.S.

should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

Several other sections of chapter 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

### **Attorney General Opinion 2010-41**

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?
- May a municipality amend its local business tax ordinance ... to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations addressed [exempted or allowed to be exempted] in Chapter 205.
- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Chapter 205, Florida Statutes, or other applicable general law.
- A city may apply only the exemptions set forth in Chapter 205, Florida Statutes, to exclude individuals or entities from its local business tax.

There is no exemption in chapter 205, F.S., for individuals who are employees of another person.

### Effect of proposed changes

The bill creates an additional exemption from local business taxes under chapter 205, F.S., for individuals who are employees of another person. The bill provides that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax. The bill specifies that an individual exempt under this section may not be required by any local governing authority to apply for an exemption from a local business tax, otherwise prove his or her exempt status, or pay any tax or fee related to a local business tax.

The bill provides that an employee may not be held liable by any local governing authority for the failure of a principal or employer to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax. A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for individuals who are exempt under this section in order to obtain a local business tax receipt.

For purposes of the application of the provisions of chapter 205, F.S., the bill specifies that an individual acting in the capacity of an independent contractor is not an employee. Similar to the criteria to be

considered an independent contractor for purposes of the workers' compensation statutes<sup>11</sup>, the bill specifies that "independent contractor" means an entity which satisfies at least 4 of the 6 statutorily listed criteria created in the bill which are:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;
- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;
- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

Additionally, the bill further specifies that if 4 of the 6 criteria do not exist for evaluation relating to being an independent contractor, an individual may still be presumed to be an independent contractor and not an employee based on consideration of 7 specified work conditions created in the bill:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work;
- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;
- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform;
- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis;
- The independent contractor may realize a profit or suffer a loss in connection with performing work or services;
- The independent contractor has continuing or recurring business liabilities or obligations; or
- The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

## B. SECTION DIRECTORY:

Section 1. Amends s. 205.022, F.S., to define the term "independent contractor" for purposes of the application of the provisions of chapter 205, F.S.

Section 2. Creates s. 205.066, F.S., to exempt an individual who engages in or manages a business, profession, or occupation as an employee of another person. Such employee is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.

Section 3. Amends s. 205.194, F.S., to delete a requirement that DBPR provide certain professional regulation information to local officials who issue business tax receipts; and to delete a provision prohibiting a local official who issues business tax receipts from renewing a license under certain circumstances.

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<sup>11</sup> s. 440.02(15), F.S.



Section 4. Provides an effective date of July 1, 2011.

## 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:

The Revenue Estimating Conference has not yet estimated the revenue impact of this bill.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates an exemption from local business taxes for individuals who are employees of another person. Individuals who are employees of another person who are currently required to pay local business taxes would be provided relief from that requirement.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision may apply because the bill reduces the authority that municipalities and counties have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from the exemption for local business taxes created by the bill. It has not been determined whether the bill will qualify for an exemption from the mandates provision by having an insignificant fiscal impact of less than \$1.9 million.

If the mandates provision applies, and in the absence of an applicable exemption, Article VII, section 18(b), of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



28 Section 1. Subsection (9) is added to section 205.022,  
 29 Florida Statutes, to read:

30 205.022 Definitions.—When used in this chapter, the  
 31 following terms and phrases shall have the meanings ascribed to  
 32 them in this section, except when the context clearly indicates  
 33 a different meaning:

34 (9) (a) "Independent contractor" means a person who meets  
 35 at least four of the following criteria:

36 1. The independent contractor maintains a separate  
 37 business with his or her own work facility, truck, equipment,  
 38 materials, or similar accommodations;

39 2. The independent contractor holds or has applied for a  
 40 federal employer identification number, unless the independent  
 41 contractor is a sole proprietor who is not required to obtain a  
 42 federal employer identification number under state or federal  
 43 regulations;

44 3. The independent contractor receives compensation for  
 45 services rendered or work performed and such compensation is  
 46 paid to a business rather than to an individual;

47 4. The independent contractor holds one or more bank  
 48 accounts in the name of the business entity for purposes of  
 49 paying business expenses or other expenses related to services  
 50 rendered or work performed for compensation;

51 5. The independent contractor performs work or is able to  
 52 perform work for any entity in addition to or besides the  
 53 employer at his or her own election without the necessity of  
 54 completing an employment application or process; or

55 6. The independent contractor receives compensation for

56 work or services rendered on a competitive-bid basis or  
 57 completion of a task or a set of tasks as defined by a  
 58 contractual agreement, unless such contractual agreement  
 59 expressly states that an employment relationship exists.

60 (b) If four of the criteria listed in paragraph (a) are  
 61 not met, an individual may still be presumed to be an  
 62 independent contractor based on full consideration of the nature  
 63 of the individual situation with regard to satisfying any of the  
 64 following conditions:

65 1. The independent contractor performs or agrees to  
 66 perform specific services or work for a specific amount of money  
 67 and controls the means of performing the services or work.

68 2. The independent contractor incurs the principal  
 69 expenses related to the service or work that he or she performs  
 70 or agrees to perform.

71 3. The independent contractor is responsible for the  
 72 satisfactory completion of the work or services that he or she  
 73 performs or agrees to perform.

74 4. The independent contractor receives compensation for  
 75 work or services performed for a commission or on a per-job  
 76 basis and not on any other basis.

77 5. The independent contractor may realize a profit or  
 78 suffer a loss in connection with performing work or services.

79 6. The independent contractor has continuing or recurring  
 80 business liabilities or obligations.

81 7. The success or failure of the independent contractor's  
 82 business depends on the relationship of business receipts to  
 83 expenditures.

84 Section 2. Section 205.066, Florida Statutes, is created  
 85 to read:

86 205.066 Exemptions; employees acting in an individual  
 87 capacity.-

88 (1) An individual who engages in or manages a business,  
 89 profession, or occupation in an individual capacity as an  
 90 employee of another person is not required to apply for an  
 91 exemption from a local business tax, pay a local business tax,  
 92 or obtain a local business tax receipt. An individual acting in  
 93 the capacity of an independent contractor is not an employee.

94 (2) An employee may not be held liable by any local  
 95 governing authority for the failure of a principal or employer  
 96 to apply for an exemption from a local business tax, pay a local  
 97 business tax, or obtain a local business tax receipt. An  
 98 individual exempt under this section may not be required by any  
 99 local governing authority to apply for an exemption from a local  
 100 business tax, otherwise prove his or her exempt status, or pay  
 101 any tax or fee related to a local business tax.

102 (3) A principal or employer who is required to obtain a  
 103 local business tax receipt may not be required by a local  
 104 governing authority to provide personal or contact information  
 105 for individuals exempt under this section in order to obtain a  
 106 local business tax receipt.

