

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7197      PCB STA 06-03      Governmental Operations/Regulatory Fees  
**SPONSOR(S):** State Administration Appropriations Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1678

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	8 Y, 0 N	Belcher	Belcher
1) _____	_____	_____	_____
2) _____	_____	_____	_____
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5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill creates section 216.036, F.S., to require that state agencies review the fees charged for providing regulatory services or regulating businesses and professions. The bill also requires each agency, as part of its legislative budget request, to provide to the Governor and Legislature alternatives for realigning revenues and/or costs to make the regulatory service or program totally self-sufficient or provide justification for a subsidy from other state funds. The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least once every 5 years.

The bill has no fiscal impact; however, mandated reviews could result in cost savings or fee adjustments at a future date which could impact state regulatory fee revenues and program costs. Fee adjustments as a result of the review process would impact state-regulated businesses and professions.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED FUNDING:

### BACKGROUND

To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards.

#### Regulatory Program Funding

In December 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 05-57, *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*. The report noted that currently, Florida administers 190 regulatory programs. Of the \$677 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided \$29 million. The report provided the following background information:

- Funding for regulatory programs is derived from three major sources—user charges, federal funds, and general revenue.
- Several factors should be considered in determining how regulatory programs should be funded, including the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities.
- In general, user charges should be the primary source of funding for the state's regulatory programs and should be sufficient to cover all of the associated direct and indirect costs, as it helps reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability because regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective.

OPPAGA's findings included:

- There is no overall policy for determining appropriate regulatory program funding sources and that most regulatory programs [in Florida] are not currently required to be self-supporting. Less than half (81, or 43%) of the state's 190 regulatory programs are statutorily required to be supported solely by user fees and/or federal funds and, in some cases, programs that are required to be self-supporting nonetheless receive general revenue.
- Current state accounting methods hinder determining appropriate funding levels for regulatory programs as the state's accounting system does not identify the total direct costs for all regulatory programs and agencies are using different methodologies to calculate the indirect costs of these programs.

OPPAGA's report identified several policy options for consideration by the legislature, including:

- Establishing a uniform policy governing regulatory program funding.
- Eliminating statutory caps on the amount of regulatory fees as these limits can become outdated if not updated over time to reflect inflation.

- Revising the legislative budget request instructions to require agencies to provide written justification when requesting general revenue for a regulatory program, which would assist in the determination as to whether the program provides sufficient broad public benefits to justify general revenue funding.
- Revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs.

## **Regulatory Fee Structure**

In December 2002, Senate Interim Project Report No. 2003-139, titled *Fee Equity – Examining the Fairness of Florida’s Regulatory Fee Structure* was issued. The report noted that within the State annual budget of over \$50 billion, along with separate fiduciary accounts of almost another \$120 billion, are scores of separate revenue raising and spending streams. The report provided the following background issues:

- Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
- Fees charged for services and for regulation of businesses and professions are set in statute either as a flat fee, a fee cap, or authorization is given to an agency or board to charge a fee to “cover the cost of such service.”
- Many fees are capped and require legislation to change the cap.
- Recently some fees charged have been inadequate to cover the true cost of regulation.
- Concerns have been raised when the fees collected do not completely cover the cost of the benefits provided and with the seemingly disparate treatment among those regulated.

The Interim Project report included the following key findings:

- The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
- Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Because of policy considerations, the fees may not entirely cover the cost of regulating the profession or providing the service.
- Prescribing that all costs of providing a service or of regulating professions be covered requires that all costs be defined and allocated.
- The language for cost recovery varies in the statutes between agencies.
- State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

- Fee structures should be reviewed to insure consistency with stated policy. Further, with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
- Any review should be tied to an existing systematic and periodic review process. The review should consider all costs of providing a service for which a fee is charged and of regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.

## **CHANGES PROPOSED BY THE BILL**

The bill creates section 216.0236, Florida Statutes, to require each state agency to examine fees charged to regulate and oversee businesses or professions. It also requires that if an agency

determines that the fees charged are not adequate to cover program costs and that an appropriation from other state funds is necessary to supplement the direct or indirect costs for providing regulation and oversight, the agency will present alternatives for realigning revenues and/or costs to make the regulatory service or programs totally self-sufficient or demonstrate that the service or programs provides substantial benefits to the public which justify a subsidy from state funds. The bill requires the agency to present the alternatives to the Governor and the Legislature during the annual submission of their Legislative Budget Request. The bill requires the Legislature to review the alternatives during the next regular session after submission.

The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least every 5 year. The schedule for such review may be included in the legislative budget instructions that are developed pursuant to the requirements of s. 216.023, F.S.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 216.0236, F.S., to provide Legislative intent for funding the regulation of businesses and professions; to require agencies to review regulatory fees and costs annually and provide change alternatives to the Governor and Legislature if fees are not adequate to cover program costs; to require to Legislature to review the regulatory fee structure of all businesses and professions at least once every 5 years.

**Section 2.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D. Fiscal Comments

2. Expenditures:

See D. Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in fee increases that will affect some consumers of the various goods or services provided by regulatory programs that are not currently self-supporting.

D. FISCAL COMMENTS:

It is expected that the review of regulatory fees and costs could impact both state revenues and expenditures at a future date. This is dependent on the results of the reviews and the actions taken by future Legislatures.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

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

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

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

None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES