

STORAGE NAME: h1923.sgc.doc
DATE: April 19, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1923 (PCB BR 01-03)
RELATING TO: The Department of Business and Professional Regulation
SPONSOR(S): Committee on Business Regulation
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill contains numerous modifications relating to several professions and the land sales program, under the Department of Business and Professional Regulation (DBPR).

The bill: Transfers the licensure and regulatory functions relating to **yacht and ship brokers** from the Division of Land Sales, Condominiums and Mobile Homes under DBPR to the Division of Professions under DBPR; **Talent agencies** are required to be registered rather than licensed by DBPR; Allows **building code administrators and inspectors** absentee supervision over newly hired plans examiners or building code inspectors who are not yet certified and allows the collection of certain additional examination fees; allows the **Board of Engineers** to adopt rules relating to the type of seals that may be approved for authenticating documents; Creates additional exemptions from licensure by the **Board of Professional Surveyors and Mappers** for certain subordinates operating under a registered supervisor and allows subordinates to enter private property to locate survey monuments; Merges the **Barbers' Board and the Board of Cosmetology** into a single seven member board; Relating to **architects and interior designers** it removes the authority of the board to approve the curriculum of architectural degree programs; Allows any affected person to file for injunctive relief against a person conducting unlicensed activity relating to architecture or interior design; Reduces the size of the **Construction Industry Licensing Board (CILB)** from eighteen to sixteen members, and moves the CILB from Jacksonville to Tallahassee; Repeals the requirement for the **Electrical Contractors' Licensing Board (ECLB)** (which is also composed of alarm system contractors) to meet jointly with the CILB. The bill transfers the **land sales registration program** from the Division of Florida Land Sales, Condominiums, and Mobile Homes of DBPR to the Division of Real Estate of DBPR.

The DBPR reports the estimated fiscal impact of bill to approach \$29,863 in savings to the state beginning in FY 2001-02 and \$99,863 in FY 2002-03.

The Council For Smarter Government adopted eight amendments that are traveling with the bill: three amendments are technical, two relate to cosmetology, one relates to condominium arbitration, one addresses elevator inspections and one refers to information technology. The arbitration changes reflect budget reductions contained within the House Appropriations bill. Eight full time equivalent (FTE) positions are eliminated and spending authority of \$18,000 is reduced in the Land Sales, Condominium and Mobile Homes Trust Fund in DBPR.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Department of Business and Professional Regulation (DBPR) was established in 1993 (ch. 93-220, Laws of Florida) with the merger of the Department of Business Regulation and the Department of Professional Regulation. The mission of the DBPR is to protect the health, safety, and welfare of Florida's consumers by ensuring that regulated businesses and professions meet prescribed standards. The DBPR enforces compliance with numerous filing and disclosure requirements and various standards and regulations.

See Section-By-Section portion of this analysis.

C. EFFECT OF PROPOSED CHANGES:

The bill contains numerous modifications relating to regulation of various professions and the land sales program under the Department of Business and Professional Regulation.

See Section-By-Section portion of this analysis.

D. SECTION-BY-SECTION ANALYSIS:

The following Section-By-Section analysis also includes the Present Situation and Effect of Proposed Changes sections of the bill analysis.

Chapter 20, F.S., DBPR Organization

Present Situation:

Section 20.165, F.S., establishes the organizational structure of the DBPR and includes the following divisions: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Land Sales, Condominiums, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; and Technology, Licensure, and Testing. This section also establishes the authority and structure of the various boards within the DBPR.

Effect of Proposed Changes :

Section 1. The bill amends s. 20.165, F.S., to correct references to various boards that are amended by the bill, to include deleting the reference to the Board of Barbering, and the Board of Cosmetology, and including the reference to the created Board of Barbering and Cosmetology. The bill decreases the number of consumer members that are eligible to be part of a board from two consumer members for boards with five or more industry members to one consumer member for seven or fewer industry members.

Yacht and Ship Brokers

Present Situation:

Chapter 326, F.S., applies to transactions involving yachts and ships of more than 32 feet in length and which weigh less than 300 gross tons. Yacht and ship transactions do not involve issues of public health or safety, but instead address possible financial harm to vessel purchasers when transactions are marred by misrepresentation or dishonest dealings.