107 Section 3. Section 205.194, Florida Statutes, is amended  
 108 to read:

109 205.194 Prohibition of local business tax receipt without  
 110 exhibition of state license or registration.-

111 (1) Any person applying for or renewing a local business

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112 | tax receipt ~~for the period beginning October 1, 1985,~~ to  
 113 | practice any profession regulated by the Department of Business  
 114 | and Professional Regulation, or any board or commission thereof,  
 115 | must exhibit an active state certificate, registration, or  
 116 | license, or proof of copy of the same, before such local receipt  
 117 | may be issued. ~~Thereafter, only persons applying for the first~~  
 118 | ~~time for a receipt must exhibit such certification,~~  
 119 | ~~registration, or license.~~

120 |         ~~(2) The Department of Business and Professional Regulation~~  
 121 | ~~shall, by August 1 of each year, supply to the local official~~  
 122 | ~~who issues local business tax receipts a current list of~~  
 123 | ~~professions it regulates and information regarding those persons~~  
 124 | ~~for whom receipts should not be renewed due to the suspension,~~  
 125 | ~~revocation, or inactivation of such person's state license,~~  
 126 | ~~certificate, or registration. The official who issues local~~  
 127 | ~~business tax receipts shall not renew such license unless such~~  
 128 | ~~person can exhibit an active state certificate, registration, or~~  
 129 | ~~license.~~

130 |         (2)(3) This section shall not apply to s. 489.113, s.  
 131 | 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.  
 132 | 489.521, or s. 489.537.

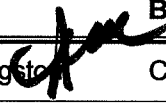

133 |         Section 4. This act shall take effect July 1, 2011.

HB 4011



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4011 Dance Studios  
SPONSOR(S): Gaetz  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston 	Creamer 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill repeals regulatory provisions relating to the operation of ballroom dance studios. Section 501.143, F.S., is repealed and s. 205.1969, F.S., is amended to remove a reference to payment of the local business tax. These changes remove the statutory requirements relating to the operation of dance studios and the requirements for registration by the Department of Agriculture and Consumer Services (DACS).

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with registration. The DACS estimates this reduction to be \$59,100 per fiscal year based on the \$300 fee paid to the DACS for each studio.

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing registration applications. The DACS reports that this reduction would approach \$34,339 per year.

The bill has an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current situation

Currently, s. 501.143, F.S., is cited as the "Dance Studio Act."

This section defines "ballroom dance studio" to mean:

any person that engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services or secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

It is common to use the reference to dance studio or ballroom dance studio interchangeably.

The owner or operator of a dance studio must register with the DACS annually. The registration procedure requires:

- the legal business or trade name, mailing address, and business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- copies of contracts to be offered to the public;
- payment of the registration fee of \$300;
- the DACS may refuse registration if the applicant or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract of a ballroom dance studio must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Ballroom Dance Studio Registration No ....."

Statutory contract requirements specify that:

- the contract is in writing and all provisions, requirements, and prohibitions which are mandated by this statutory section must be contained in the written contract before it is signed by the customer;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for ballroom dance studio services or lessons include the customer's total payment obligation for services or lessons and contain a written statement of the hourly or lesson rate charged for which the customer has contracted.

A contract for the sale of future dance studio services or lessons which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the ballroom dance studio (a refund must be issued within 20 days after receipt of the notice of cancellation made within the 3-day period);
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the lessons or services or if the lessons or services cease to be offered as

stated in the contract (the studio must refund the balance in three equal monthly installments, to be completed within not more than 90 days); and

- studio management must keep a copy of each contract on file for as long as the contract is in effect and for a period of 2 years thereafter.

Each studio that has been in business under the same ownership for less than 3 years and receives an advance payment in excess of \$250 or enters into retail installment contract for payment is required to establish a mechanism for ensuring customer refunds.

Financial security is required by statute and must be maintained in the form of a bond, an irrevocable letter of credit, or a guaranty agreement that is secured by a certificate of deposit as follows:

- if the studio has been in business under the same ownership for less than 1 year - \$5,000;
- if the studio has been in business under the same ownership for at least 1 year, but less than 2 years - \$10,000; and
- if the studio has been in business under the same ownership for at least 2 years, but less than 3 years - \$15,000.

The DACS indicates that "the statute only addresses businesses under 3 years and the Department has interpreted that to mean NO bond is required"<sup>1</sup> if a studio has been under the same ownership for more than three years.

Enforcement authority is vested with the DACS and the Department of Legal Affairs for administrative, civil, and criminal penalties. Subsection 501.143(9), F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund if the action was brought by the DACS or the Legal Affairs Revolving Trust Fund if the action was brought by the Department of Legal Affairs.

Additionally, a customer injured by a fraudulent act in violation of this section may bring an action for the recovery of damages. Judgment may be entered for three times the amount, at which the actual damages are assessed plus costs and reasonable attorney's fees.

#### Effect of proposed changes

The bill repeals regulatory provisions relating to the operation of ballroom dance studios. Section 501.143, F.S., is repealed and s. 205.1969, F.S., is amended to remove a reference to registration by the state. These changes remove the statutory requirements concerning the operation of dance studios and the requirements for registration by the DACS.

#### B. SECTION DIRECTORY:

Section 1. Repeals s. 501.143, F.S., relating to the regulation of dance studios.

Section 2. Amends s. 205.1969, F.S., to delete a reference to the regulation of dance studios and, therefore, conform to the repeal of the regulation of this activity.

Section 3. Effective date – July 1, 2011.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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<sup>1</sup> E-mail response to committee staff from Grace Lovett, Director of the Office of legislative Affairs, Department of Agriculture and Consumer Services, February 8, 2011

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with registration. The DACS estimates this reduction to be \$59,100 per fiscal year based on the \$300 fee paid to the DACS for each studio.

2. Expenditures:

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing registration applications. The DACS reports that this reduction would approach \$34,339 per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant. Business overhead costs could be anticipated to be reduced, primarily, in association with the payment of registration fees. Other savings could be associated with the practice of posting security collateral and contract content requirements.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4011

2011

1                                   A bill to be entitled  
 2           An act relating to dance studios; repealing s. 501.143,  
 3           F.S., relating to the Dance Studio Act; amending s.  
 4           205.1969, F.S.; conforming a cross-reference; providing an  
 5           effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Section 501.143, Florida Statutes, is repealed.

10           Section 2. Section 205.1969, Florida Statutes, is amended  
 11           to read:

12           205.1969 Health studios; consumer protection.—A county or  
 13           municipality may not issue or renew a business tax receipt for  
 14           the operation of a health studio pursuant to ss. 501.012-501.019  
 15           ~~or ballroom dance studio pursuant to s. 501.143,~~ unless such  
 16           business exhibits a current license, registration, or letter of  
 17           exemption from the Department of Agriculture and Consumer  
 18           Services.

19           Section 3. This act shall take effect July 1, 2011.

HB 4105

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4105 Contracting  
SPONSOR(S): Plakon  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Whittington <i>ew</i>	Creamer <i>JC</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

Florida Statutes mandate that the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board appoint a joint committee that will meet twice a year. However, the joint committee has not met since May 21, 2008.

The bill deletes provisions requiring the Construction Industry Licensing Board and Electrical Contractors' Licensing Board to appoint a joint committee to meet at least twice a year.

It is anticipated that the bill will not have a fiscal impact on state funds.

