

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 713 Regulation of Professions

**SPONSOR(S):** Workman

**TIED BILLS:** IDEN./SIM. BILLS: SB 1330

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Livingston	Cooper
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

The bill contains numerous modifications relating to several regulatory activities under the Department of Business and Professional Regulation (DBPR). The bill:

- amends various provisions of the home inspection licensing program (scheduled to become effective July 1, 2010). Changes include modifying the definition of home inspection services, eliminating the business license (certificate of authorization), authorizing applicants to take the licensure examination without having to obtain DBPR approval, requiring a criminal history check for applicants, providing disciplinary action for failure to meet standards of practice adopted by the DBPR, and providing additional rulemaking authority;
- amends various provisions of the mold-related licensure program (scheduled to become effective July 1, 2010). Changes include eliminating the business license (certificate of authorization), authorizing applicants to take the licensure examination without having to obtain DBPR approval, clarifying that the two-year degree requirement must be an associate of arts degree or equivalent (with 30 semester hours in certain courses), requiring a criminal history check for applicants, providing disciplinary action for failure to meet standards of practice adopted by the DBPR, and providing additional rulemaking authority;
- creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida;
- authorizes the issuance of a special alcoholic beverage license to movie theaters that meet specified criteria and eliminates language relating to the time quota alcoholic beverage license holders are permitted to have their licenses held in an inactive status;
- transfers carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal;
- revises the qualifications of members of the Florida Real Estate Appraisal Board;
- allows the Florida State Boxing Commission to issue a notice to cease and desist;
- prohibits an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation determines if a violation occurred;
- allows for publication of notices, forfeitures, etc., through electronic dissemination via the DBPR website, other public computer networks, or using other future technology; and
- requires that upon a determination by the DBPR that it erroneously issued a license, or upon the revocation of a license, the licensee must surrender his or her license to the DBPR.

The bill is not anticipated to have a significant fiscal impact on state or local governments. The DBPR projects that the issuance of special alcoholic beverage licenses could generate annual license fee revenues approaching \$21,000 in the first year and \$15,000 in subsequent years.

The effective date of the bill is July 1, 2010.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Home Inspectors/Mold Services**

###### Present situation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR) and includes the Division of Professions. It also establishes other divisions to include the divisions of: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Real Estate; Regulation; Technology; and Service Operations. This section also establishes the authority and structure of the various boards within the DBPR. The Florida State Boxing Commission is also housed within the DBPR pursuant to s. 548.003, F.S. Community association management (CAM) firms come under the oversight of the Regulatory Council of Community Association Managers.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Division of Professions administers 14 professional boards and one council pursuant to s. 20.165, F.S.

The DBPR websight<sup>1</sup> indicates that the Division of Regulation includes oversight of two specified programs. The "child labor program" pursuant to part I of chapter 450, F.S. The program has two primary components within its' mission: (1) the law limits the amount of hours that minors may work, so that minors will be able and available for school; and (2) the law restricts the types of jobs minors may perform for safety reasons.

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<sup>1</sup> <http://www.myfloridalicense.com/dbpr/divisions.html>

The “farm labor program” pursuant to part III of chapter 450, F.S. The program is designed to ensure, through a system of compliance and enforcement, that Florida farm workers are protected from harmful work situations and exploitation.

Other programs are also administered under the DBPR.

- The DBPR is responsible for the oversight of asbestos licensing pursuant to chapter 469, F.S. There is no professional board.
- The DBPR is responsible for the oversight of athlete agents pursuant to part IX of chapter 468, F.S. There is no professional board.
- The DBPR is responsible for the oversight of talent agencies pursuant to part VII of chapter 468, F.S. There is no professional board.
- Pursuant to section 447.06, F.S., labor organizations must register with the DBPR before conducting activities.
- Pursuant to section 447.04, F.S., a person desiring to act as a business agent for a labor organization must obtain a license or permit by filing an application with the DBPR.

## **Home Inspectors**

### Present situation

The licensure and regulation of home inspection services are specified in part XV, chapter 468, F.S., and go into effect on July 1, 2010. This part provides for the creation of a regulatory program located in the DBPR. Part XV creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties. There is no professional board.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition. A home inspection is performed by private individuals rather than by local government inspectors.

“Home inspection” is defined to mean 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 an opinion of the condition of the home<sup>2</sup>.

### Effect of proposed changes

The bill amends s. 20.165, F.S., to expand the statutory structure of professional boards established within the Division of Professions of the DBPR to include a home inspection “program” that is not regulated by a professional board.

The bill amends various provisions of the home inspection services licensing program. The changes include modification of the definition of home inspection services, elimination of the business license, referred to as a certificate of authorization, authority for applicants to take the licensure examination

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<sup>2</sup> s. 468.8311(4), F.S.

without having to obtain DBPR approval, a requirement for a criminal history check for applicants, and authority for disciplinary action for failure to meet standards of practice adopted by the DBPR.

The bill amends s. 468.8319(1)(f), F.S., to preclude home inspectors, or home inspector businesses, from performing, or offering to perform, repairs to a home on which the home inspector or business prepared a home inspection report. The bill amends s. 468.8319(1)(g), F.S., to preclude home inspectors from inspecting any property in which the home inspector, or the home inspector's company, has a financial interest.

The bill amends s. 468.8324, F.S., to provide new grandfathering requirements. Qualifications include certification by a state or national association that requires successful completion of a proctored examination for certification and completion of at least 14 hours of verifiable education on home inspection, or three years' minimum experience as a home inspector, comprised of 120 home inspection reports at the time of application along with verifiable proof of completing 14 hours of education on home inspection.

In addition to one of the foregoing, the bill specifies that grandfather applicants must not have had a home inspector license or a license in a related field, as defined by the bill, revoked at any time, suspended within the past 5 years, or a fine assessed in excess of \$500 within the past 5 years.

The bill authorizes the DBPR to investigate validity of reports and take disciplinary action for filing of false reports. Grandfather applicants must comply with the criminal background, good moral character, and insurance requirements of this part. Grandfather applications must be postmarked no later than March 1, 2011.

The bill prohibits enforcement of unlicensed activity by home inspectors until July 1, 2011.

The bill specifies broad rule making authority of the DBPR to "adopt rules to administer this part."

## **Mold Assessors and Mold Remediators**

### Present situation

Currently, there are companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. The licensure and regulation of mold-related services are specified in part XVI, chapter 468, F.S., and go into effect on July 1, 2010. This part provides for the creation of a regulatory program in the DBPR. Part XVI creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties. There is no professional board.

"Mold assessment" means a process that includes the sampling and evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of mold growth.<sup>3</sup> "Mold remediation" means the removal, cleaning, sanitizing, or demolition of mold or mold-contaminated matter that was not purposely grown at that location.<sup>4</sup>

### Effect of proposed changes

The bill amends s. 20.165, F.S., to expand the statutory structure of professional boards established within the Division of Professions of the DBPR to include a mold services "program" that is not regulated by a professional board.

The bill amends various provisions of the mold services licensing program. It amends s. 468.8413(1) and (2), F.S., to authorize applicants to take the licensure examination without having to obtain prior DBPR approval. The bill amends s. 468.8413(2), F.S., to clarify that a mold remediator or mold assessor must have at least a 2 year associate of arts degree or the equivalent, with at least 30

<sup>3</sup> s. 468.8411(3), F.S.

<sup>4</sup> s. 468.8411(5)

semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety or a related field. The bill also creates s. 468.8413(4)(d), F.S., requiring applicants to submit fingerprints for criminal background checks.

The bill amends s. 468.8418, F.S., to eliminate the requirement for businesses offering mold-related services to obtain a certificate of authorization. It amends s. 468.8421(1), F.S., to require insurance coverage of at least \$1 million for both preliminary and post-remediation mold assessment. The bill amends s. 468.842, F.S., to provide a disciplinary violation for failing to meet standards of practice adopted by the DBPR.