The regulation of yacht and ship brokers began in 1988. The program is currently housed in the Bureau of Land Sales within the Division of Land Sales, Condominiums, and Mobile Homes under the DBPR. Brokers and salespersons are required to be licensed by DBPR, to provide bonding, and to meet statutory guidelines for escrowing funds.

Effect of Proposed Changes:

The bill transfers the licensure and regulatory functions relating to yacht and ship brokers from the Division of Land Sales, Condominiums and Mobile Homes under DBPR to the Division of Professions under DBPR (there is no regulatory Board associated with this program).

Sections 2, 3, 4, and 5. Amends ss. 326.01, 326.002, 326.003, and 326.004, F.S. to correct references. Section 5 also specifies the DBPR may deny the renewal of a license, in addition to the current authority to deny the initial license. This section further clarifies that the DBPR submit fingerprints to the FBI for analysis.

Section 6. Amends. 326.006, F.S., to correct references

This section creates a civil penalty to be imposed by the DBPR against anyone who fails to: answer questions of DBPR relating to an investigation, provide documents when requested by the DBPR or obey a DBPR subpoena. This section also authorizes the DBPR to suspend or revoke the license of a broker or salesman for engaging in actions that show a lack of good moral character or for being convicted of a felony. The sanctions of suspension or revocation by DBPR of the license of a broker are created if the license has been acted against in any other state.

Section 7. States that the regulation of yacht and ship brokers is transferred to the Division of Professions within DBPR and all appropriate trust fund revenues are to be deposited into the Professional Regulation Trust Fund.

Chapter 455, F.S., DBPR General Powers

Present Situation:

The regulation of professions is carried out in part by the licensing and regulation of various non-medical professions by the DBPR. This regulation is intended to protect the public by ensuring that regulated industries and professionals meet prescribed standards of education, competency, and practice.

Each profession is administered either directly by the DBPR or through a separately appointed board, council, or a commission. In addition to administering the professional boards, the DBPR processes applications for licensure and license renewal. The DBPR also receives and investigates complaints made against licensees and, if necessary, brings administrative charges. Enforcement authority includes the issuance of citations for violations pursuant to s. 455.224, F.S. This citation authority is currently limited by statute to apply only to regulated professions.

Sections 455.2177, .2178, and .2179, F.S., currently require the DBPR to monitor compliance by licensees of the various continuing education requirements of the practice acts. The DBPR is authorized to waive the monitoring for compliance for a program that has achieved 95% continuing education compliance by licensees of a particular profession. These sections also address the oversight of continuing education providers by the DBPR.

Rule 61-6.015, F.A.C., currently exempts architects and interior designers from the continuing education monitoring requirements of the DBPR.

Effect of Proposed Changes:

Section 8. Amends s. 455.213, F.S., to give the DBPR exclusive authority to adopt rules for applications for licensure and license renewal; prohibits the issuance or renewal of a license if the applicant has not complied with all statutory and legal requirements; specifies that any submission required to be made to the DBPR in writing may be made by electronic means.

Section 9. Amends s. 455.224, F.S., to expand the DBPR citation authority to all divisions of the DBPR rather than the current application to only professions regulated by DBPR.

Talent Agencies

Present Situation:

Part VII of chapter 468, F.S., requires the DBPR to license and discipline talent agents and their businesses. Regulation is designed for the primary purpose of preventing fraudulent and unscrupulous activities. To that end, applicants for licensure must provide proof of required experience, submit information for a background check, and establish their good moral character or reputation for fair dealing. There is no examination requirement associated with this program.

Effect of Proposed Changes:

The bill requires registration rather than licensure by DBPR (there is no regulatory board associated with this program). It creates a violation as a deceptive and unfair trade practice under chapter 501, F.S., with jurisdiction for enforcement lying in the courts.

Section 10. Amends s. 468.401, F.S., to correct references.

Section 11. Amends s. 468.402, F.S., to incorporate references to registration rather than licensure, to delete the penalty authority of the DBPR, and to provide for unlawful acts.