The bill has an effective date of July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Construction Industry Licensing Board (CILB) is the supervising body mandated with implementing part I, ch. 489, F.S.<sup>1</sup> The CILB regulates contractors practicing in building and construction trades, including general, air conditioning, and plumbing. The CILB is made up of 18 members: 4 general contractors, 3 building or residential contractors (with at least 1 building contractor and 1 residential contractor), 1 sheet metal contractor, 1 pool contractor, 1 plumbing contractor, 2 building officials of a municipality or county, 1 roofing contractor, 1 air conditioning contractor, 1 mechanical contractor, 1 underground utility and excavation contractor and 2 consumer members.<sup>2</sup> The CILB meets approximately eleven times a year for three days.

The CILB approves or denies licensing applications and continuing education providers and courses. Licensing and renewal fees are deposited into the Professional Regulation Trust Fund to pay for CILB expenses. The CILB carries out enforcement activities, including reviewing disciplinary cases to determine whether contractors should be disciplined. It can assess fines or other penalties when it determines contractors have violated board rules or Florida statutes. The CILB also reviews and decides claims made to the Florida Homeowners' Construction Recovery Fund.

The Electrical Contractors' Licensing Board (ECLB) was created to implement the provisions of part II, ch. 489, F.S.<sup>3</sup> The ECLB is responsible for regulating electrical and alarm system contractors. The ECLB is made up of 11 members: 7 certified electrical contractors, 2 certified alarm system contractors I, and 2 consumer members.<sup>4</sup> The ECLB meets approximately six times a year for three days, plus teleconferences as necessary.

The ECLB, whose operations are funded by licensure fees, is responsible for the issuance and renewal of licenses and the prosecution of licensees for violations specified in statute. The ECLB also promulgates rules to carry out the provisions of law. The Department of Business and Professional Regulation assists the ECLB by processing licensure applications, administering examinations, and conducting investigations.

For every meeting, each board member receives per diem and mileage allowances as provided in s. 112.061, F.S., from the place of her or his residence to the place of the meeting and return to the residence.<sup>5</sup>

Currently, Florida Statutes mandate the CILB and ECLB form a joint committee to meet at least twice a year.<sup>6</sup> However, the statutes do not provide what the joint committee is to meet about.

The two boards currently appoint members to meet for specific reasons when necessary. The last meeting took place on May 21, 2008 in regards to solar licensing issues. Additionally, neither the CILB nor ECLB project expenses for the joint meetings in their annual budgets.

##### Proposed Changes

The bill deletes subsection (6) in both ss. 489.107 and 489.507, F.S. This bill deletes the requirement that the CILB and ECLB appoint a committee to meet jointly at least twice a year.

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<sup>1</sup> Fla. Stat. s. 489.107 (2010).

<sup>2</sup> Id.

<sup>3</sup> Fla. Stat. s. 489.507 (2010).

<sup>4</sup> Id.

<sup>5</sup> See, e.g., chapter 61G6-4.016, F.A.C.

<sup>6</sup> See Fla. Stat. s. 489.107(6) (2010) & Fla. Stat. s. 489.507(6) (2010).



**B. SECTION DIRECTORY:**

Section 1. Amends section 489.107, F.S., deleting subsection (6).

Section 2. Amends section 489.507, F.S., deleting subsection (6).

Section 3. Providing an effective date of July 1, 2011.

**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:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.


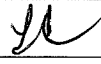
#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 4171

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4171 Mold-Related Services  
**SPONSOR(S):** Grant  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston 	Creamer 
2) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The bill repeals regulatory provisions relating to mold assessors and mold remediators. Part XVI of chapter 468, F.S., is repealed and ss. 20.165 and 455.2123, F.S., are amended to remove reference to this part of chapter 468, F.S. These changes remove the regulatory requirements concerning the operation of mold assessors and mold remediators effective July 1, 2011.

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with applications for licensure. The Department of Business and Professional Regulation (DBPR) indicates that the actual reduction is unknown at this time as program requirements are only enforceable beginning on July 1, 2011.

A positive fiscal impact on state trust funds may be anticipated to occur from the reduction in cost associated with processing applications. The DBPR indicates that the actual positive impact is unknown at this time as program requirements are not enforceable until July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

Currently, s. chapter 468, Part XVI, F.S., relates to the licensure and regulation of mold assessors and mold remediators.

“Mold assessment” means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under chapter 489 unless performed by a person who is licensed under that chapter or the work complies with that chapter.

“Mold assessor” means any person who performs or directly supervises a mold assessment. “Mold remediator” means any person who performs mold remediation. A mold remediator may not perform any work that requires a license under chapter 489, F.S., (construction contracting) unless the mold remediator is also licensed under that chapter or complies with that chapter.

Applicants must submit to a criminal background check, are required to attest that they have obtained general liability and errors and omissions insurance for both preliminary and post remediation mold assessment in the amount of no less than \$1 million dollars, as determined by statute, and disclose contact and background information.

##### Mold Assessor

- Examination – Applicants must pass a department-approved proctored examination on mold assessment; and either hold at least an Associate of Arts degree, with 30 credit hours in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science, or have a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be “grandfathered” into licensure – Applicants must either submit proof of certification as a mold assessor by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 60 hours of relevant verifiable education; or submit proof of 3 years experience as a mold assessor, demonstrable by at least 40 invoices. Applications must be submitted before March 1, 2011.

##### Mold Remediator

- Examination – Applicants must pass a department-approved proctored examination on mold remediation; and either hold at least an Associate of Arts degree in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science and demonstrate a minimum of 1 year of documented field experience in microbial sampling or investigations, or applicants may submit proof of a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be “grandfathered” into licensure – Applicants must hold certification as a mold remediator by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 30 hours of relevant verifiable education; or have at least 3 years of experience as a mold remediator, established by at least 40 invoices. Applications must be made before March 1, 2011.

In the 2010 legislative session, HB 713 was passed into law as chapter 2010-176, LOF. The bill delayed unlicensed activity enforcement relating to mold assessors and mold remediators until July 1, 2011. This deferred enforcement, as a result, effectively delayed license requirements one year to allow applicants to have time to apply and be processed and approved or rejected and begin operations without the fear of being prosecuted for unlicensed activity. The responsibility of issuing licenses by DBPR has still existed during this interim period.

Effect of proposed changes

The bill repeals licensure and regulatory requirements for mold assessors and mold remediators effective July 1, 2011.

**B. SECTION DIRECTORY:**

Section 1. Repeals part XVI, F.S., relating to the regulation of mold assessors and mold remediators.

Section 2. Amends section 20.165, F.S., to remove reference to part XVI of chapter 468, F.S.

Section 3. Amends s. 455.2123, F.S., to remove reference to part XVI of chapter 468, F.S.

Section 4. Effective date – July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with applications for licensure. The DBPR indicates that the actual reduction is unknown at this time as program requirements are not enforceable until July 1, 2011.