The bill amends s. 468.8423, F.S., to provide new grandfathering requirements. Qualifications include certification by a state or national association that requires successful completion of a proctored examination for certification and completion of at least 60 hours of verifiable education for an assessor and 30 hours of education for a remediator, or demonstrate three years' minimum experience as a mold assessor or mold remediator; comprised of 40 invoices for mold assessments or remediation at the time of application.

In addition to one of the foregoing, grandfather applicants must not have had a mold assessor or mold remediator license or a license in a related field, as defined by the bill, revoked at any time, suspended within the past 5 years, or a fine assessed in excess of \$500 within the past 5 years.

The bill authorizes the DBPR to investigate validity of invoices and take disciplinary action for filing of false information. Grandfather applicants must comply with the criminal background, good moral character and insurance requirements of this part. Grandfather applications must be postmarked no later than March 1, 2011.

The bill prohibits unlicensed activity enforcement until July 1, 2011.

The bill specifies broad rule making authority of the DBPR to "adopt rules to administer this part."

## **Military Spouses/Professional Licensure**

### Present situation

Currently, section 455.02, F.S., applies to licensees who are members of the armed forces on active duty who are absent from the state and not practicing their profession in the private sector. This statute applies to numerous professions regulated by DBPR but not all professions.

The member/licensee is exempted from license renewal requirements for the duration of active duty while absent from the state of Florida, and for a period of six months after discharge or return to the state, and not practicing the profession.

Currently, many of the professions in Florida have an endorsement provision as a part of their licensing authority that allows for the acceptance of an active out-of-state practitioner in good standing to be qualified to be licensed in Florida based on the out-of-state license criteria, ie. barbering<sup>5</sup>. Similarly, many of the professions in Florida provide for "a reciprocal agreement" between professions in different states to allow licensure of out-of-state practitioners by reciprocity based on similar licensing qualifications, ie. construction contracting<sup>6</sup>.

Presently, there are no provisions to allow the spouses of active duty military personnel who are relocating to Florida an opportunity to practice their profession by using a temporary Florida license issued based on license qualification of the applicants' home state.

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<sup>5</sup> s. 475.144(5), F.S.

<sup>6</sup> s. 489.115(3)(c), F.S.

## Effect of proposed changes

The bill creates a temporary professional license for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida pursuant to his or her spouse's official active duty military orders. The spouse must hold a valid out-of-state license and submit to a criminal background check. The nonrenewable temporary license allows the spouse to work in his or her respective profession for six months from the date of issuance of the temporary license.

## **Carbon Monoxide Detection**

### Present situation

Currently, s. 509.211, F.S., relates to "safety regulations" for public lodging establishments under the Division of Hotels and Restaurants of the DBPR. The State Fire Marshal of the Department of Financial Services implements the provisions of chapter 633, F.S., relating to fire prevention and control and chapter 554, F.S., which is the "Boiler Safety Act."

Section 509.211, F.S., requires enclosed spaces or rooms in public lodging establishments which contain a boiler that is heated by combustion of fuels, to be equipped with certified carbon monoxide sensor devices. The devices are required to be integrated with the public lodging establishment's fire detection system.

Currently, part IV of chapter 553, F.S., is the "Florida Building Code." Beginning July 1, 2008, s. 553.885, F.S., requires construction of new buildings that will contain a fossil-fuel-burning heater or appliance, a fireplace, or an attached garage must have an approved operational carbon monoxide alarm installed within 10 feet of each room used for sleeping purposes. The Florida Building Commission is required to adopt rules applicable to these installations and to incorporate the requirements into its next revision of the Florida Building Code.

### Effect of proposed changes

The bill changes responsibilities for regulating carbon monoxide sensor devices and carbon monoxide mitigation in chapter 509, F.S., from the Division of Hotels and Restaurants of the DBPR to the State Fire Marshal of the Department of Financial Services. This change of responsibility places carbon monoxide sensor device and mitigation regulation located in public lodging establishments with the State Fire Marshal.