Section 12. Amends s. 468.403, F.S., to revise the application procedure to reflect registration requirements; to delete the application requirements for fingerprints, photographs, personal recommendations, and experience; and to remove language requiring the DBPR to investigate the applicant.

Section 13. Amends s. 468.404, F.S., to correct references.

Section 14. Amends s. 468.406, F.S., to require talent agencies distribute fee schedules and fee increases to clients rather than the DBPR.

Sections 15 and 16. Amends s. 468.407 and 468.410, F.S., to correct references.

Section 17. Amends s. 468.412, F.S., to delete requirements that a talent agency maintain records for the DBPR and post DBPR rules.

Section 18. Amends s. 468.413, F.S., to specify a civil action may be brought by an injured person for violations; to specify a court may suspend or revoke a registration for violations; to provide the DBPR may prohibit a talent agency from operating in the future; and to remove the authority of the DBPR to assess a fine against the talent agency.

Section 19. Amends s. 468.414, F.S., to delete language relating to the deposit of fines and penalties into the DBPR trust fund.

Section 20. Amends s. 468.415, F.S., to correct references.

Section 21. Repeals ss. 468.405 and 468.408, F.S., relating to the qualifications for licensure and bonding requirements.

Building Code Administrators and Inspectors

Present Situation:

Part XII of chapter 468, F.S., provides for the regulation of building code administrators and inspectors by the Board of Building Code Administrators and Inspectors within the DBPR. The statute provides for various types and levels of mandatory certification of building code administrators and inspection personnel. License fees and one-half of 1% surcharges on building permits fund the program.

A building code administrator supervises enforcement of building code regulation, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform. Part XII sets forth the requirements for licensure for the various types and categories of certificate holders, including education, experience and an examination. Local government employees are exempt from the payment of any examination fee.

The statutes provide for the issuance of a provisional certificate to newly employed persons and require the employee to work under the direct supervision of a certified building code administrator until full certification is achieved.

Effect of Proposed Changes:

The bill allows building code administrators absentee supervision over newly hired plans examiners or building codes inspectors who are not yet certified. The requirement for direct supervision could be met by using the telephone or other telecommunications devices for employees located in counties under 75,000 in population, or located in cities within those counties.

The bill further allows examination fees to be collected from a local government employee who fails to show for the examination (local government employees are currently exempt from application and examination fees).

Section 22. Amends s. 468.609, F.S., to allow direct supervision of an applicant for a provisional certificate in a county with a population of under 75,000 persons by absentee communications.

Section 23. Amends s. 468.627, F.S., to require the payment of examinations fees by employees of local government even when they fail to sit for the exam.

Engineers

Present Situation:

Engineers are licensed and regulated by the Board of Professional Engineers, under the DBPR, pursuant to chapter 471, F.S. Engineers perform consultation, planning, and design of engineering systems. Chapter 471, F. S., provides for testing, licensure, and discipline of engineers. Section 471.025, F.S., authorizes the Board of Professional Engineers to adopt by rule the form of the engineer seal used to approve their work.

Effect of Proposed Changes:

The bill amends chapter 471, F.S., to allow the DBPR to adopt rules authorizing more than one type of seal that an engineer may choose to use to seal their work product in Florida.

Section 24. Amends s. 471.025, F.S., to authorize the Board of Engineers to adopt rules to allow optional formats for seals that may be used by engineers to authenticate their documents.

Land Surveying and Mapping

Present Situation:

Chapter 472, F.S., requires the Board of Professional Surveyors and Mappers, under the DBPR, to license, regulate and discipline surveyors and mappers. This program is designed for the primary purpose of eliminating, according to the statements of legislative intent, the significant threat (economic) to the public presented by improper surveying and mapping of land, water, and space.

Requirements for licensure include good moral character, a degree in surveying and mapping, experience as a subordinate to a registered surveyor and mapper and successful passage of an examination. Certain exemptions from licensure are specified in s. 472.003, F.S., to include certain government employees and certain contractors in specified lines of work.

Effect of Proposed Changes:

The bill expands the exemptions from licensure to include employees of state or local government, employee leasing companies, and registered surveyors and mappers. The exemption would apply if the person works as a subordinate to a registered person in responsible charge of the subordinate.

The bill defines the term "employee" as a person who receives compensation from an employer who pays appropriate federal taxes and provides workers compensation. The term "subordinate" is defined as an employee who works directly under the supervision of a person licensed under

chapter 472, F.S. The term "monument" for surveying and mapping purposes is defined to be an object occupying a corner of real property or other reference point. The term "legal entity is defined.

The bill amends the current provisions that allow surveyors and mappers to enter upon private property to include subordinates to seek out monuments

The bill allows subordinates to enter upon private property to locate monuments if regulations pertaining to security and other health and safety precautions are observed. The bill limits landowner liability for negligent actions on the part of another.

Section 25. Amends s. 472.001, F.S., to correct a reference.

Section 26. Amends s. 472.003, F.S., to expand licensure exemptions to include subordinate employees of government units, employee leasing companies, and surveyors and mappers.

Section 27. Amends s. 472.005, F.S, to define "employee," "subordinate," "monument", and "legal entity."

Sections 28, 29, 30, and 31. Amends ss. 472.011, 472.015, 472.021, and 472.027, F.S., to correct references.

Section 32. Amends s. 472.029, F.S., to allow subordinates to enter upon private property to locate monuments.

Section 33. Amends s. 810.12, F.S., to clarify a reference to other persons being authorized to enter upon lands pursuant to chapter 472, F.S.

Sections 34 and 35. Amends ss. 472.031 and 472.037, F.S., to correct references.

Merger of Barber and Cosmetology Boards

Present Situation:

The Barbers' Board is established pursuant to provisions in Chapter 476, F.S. to regulate barbers, and is comprised of seven members, consisting of five who are licensed barbers and two who are consumer members. Board members serve for terms of four years, and are compensated for per diem and mileage expenses incurred while conducting official board business.

The Board of Cosmetology is established pursuant to provisions in Chapter 477, F.S. and regulates cosmetologists and cosmetology specialists such as manicurists, pedicurists, nail extension specialists, facial specialists, full specialists, hair braiders, hair wrappers, and body wrappers. The board is comprised of seven members, consisting of five who are licensed cosmetologists and two who are consumer members. Board members serve for terms of four years, and are compensated for per diem and mileage expenses incurred while conducting official board business, in addition to \$50 per day spent while conducting official board business.

Effect of Proposed Changes:

The bill amends chapter 476, and 477 F.S., to abolish the Barbers' Board and the Board of Cosmetology, and create a seven member Board of Barbering and Cosmetology consisting of three licensed barbers, three licensed cosmetologists, and one member who is not a licensed barber or cosmetologist. It also adopts and applies several statutory provisions, currently authorized for members of the Board of Cosmetology, to the newly created board.

The bill also amends chapter 476 and 477, F.S., to reflect definition changes resulting from the creation of the Board of Barbering and Cosmetology, and establishes that all rules of the Barbers' Board and Board of Cosmetologists currently in effect at the time the act becomes law will remain in effect and become the rules of the Board of Barbering and Cosmetology.

Additionally, the bill establishes that all appointments to the Board of Barbering and Cosmetology are new appointments, and that the Governor shall appoint new board members to a term of four or less years so that no more than two board member terms shall expire in any year. Lastly, the bill authorizes that the new board be replaced as the party of interest for all legal actions naming either of the abolished boards as a party.

Section 36. Amends s. 476.014, F.S., to correct a reference.

Section 37. Amends s. 476.034, F.S., to define "Board" as the Board of Barbering and Cosmetology.

Section 38. Amends s. 476.054, F.S., to title the section "Board of Barbering and Cosmetology", create the Board of Barbering and Cosmetology, and update board references where necessary.

Establishes that the newly created Board of Barbering and Cosmetology shall consist of three barbers, three cosmetologists, and a Florida citizen who is neither.