2. Expenditures:

A positive fiscal impact on state trust funds may be anticipated to occur from the reduction in cost associated with processing applications. The DBPR indicates that the actual positive impact is unknown at this time as program requirements are not enforceable until July 1, 2011.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Not anticipated to be significant.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



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1                                   A bill to be entitled  
 2           An act relating to mold-related services; repealing part  
 3           XVI of chapter 468, F.S., relating to the mold-related  
 4           services licensing program of the Department of Business  
 5           and Professional Regulation, the regulation of mold  
 6           assessment and mold remediation, the examination,  
 7           licensure, continuing education, and discipline of mold  
 8           assessors and mold remediators, and the certification of  
 9           corporations and partnerships offering mold assessment or  
 10          mold remediation to the public; amending ss. 20.165 and  
 11          455.2123, F.S.; conforming provisions; providing an  
 12          effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Part XVI of chapter 468, Florida Statutes,  
 17 consisting of sections 468.84, 468.841, 468.8411, 468.8412,  
 18 468.8413, 468.8414, 468.8415, 468.8416, 468.8417, 468.8418,  
 19 468.8419, 468.842, 468.8421, 468.8422, 468.8423, and 468.8424,  
 20 is repealed.

21           Section 2. Paragraph (a) of subsection (4) of section  
 22 20.165, Florida Statutes, is amended to read:

23           20.165 Department of Business and Professional  
 24 Regulation.—There is created a Department of Business and  
 25 Professional Regulation.

26           (4) (a) The following boards and programs are established  
 27 within the Division of Professions:

28           1. Board of Architecture and Interior Design, created

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2011

- 29 | under part I of chapter 481.
- 30 |       2. Florida Board of Auctioneers, created under part VI of
- 31 | chapter 468.
- 32 |       3. Barbers' Board, created under chapter 476.
- 33 |       4. Florida Building Code Administrators and Inspectors
- 34 | Board, created under part XII of chapter 468.
- 35 |       5. Construction Industry Licensing Board, created under
- 36 | part I of chapter 489.
- 37 |       6. Board of Cosmetology, created under chapter 477.
- 38 |       7. Electrical Contractors' Licensing Board, created under
- 39 | part II of chapter 489.
- 40 |       8. Board of Employee Leasing Companies, created under part
- 41 | XI of chapter 468.
- 42 |       9. Board of Landscape Architecture, created under part II
- 43 | of chapter 481.
- 44 |       10. Board of Pilot Commissioners, created under chapter
- 45 | 310.
- 46 |       11. Board of Professional Engineers, created under chapter
- 47 | 471.
- 48 |       12. Board of Professional Geologists, created under
- 49 | chapter 492.
- 50 |       13. Board of Veterinary Medicine, created under chapter
- 51 | 474.
- 52 |       14. Home inspection services licensing program, created
- 53 | under part XV of chapter 468.
- 54 |       ~~15. Mold-related services licensing program, created under~~
- 55 | ~~part XVI of chapter 468.~~

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56 Section 3. Section 455.2123, Florida Statutes, is amended  
 57 to read:

58 455.2123 Continuing education.—A board, or the department  
 59 when there is no board, may provide by rule that distance  
 60 learning may be used to satisfy continuing education  
 61 requirements. A board, or the department when there is no board,  
 62 shall approve distance learning courses as an alternative to  
 63 classroom courses to satisfy continuing education requirements  
 64 provided for in part VIII or, part XV, ~~or part XVI~~ of chapter  
 65 468 or part I or part II of chapter 475 and may not require  
 66 centralized examinations for completion of continuing education  
 67 requirements for the professions licensed under part VIII or  
 68 part XV, ~~or part XVI~~ of chapter 468 or part I or part II of  
 69 chapter 475.

70 Section 4. This act shall take effect July 1, 2011.



**Business and Consumer Affairs Sub-Committee**

**Workshop on Business and Professional Regulations**

**Issues for Discussion**

**March 8, 2011**

**Business and Consumer Affairs Subcommittee  
Workshop on Regulatory Reform  
March 8, 2011**

**Proposed repeals of Regulations identified for further discussion:**

1. Athlete Agents
2. Auctioneers
3. Auctioneer Apprentices
4. Barbers
5. Body Wrappers
6. Business Opportunities
7. Cattle Owners with Officially Registered Brands
8. Charitable Organizations
9. Community Association Managers/Firms
10. Condominiums and Cooperatives
11. Dance Studios
12. Employee Leasing Companies
13. Hair Braiders
14. Hair Wrappers
15. Health Studios
16. Home Inspectors
17. Interior Designers
18. Intrastate Movers
19. Landscape Architects
20. Manicurists
21. Mobile Home Lots
22. Mold Related Services
23. Motor Vehicle Repair Shops
24. Professional Geology
25. Professional Surveyors and Mappers
26. Rooming Houses
27. Sellers of Travel
28. Specialty Salons (Manicurists, Pedicurists, Nail Extensions)
29. Talent Agents
30. Telemarketing
31. Timeshares
32. Yacht and Ship Brokers
33. Television Tube Labeling (HB 4013 by Eisnaugle-Reported Favorably by BCA Subcommittee on 2/8/11)
34. Contract Commissions (HB 4023 by Plakon- Reported Favorably by BCA Subcommittee on 2/8/11)
35. Water Vending Machines (HB 4009 by Workman- Reported Favorably by BCA Subcommittee on 2/8/11)

## **Modifications to Existing Regulatory Requirements Identified for Further Discussion:**

### **1. Eliminate duplicate licensure requirements for sole proprietorships -**

- **Asbestos Consultants and Contractors** - Currently, an Asbestos Consulting or Contracting business must be licensed by the state, unless exempt from licensure, in addition to the requirement that the individual be licensed. Consultants and contractors currently exempt from licensure include government employees, certified roofing contractors, or persons performing adhesive floor repairs, removal, or inspections.

The proposal is to eliminate the business license requirements for sole proprietorships for individuals licensed as Asbestos Contractors and Consultants.

- **Architects** - Currently, an Architect business must be licensed by the state, unless exempt from licensure, in addition to the requirement that the individual be licensed. Persons currently exempt from licensure include anyone who makes plans and specifications for, or supervises the erection, enlargement, or alteration of:
  - Any building upon any farm for the use of any farmer, regardless of the cost of the building;
  - Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost; or
  - Any other type of building costing less than \$25,000, except a school, auditorium, or other building intended for public use, provided that the services of a registered architect shall not be required for minor school projects.

The proposal is to eliminate business license requirements for sole proprietorships for individuals licensed as Architects.

### **2. Decriminalize minor violations of professional boards' rules -**

Under current law, many minor violations of professional boards' rules are identified as second degree misdemeanors, which are criminal violations. Some examples are provided below. The proposal is to decriminalize minor violations currently covered under administrative oversight and penalties for specific regulated professions/businesses.

- **Real Estate Commission**
  - Failure to properly register a branch office
  - Improper use of a guest lecturer
  - Failure to maintain the office entrance sign as required
- **Real Estate Appraisers**

- Failure to report a change of business address
- Failure to properly display license or certification
- Failure to disclose all business locations

- **Cosmetologists**

- Failure to attach to the license a 2”X 2” photo taken within two years
- Failure to insure walls, ceilings, furniture and equipment are free from dust
- Failure to keep hair from accumulating on the floor

**3. Remove unnecessary and repetitive continuing education requirements to reactivate certain licenses -**

Currently, in order to reactivate an inactive license, certain licensees must fulfill the continuing education requirements for each cycle the license was inactive, resulting in a licensee taking numerous, repetitive courses. Some examples are provided below. The proposal is to ensure the continuing education requirements are met, however remove the repetitive nature of these requirements regardless of how long a license may have been inactive.