## **Florida State Boxing Commission**

### Present situation

Chapter 548, F.S., governs pugilistic matches in the state, which include boxing, kickboxing, and mixed martial arts. The Florida State Boxing Commission is authorized to administer the provisions of the chapter. By definition, "boxing" means to compete with the fists; "kickboxing" means to compete with fist, feet, legs, or any combination thereof; and "mixed martial arts" means unarmed combat involving the use, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Chapter 548, F.S., prohibits certain matches unless sanctioned and supervised by an approved sanctioning organization. Additionally, amateur and professional matches are prohibited unless the requirements of law and rules are met, such as the availability of medical services.

The Florida State Boxing Commission does not have statutory authority to issue a notice to cease and desist to persons violating a provision of chapter 548, F.S.

## Effect of proposed changes

The bill authorizes the Florida State Boxing Commission to issue a notice to cease and desist for violations of chapter 548, F.S.

## **Alcoholic Beverage Licensing**

### Present situation

Chapters 561-565 and 567-568, F.S., comprise Florida's alcoholic beverage law. The Division of Alcoholic Beverages and Tobacco (division) in the DBPR is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Florida's retail alcoholic beverage licensing system is generally built around the quota license structure with other retail licenses that allow the sale of liquor enacted as exceptions to the quota limitation. Section 561.20(1), F.S., provides for a quota or limitation on the number of liquor licenses which may be issued in a county based on population: one license for each 7,500 residents. There are no statutory limitations on the number of retail beer and wine licenses which may be issued in a county.

There are numerous statutory exceptions to the quota limitation which allow for the issuance of liquor licenses to various entities meeting specified conditions, e.g., hotels or motels, civic center authorities, golf clubs, restaurants, etc. The statutes do not currently specifically authorize alcoholic beverage licenses for movie theaters.

Section 561.29(1)(i), F.S., requires quota licenses to be active for a minimum of 210 days within any 12 month period. Every licensee must notify the division in writing of any period during which his or her license is inactive and place the physical license with the division to be held in an inactive status. The division may waive or extend this requirement upon finding of hardship to a maximum period of 24 months. Section 561.32(3)(a), F.S., relating to fees on license transfers, establishes a fee for the transfer of any such license issued under s. 561.20(1), F.S., that has been inactive for the three years immediately preceding the transfer of the license.

### Effect of proposed changes

The bill authorizes the division to issue alcoholic beverage special licenses for consumption on premises to movie theaters that meet the following criteria:

- has at least five operating screens, which show first-run feature films that open on the scheduled national release dates;
- holds a seating license issued by the Division of Hotels and Restaurants;
- derives at least 51 percent of its gross revenues from the sale of theater tickets, food, and nonalcoholic beverages;
- prepares on premises and serves full course and multicourse meals, including appetizers, entrees with side dishes, and desserts, but that does not include prepackaged meals that are heated and served, to at least 200 patrons in seats at tables, seats equipped with a tray or table top, or seats at a food service counter, each of which must accommodate a full course or multicourse meal for a seat to be counted; and
- offers food service at all times when alcoholic beverages are offered for sale.

The licensee may only sell or serve alcoholic beverages for consumption on premises in areas designated for the service of full course or multicourse meals. The sale of alcoholic beverages may not occur during any day more than 1 hour before the start of the first show and more than 1 hour after the end of the final show. The licensee must pay the annual state license tax of \$1,820 and must keep all records required by the division by rule for 3 years.

The bill eliminates language relating to the time quota alcoholic beverage license holders are permitted to have their licenses held in an “inactive status”.

## **Miscellaneous Provisions**

### **Real Estate Appraisal Board**

Section 475.613, F.S., currently provides the make-up of the Florida Real Estate Appraisal Board to consist of seven members. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Two members of the board must be representatives of the general public and not be connected with the practice of real estate appraisal, real estate brokerage, or mortgage lending.

The bill allows a broader range of qualified candidates to be considered for appointment to the board by removing the statutory requirement that two members of the board represent the general public and not be connected in any way with the practice of real estate brokerage or mortgage lending. The consumer members would still be restricted from being connected with the practice of real estate appraisal.