Adopts and applies the following statutory provisions, currently established for members of the Board of Cosmetology, to members of the newly created board:

- Board members shall be residents of Florida, and shall have maintained residency for at least five continuous years
- Board members shall receive compensation in the amount of \$50 for each day spent performing official board business, (in addition to the per diem and mileage allowance members of the Barbers' Board and Board of Cosmetologists presently receive)
- Board appointees shall, before accepting their duties as a board member, take the constitutional oath of office and file it with the Department of State, which shall then issue them a certificate of their appointment
- Board members shall elect from among themselves a chair and vice-chair in the month of January

Section 39. Amends s. 476.064, F.S. by deleting language requiring the board to annually elect a chair and vice chair from its members and hold annual meetings. Additionally, it deletes language authorizing the board chair to call meetings, requirements for what makes a quorum, and replaces "act" with "chapter" in reference to statute language. Finally, the section establishes that board personnel need not be licensed barbers or cosmetologists.

Sections 40, 41, 42, 43, and 44. Amends ss. 476.074, 476.154, 476.194, 476.214, and 476.234, F.S., to correct references.

Section 45. Amends subsection (1), s.477.013, F.S. to define "Board" as the Board of Barbering and Cosmetology as created in s.476.054, F.S.

Section 46. Repeals s. 477.015, F.S., which establishes the present Board of Cosmetology.

Section 47. Abolishes the Barbers' Board created pursuant to s. 476.054, F.S., and the Board of Cosmetology pursuant to s. 477.015, F.S., and establishes that all rules of the Barbers' Board and

the Board of Cosmetologists currently in effect at the time the act becomes law shall remain so and become rules of the Board of Barbering and Cosmetology.

Section 48. Affirms that the Board of Barbering and Cosmetology is a new board, and that all appointments to the board shall be made by the Governor, and that initial terms shall be made for a period of four years or less, so that more than two terms shall not expire in any given year. This section also establishes that the Board of Barbering and Cosmetology will assume all Barbers' Board responsibilities pursuant to chapter 476, F.S., and all Board of Cosmetology responsibilities pursuant to chapter 477, F.S.

Section 49. Establishes that the Board of Barbering and Cosmetology shall be replaced as the party of interests for any legal action that names the Barbers' Board or the Board of Cosmetology as a party.

Section 50. Deletes paragraph (c), of subsection (7), s. 477.019, F.S., establishing that the Board of Cosmetology may, through rulemaking, stipulate that licensees who violate the continuing education requirements be obligated to take a refresher course (consisting of 48 hours or less) or examination, or both, and endure any other penalty.

Section 51. Amends subsection (1), s. 477.026, F.S., to establish a fee, not to exceed \$25, for hair braider, hair wrapper, and body wrapper registration renewal and delinquent renewal.

Architects

Present Situation:

Architects are licensed and regulated by the Board of Architecture and Interior Design, under the DBPR, pursuant to part I of chapter 481, F.S. Architecture is performing services in connection with the design and construction of a structure having the principal purpose of human habitation or use. Regulatory provisions include testing, licensure and discipline of architects by DBPR.

Requirements for licensure include a degree in an approved architectural curriculum of five years or more which degree must be NAAB (National Architectural Accreditation Board) accredited or equivalent; successful completion of an internship; and successful completion of the Architect Registration Examination.

Persons may not use the title of architect or practice architecture unless properly licensed.

Effect of Proposed Changes:

Section 52. Amends s. 481.209, F.S., to remove the authority of the board to approve the curriculum of architectural degree programs.

Section 53. Amends s. 481.223, F.S., to allow any affected person to file for injunctive relief against a person conducting unlicensed activity relating to architecture or interior design services. The bill defines "affected person" as anyone who is affected and includes, but is not limited to, the DBPR, a client, or a private association composed of members of the profession in question.

Construction Industry Licensing Board (CILB)

Present Situation:

Construction contracting is regulated under part I of chapter 489, F.S. Construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Contractors either must be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only). Individuals who practice contracting in Florida must be registered with or certified by the CILB.

Single tier licensure refers to an effort initiated by the 1999 legislature to eliminate local licensure of contractors, thus making statewide licensure the only option. As an interim step toward single tier licensure, a bill was passed into law allowing registered contractors to be issued statewide certification upon application to the CILB. This authority allows registered contractors to be "grandfathered" into state certification.