- **Cosmetologists**

An individual with an inactive Cosmetology license is required to complete 8 hours of continuing education for each year his or her license was inactive, before a license may be reactivated.

- **Architects**

- An individual with an inactive Architect or Interior Design license is required to complete 10 hours of continuing education for each year his or her license was inactive, before a license may be reactivated.

- **Construction Contractors**

- An individual with an inactive Construction Contracting license is required to complete 14 hours of continuing education every two years, up to a total of 96 hours, for each cycle his or her license was inactive, before a license may be reactivated.

- **Electrical Contractors**

- An individual with an inactive Electrical Contracting license is required to complete 12 hours of continuing education for each year his or her license was inactive, up to 48 hours, before a license may be reactivated.

**4. Allow degrees from accredited institutions to satisfy minimum education requirements for licensure -**



- **Real Estate Brokers**

Under current law, the Real Estate Commission may require the satisfactory completion of one or more of the educational courses or equivalent courses taken at an accredited college, university, or community college, at a career center, or at a registered real estate school, as a condition precedent for any person to become licensed or to renew her or his license as a real estate broker, broker associate, or sales associate. The course or courses required for one to become initially licensed are not to exceed a total of 63 classroom hours of 50 minutes each, inclusive of examination, for a sales associate and 72 classroom hours of 50 minutes each, inclusive of examination, for a broker.

Section 475.17, F.S., currently provides an exemption from these course requirements for persons who have received a Bachelor's degree in real estate from an accredited institution of higher education.

The proposal is to expand the exemption for the initial real estate licensure and the post licensure education requirements to applicants who have received a Bachelor's degree in Real Estate, a Bachelor's degree in Business having a concentration or emphasis in Real Estate, or a Graduate degree with a concentration or emphasis in Real Estate from an accredited institution of higher education.

- **Accountants' CPA Exam and Licensing**

Currently, an applicant is not eligible to sit for the CPA exam or is deemed eligible for licensure until the Department of Business and Professional Regulation reviews every individual course credit documented on the applicant's official transcript to confirm the courses are approved by the Board of Accountancy.

The proposal is to eliminate the two separate individual course reviews required and allow a graduate of an accredited college or university in Florida with a Bachelor's degree in accounting be eligible to sit for the CPA exam and allow graduate of an accredited college or university in Florida with a 5-year Masters degree in accounting to be deemed eligible for licensure after successfully passing the licensure exam and demonstrating proof of 1 year relevant work experience and good moral character.

- **Accountants Endorsement Licenses**

Currently, CPAs from another state are required to have "substantially" equivalent education courses as required by Florida for licensure. In the event, through an extensive review of an applicant's course work, the Board finds the

applicant's courses are not equivalent to Florida requirements, the CPA may not be licensed until additional hours are completed.

The proposal is to allow a CPA licensed in another state with 5 years of experience in the field of public accountancy to become licensed in Florida if all applicable fees are paid to the department regardless of the scope of the applicant's out of state course work.

#### **5. Eliminate duplicative agency oversight**

Currently, both the Department of Agriculture and Consumer Services and the Department of Legal Affairs (Attorney General) have responsibility for the oversight of programs. This proposal consolidates the oversight for the programs listed below.

- **Lemon Law** – Transfer all authority for the regulation and enforcement of this program to the Department of Legal Affairs.
- **Price Gouging** - Transfer all authority for the regulation and enforcement of this program to the Department of Legal Affairs.

#### **6. Streamline other regulatory requirements -**

- **Payment of Fees** - Currently, certain fees paid by professions of the Security Industry must be paid by certified check, money order, or by some other means as required by the agency. The proposal is to delete the requirement that checks used to pay certain fees be certified.
- **Cottage Food Act** - Currently, food establishments are subject to the licensure and regulatory requirements of the Department of Agriculture and Consumer Services (DACS). Florida statute defines food establishment as “any factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail.”

DACS has also adopted by reference the 2001 FDA Food Code prohibiting the sale of homemade food products:

“Private Homes and Living or Sleeping Quarters, Use Prohibition.  
A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.”

As such, in Florida, it is illegal to sell homemade foods, except for not potentially hazardous foods which may only be sold at functions, such as bake sales. The DACS defines “potentially hazardous foods” as “any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients.

The term “potentially hazardous food” does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less, or air-cooled hard-boiled eggs with the shell intact.

The proposal is to authorize the direct sale of homemade foods and provide definitions and requirements for such practices. Specifically the proposal would:

- Define a "Cottage food product" as one that is not potentially hazardous and does not require time and/or temperature control for food safety. Cottage food products would include only breads, cakes, cookies, candies, fruit pies, jams, jellies, dried fruit, cereals and dry mixes;
- Require that the gross sales of a cottage food operation not exceed \$15,000 annually;
- Require Cottage food operations to meet all applicable minimum county or city laws, codes or requirements for preparation, processing, storage and sale of food products from a home-based operation and all state and federal tax laws; and
- Authorize DACS to investigate a complaint alleging that a cottage food operation is violating any state laws.



**Business and Consumer Affairs Sub-Committee**

**Workshop on Business and Professional Regulations**

**Professional and Business Profiles**

**March 8, 2011**

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## **Athlete Agents**

### **Scope of Practice/Description:**

Represents and promotes athletes to prospective employers. May handle contract negotiations and other business matters for clients.

**Number of In-State Practitioners:** 163

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Other Applicable Regulations:** The NCAA supports the Sports Agent Responsibility and Trust Act (SPARTA) as a viable tool that can be used to combat the improper and illegal conduct of some athlete agents.

A violation of this act is deemed an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act. Under SPARTA, a state Attorney General or a college and university can bring a civil cause of action to recover any damages caused by a prohibited activity. Universities and the represented athlete have legal recourse guaranteed by a contractual agreement.

**Number of Disciplinary Actions Taken (FY 2009-10) (FY 2009-10):** 2

- Consumer Initiated-2
- Administrative-0

### **Types of Complaints:**

- Practicing without a license

## **Auctioneers and Auctioneer Apprentices**

### **Scope of Practice/Description:**

Sells articles or farm products at auction to highest bidder. Appraises merchandise before sale and assembles merchandise in lots according to estimated value of individual items.

**Number of In-State Practitioners:** 1,760

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Other Applicable Regulations:**

**Number of Disciplinary Actions Taken (FY 2009-10):** 29

- Consumer Initiated-14
- Administrative-15

### **Types of Complaints:**

- Misrepresentation of property
- Contract disputes
- Billing disputes
- Advertising violations



## **Barbers**

### **Scope of Practice/Description:**

Provides barbering services, such as cutting, trimming, shampooing, and styling hair, trimming beards, or giving shaves.

**Number of In-State Practitioners:** 15,043

### **Minimum Education Requirements:**

- Must have a high school diploma;
- Must have completed 1,200 hours at a Florida barbering school;
- Must have completed a Board-approved HIV/AIDS course; and
- Must pass the Florida barbering examination

**Continuing Education Requirement:** HIV/AIDS Continuing Education – Completion of one two-hour board approved course is required prior to issuance of initial license and biennial license. There is no specified number of hours required for the duration of a course.