### **Veterinarians**

Section 474.203(2), F.S., grants an exemption from licensure requirements for persons practicing as interns or resident veterinarians at Florida schools or colleges that are accredited by the American Veterinary Medical Association (AVMA) or a school recognized by the AVMA Commission for Foreign Veterinary Graduates. The interns or residents must be a graduate of a school or college accredited by the AVMA.

The bill amends s. 474.203(2), F.S., to expand the exemption to allow for veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates of the AVMA.

### **Cosmetology**

Section 477.019, F.S., allows cosmetology applicants to apply to take their examination when they are within the last 100 hours of training at a licensed cosmetology school or other approved school. Applicants are required to complete the final 100 hours and take the licensure examination within six months of filing their application. Currently, applicants who have completed their 1,200 hours prior to submitting their application do not have a time limit for taking the examination.

The bill removes the provision which allows applicants to apply to take their examination who are within the last 100 hours of training. The requirement that the examination must be taken within 6 months after approval is also removed.

### **Licensure Errors**

Currently, there is no requirement for a licensee to surrender his or her license once a determination has been made that the license has been issued in error. Section 455.227(1)(h), F.S., provides that attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the DBPR or a board, constitutes grounds for which disciplinary action may be taken. Therefore, disciplinary proceedings to revoke licenses issued in error must be initiated by the DBPR.

The bill requires that upon a determination by the DBPR that a license was issued in error, or upon the revocation of a license by the applicable board, or by the DBPR when there is no board, the licensee must surrender his or her license to the DBPR.

## Examinations

Section 455.2175, F.S., makes it a felony for anyone to reproduce or otherwise copy examination materials administered by the DBPR. In regards to situations where an applicant is accused of cheating on an examination, the DBPR conducts an investigation, then forwards the results of the investigation to the appropriate State Attorney's Office for possible prosecution.

The bill prohibits an examinee whose exam materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another exam until the criminal investigation determines if a violation occurred.

### B. SECTION DIRECTORY:

Section 1. Amends s. 20.165, F.S., to expand the list of professional boards established within the Division of Professions of the DBPR to include two programs that are not regulated by a professional board: home inspection and mold services.

Section 2. Amends s. 215.37, F.S., to correct an out-dated reference.

Section 3. Amends s. 455.017, F.S., to correct an out-dated reference.

Section 4. Amends s. 455.02, F.S., to create a temporary professional license classification for spouses of active duty members of the Armed Forces of the United States who have been assigned to a duty station in Florida.

Section 5. Amends s. 455.213, F.S., to require a licensee to surrender a license to the DBPR if it was issued in error.

Section 6. Amends s. 455.217, F.S., to allow examination review for applicants who fail an examination.

Section 7. Amends s. 455.2175, F.S., to prohibit an examinee whose examination materials were confiscated based upon suspicion of theft or unlawful reproduction of examination materials from taking another examination until the criminal investigation determines if a violation occurred.

Section 8. Amends s. 455.227, F.S., to authorizes discipline by the DBPR against a license who enters a plea of guilty regardless of adjudication.

Section 9. Amends s. 455.228, F.S., to make a technical reference correction.

Section 10. Creates s. 455.274, F.S., to allow publication of notices through electronic dissemination via the DBPR website.

Sections 11 through 19. Amends part XV of chapter 468, F.S., and provides additional statutory requirements to operate as a home inspector.

Sections 20 - 29. Amends part XVI of chapter 468, F.S., and provides additional statutory requirements to operate as a mold assessor or mold remediator.

Section 30. Amends s. 474.203, F.S., to expand the exemption to allow for veterinary interns or residents who are graduates in training to be a graduate of a school recognized by the Educational Commission for Foreign Veterinary Graduates.

Section 31. Amends s. 475.175, F.S., to change the verbiage of fingerprint cards to fingerprints for real estate license applicants.

Section 32. Amends s. 475.613, F.S., to remove the statutory requirement that two members of the Florida Real Estate Appraisal Board represent the general public and not be connected with the practice of real estate brokerage or mortgage lending.

Section 33. Amends s. 477.019, F.S., to eliminate a provision that allows cosmetology applicants to apply to take their exam within the last 100 hours of their required 1,200 hours of course work and the requirement that the examination must be taken within 6 months after approval is also removed.