The CILB is composed of 18 members: four general contractors, three building or residential contractors with at least one each on the board, one roofing contractor, one sheet metal contractor, one air conditioning contractor, one mechanical contractor, one pool contractor, one plumbing contractor, one underground utility and excavation contractor, two building officials of a municipality or county, and two consumer members.

The CILB is statutorily divided into two divisions, I and II. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors under the CILB. Section 489.107, F.S., requires the CILB and the Electrical Contractors' Licensing Board to each appoint a committee to meet jointly at least twice a year.

The CILB is currently located in Duval county Florida.

Effect of Proposed Changes:

The bill amends chapter 489, F.S., to reduce the size of the CILB from eighteen to sixteen members by eliminating one consumer member, and one local building official member. The bill moves the CILB from Jacksonville to Tallahassee.

The bill creates s. 489.1135, F.S., to authorize the CILB to issue a temporary certificate of competency pending final approval of the applicant. (There is some concern the DBPR does not have statutory authority to issue a temporary certificate though it is current practice.) It amends s. 489.118, F.S., to clarify the authority of specialty licenses, defined by rule, to be eligible to be grandfathered into state certification.

Section 54. Amends s. 489.107, F.S., to reduce the statutory membership of the Construction Industry Licensing Board from 18 members to 16 members.

Transfers the location of the CILB from Duval to Leon county.

Section 55. Creates s. 489.1133, F.S., to authorize the CILB to issue a temporary construction certificate to allow the applicant to begin construction work prior to final approval of the certificate of competency.

Section 56. Amends s. 489.115, F.S., to correct a reference.

Section 57. Amends s. 489.118, F.S., to clarify that specialty licenses, as defined by rule, are eligible to be grandfathered into state certification.

Electrical Contractors' Licensing Board (ECLB)

Present Situation:

Electrical and alarm system contracting is regulated under part II of chapter 489, F.S. Electrical and alarm system contractors are regulated by the Electrical Contractors' Licensing Board (ECLB) within the DBPR. These contractors either must be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only). Individuals who practice electrical or alarm system contracting in Florida must be registered with or certified by the ECLB.

The ECLB is composed of 11 members: 7 certified electrical contractors; 2 certified alarm system contractors; and 2 consumer members. Section 489.107, F.S., requires the CILB and the ECLB to each appoint a committee to meet jointly at least twice a year.

Effect of Proposed Changes:

The bill repeals the requirement for joint meetings with the CILB.

The bill authorizes the ECLB to qualify a person for certification by endorsement if they are applying from a state that has a mutual reciprocity endorsement agreement with the ECLB.

Section 58. Amends s. 489.507, F.S., to delete the requirement that the ECLB meet semi-annually with the CILB.

Section 59. States the ECLB develop a plan to reduce operating costs by \$25,000.

Section 60. Amends s. 489.511, F.S., to provide for licensure of electrical and alarm system contractors by reciprocal agreement with other states.

Land Sales Practices Transferred to the Division of Real Estate

Present Situation:

Land Sales - Chapter 498, F.S., provides for the administration of the provisions of Florida's Uniform Land Sales Practices Act by the Division of Florida Land Sales, Condominiums, and Mobile Homes relating to the offer and disposition of subdivided lands to the public. This registration program is designed to protect consumers from fraud and abuse in the sale or lease of vacant subdivided lands.

Primary funding for the program is provided by the collection of an annual renewal fee from each subdivider who has been issued a license to sell subdivided lands.

Real Estate - Regulation of real estate brokers and salespersons is established under part I of chapter 475, F.S. The Florida Real Estate Commission under the Division of Real Estate of the Department of Business and Professional Regulation administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Effect of Proposed Changes:

The bill amends chapter 498, F.S., to transfer the land sales registration program from the Division of Florida Land Sales, Condominiums, and Mobile Homes of DBPR to the Division of Real Estate of DBPR. It amends chapters 718, 719, 721, and 723, F.S., to reflect the transfer of the land sales registration program and to correct references regarding trust funds.

The bill also increases the enforcement authority of the division pursuant to chapter 718, F.S., as well as, chapters 719, 721, and 723, F.S. The bill specifically allows the division to file an action to enjoin a violation to appoint a receiver or conservator, to impound or sequester property, to require restitution, and to impose a civil penalty not to exceed \$10,000.