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 535

- Consumer Initiated-32
- Administrative-503

### **Types of Complaints:**

- Practicing without a license
- Sanitation violations

## **Body Wrappers**

### **Scope of Practice/Description:**

"Body wrapping" means a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include: the application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials.

**Number of In-State Practitioners:** 4,447

### **Minimum Education Requirements:**

Must hold a certificate of completion from a board approved provider or school.

#### **Required Instruction**

Body Wrapping Registration:

Two-day, 12 hour course

Each course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

### **Continuing Education Requirement: Other Applicable Regulations:**

Every two years body wrappers must complete a board-approved, two hour HIV/AIDS continuing education course.

#### **Required Hours**

HIV/AIDS and other communicable diseases:

Minimum of 2

**Other Applicable Regulation:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 1,676 \*

- Consumer Initiated-180
- Administrative-1,496

### **Types of Complaints:**

- Practicing without a license
- Sanitary Violations

\* Numbers provided apply to the entire Board of Cosmetology licensing and regulatory program.

## **Business Opportunities**

### **Scope of Practice/Description:**

A business opportunity is an offer to assist a person in starting his or her own business by providing -- either through sales or lease -- products, equipment, supplies or service needed to carry on the business.

Business opportunities range from addressing envelopes or assembling toys at home to establishing vending machine routes.

**Number of Registrants:** 2,550

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Other Applicable Regulation:**

### *Federal*

Disclosure Requirements and Prohibitions Concerning Business Opportunities (16 CFR 437.1 - 437.3)

Federal Trade Commission Act (15 U.S.C. §§ 41-58), the FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10):** 0

## **Cattle Owners with Officially Registered Brands**

### **Scope of Practice/Description:**

Livestock brand registration was centralized at the state level in 1945. The change from county-by-county registration was instituted to prevent duplication of brands by different owners, especially as commerce and trade increased among different parts of the state.

**Number of Registrants:** 5,423

**Minimum Education Requirements:** N/A

**Continuing Education Requirement:** N/A

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 0

## **Charitable Organizations**

### **Scope of Practice/Description:**

Any person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. It includes a chapter, branch, area office, or similar affiliate soliciting contributions within the state for a charitable organization which has its principal place of business outside the state.

**Number of Registrants:** 16,588

**Minimum Education Requirements:** N/A

**Continuing Education Requirement:** N/A

### **Other Applicable Regulation:**

#### *Federal*

Telemarketing Sales Rule, 16 CFR Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10):** 506

- Consumer Initiated-4
- Administrative-502

### **Types of Complaints:**

- Failure to Register

## **Community Association Managers**

### **Scope of Practice/Description:**

Manages homeowner and condominium associations, rented or leased housing units, buildings, or land (including rights-of-way). Practices include the management of an association serving more than 10 units or having an annual budget or budgets in excess of \$100,000; controlling or disbursing funds of a community association; preparing budgets or other financial documents for a community association; assisting in the noticing or conduct of community association meetings; and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

**Number of In-State Practitioners:** 16,622

**Minimum Education Requirements:** None

### **Continuing Education Requirement:**

All community association manager licensees must satisfactorily complete a minimum of 20 hours of continuing education approved by Regulatory Council of Community Association Managers. Each hour shall consist of 50 minutes of student involvement in approved classroom, correspondence, interactive, distance education or internet courses which courses shall include the required hours at an approved update seminar.

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 93

- Consumer Initiated-73
- Administrative-20

### **Types of Complaints:**

- Mishandling of leasing applications
- Failure to follow association direction
- Practicing without a license

## **Condominiums and Cooperatives**

### **Scope of Practice/Description:**

Before a condominium community can be built, the developer must submit a filing to the division for its approval. The filing must meet the consumer protection requirements before units can be offered to sale to the public.

Before a cooperative community can be built, the developer must submit a filing to the division for its approval. The filing must meet the consumer protection requirements of this chapter before units can be offered for sale to the public. However, unlike condominium communities, the division maintains enforcement authority for the entire chapter from development through turnover and operation by the unit owners in the community.

**Number of In-State Practitioners:** 23,202 associations

**Minimum Education Requirements:** N/A

**Continuing Education Requirement:** N/A

**Other Applicable Regulations:** None known.

This deregulation does not eliminate statutory requirements for these developments, only the Department of Business and Professional Regulation's filing requirements.

**Number of Disciplinary Actions Taken (FY 2009-10):** 691

- Consumer Initiated-677
- Administrative-14

### **Types of Complaints:**

- Failure to provide an annual budget to unit owners
- Failure to grant access to records
- Failure to file with DBPR prior to sale of units

## **Dance Studios**

### **Scope of Practice/Description:**

Any person who engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services;  
or

Secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

**Number of Registrants: 223**

**Minimum Education Requirements: None**

**Continuing Education Requirement: None**

### **Other Applicable Regulation:**

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10): 9**

- Consumer Initiated-0
- Administrative-9

### **Types of Complaints:**

- Practicing without a license
- Practicing with an expired license



## **Employee Leasing Companies**

### **Scope of Practice/Description:**

Recruits and places individuals in positions with client companies to perform services such as; payroll processing, worker's compensation coverage, and human resource and benefit management.

**Number of In-State Practitioners:** 700

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

### **Other Applicable Regulations:**

Department of Financial Services determines and enforces wage workers' compensation rates that all employers must adhere to.

**Number of Disciplinary Actions Taken (FY 2009-10):** 23

- Consumer Initiated-6
- Administrative-17

### **Types of Complaints:**

- Overcharging for services
- Contract disputes
- Late reporting of financial statements

## **Hair Braiders**

### **Scope of Practice/Description:**

"Hair braiding" means the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.

**Number of In-State Practitioners:** 2,909

### **Minimum Education Requirements:**

Must hold a certificate of completion from a board-approved provider or school.

#### **Required Instruction**

Hair Braiding Registration:

Two-day, 16 hour course

The course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

### **Continuing Education Requirement: Other Applicable Regulations:**

Every two years hair braiders must complete a board-approved, two hour HIV/AIDS continuing education course.

#### **Required Hours**

HIV/AIDS and other communicable diseases:

Minimum of 2

**Other Applicable Regulation:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 1,676 \*

- Consumer Initiated-180
- Administrative-1,496

### **Types of Complaints:**

- Practicing without a license
- Sanitary Violations

\* Numbers provided apply to the entire Board of Cosmetology licensing and regulatory program.

**Hair Wrappers**

**Scope of Practice/Description:**

"Hair wrapping" means the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.

**Number of In-State Practitioners:** 750

**Minimum Education Requirements:**

Must hold a certificate of completion from a board-approved provider or school.

Required Instruction

Hair Wrapping Registration:

One-day, 6 hour course

The course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

**Continuing Education Requirement: Other Applicable Regulations:** None known.

Every two years hair braiders must complete a board-approved, two hour HIV/AIDS continuing education course.

Required Hours

HIV/AIDS and other communicable diseases:

Minimum of 2

**Other Applicable Regulation:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 1,676 \*

- Consumer Initiated-180
- Administrative-1,496

**Types of Complaints:**

- Practicing without a license
- Sanitary Violations

\* Numbers provided apply to the entire Board of Cosmetology licensing and regulatory program.