Section 34. Amends s. 509.211, F.S., to transfer carbon monoxide regulation in public lodging establishments from the Division of Hotels and Restaurants to the State Fire Marshal.

Section 35. Amends s. 548.076, F.S., to authorize the Florida State Boxing Commission to issue a notice to cease and desist for violations.

Section 36. Amends s. 561.17, F.S., to eliminate the need for applicants for alcoholic beverage licenses to submit paper applications in duplicate.

Section 37. Amends s. 561.20, F.S., to authorize the issuance of a special alcoholic beverage license to movie theaters that meet specified criteria.

Section 38. Amends s. 561.32, F.S., to eliminate language relating to the time quota alcoholic beverage license holders are permitted to have their licenses held in an inactive status.

Sections 39 – 50. Reenacts various provisions to reflect updated cross references as a result of changes made in the bill.

Section 51. Effective date – July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The DBPR specifies that “no (sections of the bill) will have a fiscal impact on the Division of Professions.”<sup>7</sup>

The DBPR fiscal analysis of the bill does not reflect a fiscal impact resulting from the implementation of the new home inspection or mold related programs.

#### 2. Expenditures:

The DBPR fiscal analysis of the bill does not reflect a fiscal impact resulting from the implementation of the new home inspection or mold related programs.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None anticipated.

#### 2. Expenditures:

None anticipated.

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<sup>7</sup> Fiscal impact estimates were provided by the DBPR, Office of Legislative Affairs, 2010 Legislative Analysis Form, dated February, 2010, HB 713.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

At the time of enactment of the regulatory provisions for home inspectors and mold related services in 2007, the April 6, 2007 Revenue Estimating Conference adopted recurring estimates of \$300,000 in the Professional Regulation Trust Fund. This assumption included the grandfathered licensees paying the same amount of license fees as other licensees.

At the time, the cost of new regulation for home inspectors and mold related services in 2007, was reflected in the legislation which initially provided for an appropriation of \$196,161 and 3 FTE positions.

However the creation of the new regulations were considered to have no fiscal impact until the provisions actually took effect which is July 1, 2010. It may be anticipated that the current provisions could have a similar fiscal impact as was projected in 2007.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill specifies broad rule making authority of the DBPR to “adopt rules to administer this part” for both home inspection activities and mold related services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Guidelines for Bill Drafting 2009 edition prepared by the House Bill Drafting Service addresses bill titles.

The discussion under this part relates to the individual segments of a bill and offers suggestions as to how each of them may be prepared in order to conform to the legal requirements of the Florida Constitution and rules of the legislative process.

Title of bill

Section 6 of Article III of the Florida Constitution provides in part that:

Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title [emphasis supplied].

The title, required by the Florida Constitution, is that portion of the bill which serves the purpose of expressing the subject of the bill. A properly prepared title is essential to the validity of the law to be enacted. The title should briefly express the subject of the proposed legislation so that the mere reading of it will indicate the nature of the details which are embodied in the act.

It is not necessary to set forth all the details and provisions of a bill in the title, and a general title is often preferable since it facilitates possible future amendment of the bill. However, the title must give notice sufficient to reasonably lead an interested person to inquire as to the contents of the bill.

What happens if a bill passes with an insufficient title?

An act is defective to the extent that its scope is broader than the subject of its title. See: *Rouleau v. Avrach*, 233 So.2d 1 (Fla. 1970). Such an act may be challenged in court, and the court may declare the act to be unconstitutional for failure to comply with Section 6 of Article III of the Florida Constitution.

HB 713 is titled "An act relating to regulation of professions."

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

"any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."

The bill contains numerous modifications relating to several programs under the DBPR. Included in the bill are provisions relating to regulatory programs that are not defined as "professions."

A discussion regarding the breadth of a title of a bill is a continuing refrain in bill drafting services. A refrain which is often unresolved and left to the interpretation of the individual inquirer.

The sponsor may wish to change the title since the bill addresses activities that are not strictly defined as "professions" by statute or the DBPR.

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