Section 61. Amends s. 498.005, F.S., to include the Division of Real Estate within the definition of “division” rather than the Division of Land Sales, Condominiums, and Mobile Homes.

Section 62. Amends s. 498.019, F.S., to correct references to the Professional Regulation trust fund rather than the Division of Land Sales, Condominiums, and Mobile Homes Trust Fund.

Sections 63 and 64. Amends ss. 498.049 and 190.009, F.S., to correct references.

Section 65. States the land sales program is moved to the Division of Real Estate along with trust fund balances.

Sections 66, 67, 68, 69, 70, 71, and 72. Amends ss 718.103, 718.105, 718.1255, 718.501, 718.502, 718.504, and 718.508, F.S., to correct references to reflect the new name of the division as the Division of Condominiums, Timeshare, and Mobile Homes. Section 69 also expands the enforcement authority of the division.

Section 73. Amends s. 718.509, F.S., to rename the trust fund as the Division of Condominiums, Timeshare, and Mobile Homes Trust Fund to reflect the transfer of land sales and the use of the funds for this program.

Sections 74 through 101. Amends ss. 718.608, 719.103, 719.1255, 719.501, 719.502, 719.504, 719.508, 719.608, 721.05, 721.07, 721.08, 721.26, 721.28, 721.301, 721.50, 723.003, 723.006, 723.0065, 723.009, 73.073, 192.037, 213.053, 215.20, 380.0651, 455.116, 475.455, 509.512, and 559.935, F.S. to correct references.

Section 102. Provides the act shall take effect October 1, 2001, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments below.

2. Expenditures:

	<u>2001-2002</u>	<u>2002-2003</u>
Talent Agencies	(16,626)	(16,626)
Bldg. Cd. Admin. & Insp.	(38,630)	(38,630)
Cosmo/Barbers	(32,607)	(32,607)
CILB – Move to Talla.	70,000	

CILB – Member reduction	(12,000)	(12,000)
Total	(29,863)	(99,863)

Also see fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill is partially designed to reduce the regulatory role of the DBPR in selected areas. Where program requirements are changed from licensure to registration, such as for talent agencies, the DBPR reports the respective fees could be anticipated to be reduced. Practitioners in the payment of lower fees should recognize cost savings.

The DBPR is authorized to impose a civil penalty against violators of chapters 718, 719, 721, and 723, F.S. in an amount not to exceed \$10,000. Violations of the provisions of these programs could prove to be costly.

D. FISCAL COMMENTS:

The DBPR reports the following estimated fiscal impact of the bill as reported to the committee via e-mail document on February 15, 2001:

Yacht and Ship Brokers

“Six FTE positions and \$269,343 will be transferred accordingly. Based on historical data, it is projected that when this function is moved to Professional Regulation no cash balance will be transferred. However, it is anticipated that revenues totaling more than \$550,000 will be generated annually. There should be no additional work level for staff within the Yacht and Ship Brokers’ Section.”

Talent Agencies

“This legislation would reduce costs related to board administrative costs and eliminate the investigative costs. Currently applicants pay a \$300 application fee and either \$200 or \$400 for licensure fees (depending on whether they are licensed in the first or second year of the biennium) along with \$39 for fingerprinting analysis and a \$5 unlicensed activity fee. The renewal fee is \$405 biennially, which includes a \$5 unlicensed activity fee. These fees would be reduced to cover administrative costs of registering applicants and renewing registrations.” [A savings of \$16,626 is projected by the DBPR]

Building Code Administrators and Inspectors

“Pursuant to statute, [local government employee] building code applicants do not pay an examination fee. As a result, there are a high percentage of no shows for the examination, approximately 15%. The amount paid by the Department in 1999-2000 for Building Code examinations where the candidate did not show up for the examination was \$38,630.”

Cosmetology/Barbers

“This legislation merges two boards. Revenues are expected to remain the same. Expenses, Legal Services and Other Personal Services will be reduced by \$32,607.”