## **Health Studios**

### **Scope of Practice/Description:**

Any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise.

**Number of Registrants:** 2,134

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

### **Other Applicable Regulation:**

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10):** 105

- Consumer Initiated-17
- Administrative-88

### **Types of Complaints:**

- Practicing without a license
- Practicing with an expired license

## **Home Inspectors**

### **Scope of Practice/Description:**

Any person who provides or offers to provide home inspection services for a fee or other compensation. Home inspection services is a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

**Number of In-State Practitioners:** Program requirements enforceable July 1, 2011

### **Minimum Education Requirements:**

- Must pass Department's examination

**Continuing Education Requirement:** Professional home inspectors are required to complete 14 hours of continuing education credits for renewal. The continuing education must include at least one hour of continuing education credit on each of the components of a home.

**Other Applicable Regulations:** None known.

**Disciplinary Actions:** Program requirements enforceable July 1, 2011

## **Interior Designers**

### **Scope of Practice/Description:**

Plans, designs, and furnishes interiors of residential, commercial, or industrial buildings. Formulates design which is practical, aesthetic, and conducive to intended purposes, such as raising productivity, selling merchandise, or improving life style. May specialize in a particular field, style, or phase of interior design.

**Number of In-State Practitioners:** 3,047

### **Minimum Education Requirements:**

- Must be a graduate of a five-year interior design program and one year of diversified interior design experience; or
- Must be a graduate of a four-year interior design program and two years of experience; or
- Has completed at least three years in an interior design curriculum and three years experience; or graduate of a two-year interior design program and four years of experience; and
- Must pass the National Council for Interior Design Qualifications (NCIDQ) examination.

### **Continuing Education Requirement:**

Interior designers are required to complete 20 hours of educational instruction or training, in subjects or courses approved by the Board, each biennium prior to the license expiration date. A minimum of 16 hours must be in technical and professional subjects related to safeguarding life, health, property and promoting the public welfare.

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 101(Total for Architects and Interior Designers, individual breakdown not available)

- Consumer Initiated-40
- Administrative-61

### **Types of Complaints:**

- Practicing without a license

## **Intrastate Moving**

### **Scope of Practice/Description:**

A person who, for compensation, loads, transports or ships, or unloads household goods as part of a household move. A Moving Broker is a person who, for compensation, arranges for another person to load, transport or ship, or unloads household goods as part of a household move or who, for compensation, refers a shipper to a mover.

**Number of Registrants: 998**

**Minimum Education Requirements: None**

**Continuing Education Requirement: None**

### **Other Applicable Regulation:**

#### *State*

The statute allows for local regulation and cooperative agreements between the DACS and local governments for enforcement. Miami-Dade, Broward, Palm Beach and Pinellas Counties have relevant local ordinances.

#### *Federal*

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10): 90**

- Consumer Initiated-28
- Administrative-62

### **Types of Complaints:**

- Practicing without a license
- Practicing with an expired license

## **Landscape Architecture**

### **Scope of Practice/Description:**

Plans and designs structures, such as private residences, office buildings, theaters, factories, and other structural property.

**Number of In-State Practitioners:** 1,489

### **Minimum Education Requirements:**

- Must be a graduate of approved architectural curriculum of five years or more from a NAAB accredited program or equivalent; internship period - three years for Bachelor degree holders, two years for Master degree holders; and
- Must have successfully completed the Architect Registration Examination

**Continuing Education Requirement:** Every person licensed must obtain at least 16 continuing education credits per biennium.

**Advanced Course Requirement:** Licensees are required to obtain a minimum of 2 hours of continuing education by completing an approved provider's specialized or advanced course, approved by the Florida Building Commission, on the Florida Building Code, relating to the licensee's respective area of practice for future renewals. Licensees are required to obtain two hours of laws and rules courses for renewal.

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 3

- Consumer Initiated-3
- Administrative-0

### **Types of Complaints:**

- Practicing without a license



## **Mobile Home Parks**

### **Scope of Practice/Description:**

Before a park owner can offer lots for rent to the public, the division must approve the park owners filing (prospectus). The prospectus details the rules and regulations of the park and provides disclosures to the tenants of their rights and obligations as a condition of their being able to rent a mobile home lot in the park. Thereafter, the division only regulates the landlord tenant relationship between the park owner/operator and the mobile home owner/tenant.

The law applies to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease.

**Number of In-State Practitioners:** 2,438 (MH Parks, not licenses)

**Minimum Education Requirements:** N/A

**Continuing Education Requirement:** N/A

**Other Applicable Regulations:** None known.

This deregulation does not eliminate statutory requirements for these developments, only the Department of Business and Professional Regulation's filing requirements and their mediation involvement between landlords and tenants.

**Number of Disciplinary Actions Taken (FY 2009-10):** 2

- Consumer Initiated-2
- Administrative-0

**Types of Complaints:**

- Increasing lot rent without proper notice

## **Mold-Related Services**

### **Scope of Practice/Description:**

Mold assessment means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.

Mold remediation means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under chapter 489 unless performed by a person who is licensed under that chapter or the work complies with that chapter.

**Number of In-State Practitioners:** Program requirements enforceable July 1, 2011

### **Minimum Education Requirements:**

#### *Mold Assessors*

- Must have a 2-year associate of arts degree, or the equivalent, with at least 30 semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of documented field experience in conducting microbial sampling or investigations; or
- A high school diploma or the equivalent with a minimum of 4 years of documented field experience in conducting microbial sampling or investigations.

#### *Mold Remediators*

- Must have a 2-year associate of arts degree, or the equivalent, with at least 30 semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of documented field experience in a field related to mold remediation; or
- A high school diploma or the equivalent with a minimum of 4 years of documented field experience in a field related to mold remediation.

### **Continuing Education Requirements:**

Professional mold assessors and remediators are required to complete 14 hours of continuing education credits for renewal.

**Other Applicable Regulations:** None known.

**Disciplinary Actions:** Program requirements enforceable July 1, 2011

## **Motor Vehicle Repair Shops**

### **Scope of Practice/Description:**

Motor vehicle repair shops are any person who, for compensation engages in the repair of motor vehicles owned by other persons. It includes mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Number of In-State Practitioners:** 24,484

### **Other Applicable Regulation:**

#### *Local*

Local licensure can substitute for registration. Miami-Dade and Broward Counties have relevant local ordinances.

#### *Federal*

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10):** 605

- Consumer Initiated-72
- Administrative-533

### **Types of Complaints:**

- Practicing without a license
- Practicing with an expired license

## **Nail Specialists**

### **Scope of Practice/Description:**

The practice of manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for attaching artificial nails, except those nails which may be applied solely by use of a simple adhesive; pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

**Number of In-State Practitioners:** 43,338

**Minimum Education Requirements:** Must hold a certificate of completion from an approved school.

### **Continuing Education Requirement:**

Every two years manicuring/pedicuring/nail extension specialists must complete 16 hours of continuing education, approved by the Board of Cosmetology, four hours of which can be through board approved elective subjects. Twelve hours must be in the following subjects:

	<u>Required Hours</u>
HIV/AIDS and other communicable diseases:	Minimum of 2
Sanitation and Sterilization:	Minimum of 3
Occupational Safety and Health Administration regulations:	Minimum of 1
Issues of workers' compensation as they pertain to Florida law:	Minimum of 1
State and federal laws and rules pertaining to cosmetology, cosmetologists, specialists, salons and booth renters:	Minimum of 2
Chemical makeup as it pertains to hair, skin, and nails:	Minimum of 2
Environmental issues:	Minimum of 1

**Other Applicable Regulation:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 1,676 \*

- Consumer Initiated-180
- Administrative-1,496

### **Types of Complaints:**

- Practicing without a license
- Sanitary Violations

\* Numbers provided apply to the entire Board of Cosmetology licensing and regulatory program.

## **Professional Geologists**

### **Scope of Practice/Description:**

A professional geologist is an individual who by reason of their knowledge of geology, soils, mathematics, and the physical and life sciences, acquired by education and practical experience, is capable of practicing or performing, or offers to perform geological services, including, but not limited to, consultation, investigation, evaluation, planning, and geologic mapping.

**Number of In-State Practitioners:** 2,267

### **Minimum Education Requirements:**

- Must be a graduate from a college or university with a major in geology or other related science acceptable to the board and satisfactory completion of a least 30 semester hours of geological courses, 24 of which must be at the third or fourth year or graduate level.

**Continuing Education Requirement:** None

**Other Applicable Regulations:** U.S. Department of Education

**Number of Disciplinary Actions Taken (FY 2009-10):** 0

## **Professional Surveyors and Mappers**

### **Scope of Practice/Description:**

Licensed surveyors and mappers make exact measurements and determine property boundaries. They provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.

**Number of In-State Registrants:** 3,770

### **Continuing Education Requirement:**

24 hours for renewal with at least 6 on either Florida's minimum technical standards or laws affecting the practice of surveying and mapping (rotated each biennium).

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 13

- Consumer Initiated-13
- Administrative-0

### **Types of Complaints:**

- Violation of technical standards

## **Rooming Houses**

### **Scope of Practice/Description:**

Statute basically defines what a rooming house isn't (it is not a hotel, it is not an apartment, etc.). using those general parameters, the Division historically has operated under the standard that a rooming house is a rented residential premises where an individual shares a kitchen and bathroom with others. Rooms can be rented for one or more nights and for extended periods of weeks, months and years.

**Minimum Education Requirements:** N/A

**Continuing Education Requirement:** N/A

**Number of Registrants:** 6,855

**Other Applicable Regulation:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 16 (Division is not able to separate consumer complaint and administrative initiated actions. It appears that all were a result of routine inspections.)

### **Types of Complaints:**

- Inspection violations

## **Sellers of Travel**

### **Scope of Practice/Description:**

A Seller of travel is any person who offers for sale prearranged travel, tourist-related services, or tour-guide services, including, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment.

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Number of Registrants:** 6,855

### **Other Applicable Regulation:**

Title 31 of the Code of Federal Regulations, Chapter V, governs the ability to travel and do business with terrorist countries.

Telemarketing Sales Rule, 16 CFR Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- prevent unfair methods of competition, and unfair or deceptive acts or practices;
- seek monetary redress and other relief for conduct injurious to consumers; and
- conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10): 78**

- Consumer Initiated-17
- Administrative-61

### **Types of Complaints:**

- Practicing without a registration
- Practicing with an expired registration



## **Talent Agencies**

### **Scope of Practice/Description:**

A Talent Agency is a business who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements or any employment or placement of an artist, where the artist performs in his or her artistic capacity. Talent Agents represent and promote talent and performers to prospective employers and may handle contract negotiations and other business matters for clients.

**Number of In-State Practitioners:** 201

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Other Applicable Regulations:** None known.

**Number of Disciplinary Actions Taken (FY 2009-10):** 30

- Consumer Initiated-27
- Administrative-3

### **Types of Complaints:**

- Financial misconduct
- Practicing without a license

## **Telemarketing**

### **Scope of Practice/Description:**

Commercial telephone solicitation is an unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine for the purpose of inducing the person to purchase or invest in consumer goods or services;

**Number of Registrants:** 18,205

**Minimum Education Requirements:** None

**Continuing Education Requirements:** None

### **Other Applicable Regulation:**

Telemarketing Sales Rule, 16 CFR Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

Federal Trade Commission Act, 15 U.S.C. §§ 41-58. The FTC is empowered to

- Prevent unfair methods of competition, and unfair or deceptive acts or practices;
- Seek monetary redress and other relief for conduct injurious to consumers; and
- Conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce.

**Number of Disciplinary Actions Taken (FY 2009-10):** 273

- Consumer Initiated-106
- Administrative-167

### **Types of Complaints:**

- Practicing without a registration
- Practicing with an expired registration

## **Timeshares**

### **Scope of Practice/Description:**

Before a community can be built, the developer must submit a filing to the division for its approval. The filing must meet the consumer protection requirements of this chapter before timeshare periods can be offered for sale to the public.

**Number of In-State Practitioners:** 549 projects

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Number of In-State Practitioners:** 549 projects

**Other Applicable Regulations:** None known.

This deregulation does not eliminate statutory requirements for these developments, only the Department of Business and Professional Regulation's filing requirements.

**Number of Disciplinary Actions Taken (FY 2009-10):** 11

- Consumer Initiated-4
- Administrative-7

### **Types of Complaints:**

- Misleading promotional offers
- Failure to provide disclosures regarding prizes for participation
- Failure to provide audited financial statements

## **Yacht and Ship Brokers**

### **Scope of Practice/Description:**

A Broker is a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons. "Yacht" means any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.

**Number of In-State Practitioners:** 2,663

**Minimum Education Requirements:** None

**Continuing Education Requirement:** None

**Other Applicable Regulations:** None known

**Number of Disciplinary Actions Taken (FY 2009-10):** 7

- Consumer Initiated-5
- Administrative-2

### **Types of Complaints:**

- Practicing without a license



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# **Business & Consumer Affairs Subcommittee**

**Tuesday, March 8, 2011  
1:00 PM - 3:00 PM  
12 HOB**

## **Amendment Packet**

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 259 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Business and Consumer  
2 Affairs

3 Representative(s) Hooper offered the following:

4

5 **Amendment**

6 Remove line 61 and insert:

7 license. A performing arts center, as defined in s. 561.01,  
8 that has an interest, directly

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 259 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Business and Consumer  
2 Affairs

3 Representative(s) Hooper offered the following:

4

5 **Amendment**

6 Remove line 108 and insert:

7 license. A performing arts center, as defined in s. 561.01,

8 that has an interest, directly

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 311 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Business & Consumer  
2 Affairs Subcommittee  
3 Representative(s) Roberson offered the following:  
4  
5

**Amendment**

6 **Removes lines 92 and 93 and insert:**

7 or obtain a local business tax receipt. For purposes of this  
8 section, persons licensed and operating as a broker associate or  
9 sales associate under Chapter 475, shall be considered an  
10 employee. An individual acting in the capacity of an  
11 independent contractor is not an employee.  
12