CILB

“The bill will have a positive fiscal impact on state government. There will be an estimated up front cost to move the board office of \$70,412 in moving expenses and pay out of salaries and benefits. However, there will be at least an annual savings of \$30,000, not to mention the efficiencies which will be gained by having this profession located with the other professions within the Division of Professions. The board meets monthly. Reduction of five members results in 60 less payments each year for the costs associated with a board member’s travel and expenses related to the attendance of a meeting.” [The bill as filed provides for a 2 member reduction and therefore a projected savings of \$12,000 (estimated at \$6,000 per member)]

Land Sales/Real Estate

The Department currently regulates land sales. The bill transfers regulation of land sales to the Department’s Division of Real Estate along with one position and \$55,562 in salaries and benefits. In addition, unspent revenues for this business area will be transferred to the Professional Regulation Trust Fund. Annual revenues are projected to be \$96,950. Even though there is an existing deficit for this business area, the negative cash balance will be retained in the Florida Land Sales, Condominiums and Mobile Homes Trust Fund.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

The bill amends s. 471.025, F.S., to authorize the Board of Engineers to adopt rules to allow optional formats for seals that may be used by engineers to authenticate their documents.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 17 and April 18, the Council For Smarter Government adopted eight amendments that are traveling with the bill.

Amendment 1. The bill reduces the size of the CILB by two members. The amendment clarifies representation in the CILB Division I and Division II membership as a result of the reduction.

Amendment 2. Technical amendment clarifying a reference.

Amendment 3. Technical amendment correcting a typographical error.

Amendment 4. The amendment alters the composition of the newly created Board of Barbering and Cosmetology, which, as established in the bill, consisted of 3 barbers, 3 cosmetologists, and 1 consumer member. The amendment establishes that the new board shall consist of 2 barbers, 3 cosmetologists, 1 cosmetology specialist, and a consumer member.

Amendment 5. The amendment establishes that the Board of Barbering and Cosmetology (Board) shall adopt rules and criteria to be used by the DBPR in approving courses and providers for use by cosmetologists and cosmetology specialists seeking to fulfill statutory continuing education requirements; It establishes that the DBPR may not approve courses that it finds do not substantially and exclusively relate to cosmetology and subsequent regulatory objectives.

The amendment establishes that, if approved by DBPR, courses given at cosmetology conferences may count towards fulfilling cosmetologist and cosmetology specialist continuing education requirements; It establishes that approved correspondence courses offered by approved providers may count towards the same continuing education requirements. Courses must consist of a written post-course test that adequately addresses its content and students' understanding of course material, including a minimum passing score as established through Board rule.

Amendment 6. Currently, s. 399.061, F. S., as amended in 2000, provides for the privatization of DBPR's elevator inspection program. Owners of elevators licensed by DBPR, and requiring inspection, may choose between two methods of private inspection: annual inspection by a Qualified Elevator Inspector (private company inspector); or enter into a service maintenance contract, including bi-annual inspection, with a private company. DBPR may inspect if there are no private inspectors in a particular community. Elevators may also be inspected locally under certain circumstances.

The amendment clarifies that this section is designed to allow private inspectors to perform elevator safety inspections. It specifies the DBPR may charge a fee for inspections that are performed by state inspectors.

Amendment 7. Currently, certain disputes involving condominium and cooperative associations are required to be referred to non-binding arbitration by DBPR before the parties may file a court action.

This amendment repeals the requirement that the DBPR employ full-time arbitrators to operate the condominium and cooperative association dispute program. It further provides that only election and recall matters are subject to arbitration by the DBPR. Other condominium and cooperative disputes will be referred to local arbitration and mediation programs where available, and the DBPR will provide arbitration where a local program is not available.

The changes reflect budget reductions contained within the House Appropriations bill. Eight full time equivalent (FTE) positions are eliminated and spending authority of \$18,000 is reduced in the Land Sales, Condominium and Mobile Homes Trust Fund in DBPR.

Amendment 8. The amendment replaces language of the bill that relates to the development of license applications by DBPR rule. It specifies various categories of information the DBPR may require of applicants. It also allows the DBPR to require printed or electronic submission of information.

VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Alan W. Livingston

Staff Director:

Don Rubottom