

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 601

Department of Business and Professional Regulation

**SPONSOR(S):** Hudson and others

**TIED BILLS:**

**IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>11 Y, 0 N</u>	<u>Livingston/Smith</u>	<u>Liepshutz</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

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

This bill de-regulates the sale of subdivided land by the DBPR under the Division of Florida Land Sales, Condominiums and Mobile Homes. The bill re-names the Division of Florida Land Sales, Condominiums and Mobile Homes as the Division of Florida Condominiums, Timeshares and Mobile Homes.

Jurisdiction over fraudulent acts in the disposition of five or more lots is transferred to the State Attorney where the fraudulent sale took place.

The bill amends numerous statutory provisions for purposes of conforming references.

The bill eliminates the currently required background check for farm labor contractors that are federally registered. The bill authorizes the DBPR to close deficient license application files for all categories of applicants for licensure after two years. The bill deletes the requirement that classroom rosters for real estate courses be submitted to the DBPR.

The bill allows applicants to take the electrical/alarm contractor certification examination prior to review by the Electrical Contractor's Licensing Board of the applicant's experience and training qualifications. The bill authorizes the board to provide by rule the number of times per year the applicant may take the examination.

The bill provides for amateur mixed martial arts events in Florida to be sanctioned and supervised by MMA amateur sanctioning organizations approved by the Florida State Boxing Commission.

This bill imposes a \$100 fee filing for amendments to prospectus disclosure documents required of mobile home park owners.

The Department of Business and Professional Regulation anticipates collecting \$33,800 annually as a result of the new filing fee related to amendments to prospectus disclosure documents; however, the department expects a net reduction in annual revenues of approximately \$243,000 in FY 2008-09 and every year thereafter related to the department's elimination of regulatory purview over subdivided lands.

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

**STORAGE NAME:** h0601a.BR.doc

**DATE:** 3/21/2008

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government/Ensure Lower Taxes

The bill is designed to eliminate the current regulatory review by the state of land sales practices relating to the sale or lease of vacant subdivided lands.

The bill creates a new fee to be paid for filing amendments to prospectus disclosure documents required of mobile home park owners.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

The DBPR was established in 1993 (chapter 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 of education, competency, and practice.

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. 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.

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

The bill contains numerous modifications relating to several programs, including the repeal of the land sales program, under the DBPR.

See below, section directory portion of this analysis.

#### C. SECTION DIRECTORY:

The following section-by-section analysis includes the Present Situation and Effect of Proposed Changes for referenced sections of the bill where appropriate.

##### **Land Sales Practices**

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 (division) 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.

## The DBPR reports:

Currently, most sellers are either exempt or are under the jurisdiction of the federal Interstate Land Sales Act regulated by HUD. Few Florida sellers restrict themselves to only offering subdivided land intrastate. The same is true of the re-sale of subdivided land with many of the offerings being made on the Internet. The division has seen a steady decline in new Florida subdivisions being registered since the passage of the laws requiring county comprehensive plans. Counties now require that the necessary infrastructure be in place in new subdivisions prior to final county approval and counties now require that assurances, e.g. bonds or letters of credit, be posted to assure completion of infrastructure—heretofore a responsibility of the division under chapter 498, FS. Currently, the division (LSC) holds no bonds or letters of credit assuring the completion of subdivision infrastructure. During fiscal year 2006-2007, and in the year to date through 12/31/2007, three (3) sellers have registered with the division lots in six (6) Florida subdivisions. Three (3) sellers have registered eleven (11) out-of-state subdivisions. Only one (1) seller has registered a new in-state subdivision, an RV park.

The DBPR states that “The need for state regulation of the land sales industry is reduced due in part by increased regulation of new developments by local government and the federal regulation of interstate land sales.”

**This bill** de-regulates the sale of subdivided land by the DBPR under the division. It transfers, by amending and re-numbering, certain sections of chapter 498 F.S., to chapter 718 F.S., to retain those provisions that chapter 718, F.S., had relied upon for authority, e.g. payment of per diem, mileage, and other expenses for division employees and reimbursement of expenses for on-site review or investigation, service of process and a definition of common promotional plan. **The bill** re-names the Division of Florida Land Sales, Condominiums and Mobile Homes as the Division of Florida Condominiums, Timeshares and Mobile Homes.

**The bill** transfers those sections in chapter 498, FS, relating to fraudulent acts, to part II of chapter 501, F.S., to be handled as unfair and deceptive trade practices. The DBPR notes that currently “when a land sales investigation uncovers clear instances of fraud, the DBPR currently forwards its investigative file to law enforcement (local law enforcement, FDLE, or the State Attorneys) because it [DBPR] has no criminal jurisdiction.” “Therefore, [the bill by] placing the anti fraud provisions into the deceptive trade practices act (part II of chapter 501) merely codifies what already happens now.”

**The bill** implements the name change for the division. Various sections of the bill correct the division name where referenced in other statutes. The enforcement authority granted to the division in chapters 326, 718, 719, 721, and 723, F.S., is amended by **the bill** to cross reference appropriate enforcement authority due to the repeal of chapter 498, F.S.

Selected sections of the bill relating to land sales include the following in numerical order:

Section 3 repeals s. 190.009(2), F.S. There will no longer be any disclosures required to be filed with the division. Section 190.009(2), FS, provides that the division ensure that developers of community development districts include certain disclosures in their offering statements.

Section 10 amends s. 380.06, F.S., to provide that the rights of any person to complete any development are not affected by the repeal of chapter 498, F.S.

Section 12 amends s. 381.0065(4)(c), F.S. to delete the requirement that the division maintain financial assurances securing the completion of promised improvements.

Section 20 amends s. 494.008, FS, to remove a reference to developers registered under chapter 498, F.S.

Sections 21 through 23 transfer certain enforcement powers granted to the division from chapter 498, F.S., to chapter 718, F.S., relating to condominiums.

Section 24 amends s. 501.2076, F.S., to transfer the fraud enforcement sections of chapter 498, FS, to chapter 501, F.S.

Section 25 amends s. 718.50155, F.S., to clarify how the division may obtain service of process on regulated parties.

Section 26 repeals numerous sections of chapter 498, F.S.

Section 34 amends section 718.112(2)(f)1., F.S., to require condominium associations to adopt their annual budget prior to the start of the association's fiscal year. Chapter 718, F.S., requires that condominium associations prepare annual budgets, but does not state when these budgets must be prepared.

### **Mobile homes**

Section 62 amends s. imposes a \$100 filing fee for amendments to prospectus disclosure documents required of mobile home park owners. Currently, chapter 723, F.S., requires that amendments to mobile home prospective disclosure documents be filed with the division for review and approval, but does not provide for fees to pay for the review of the amendments.

### **Professions**

Section 13 relates to **farm labor contractors**. **The bill** amends s. 450.33, F.S., to eliminate the currently required background check for farm labor contractors that are federally registered.

Section 14 relates to **incomplete license applications**. **The bill** amends s. 455.203, F.S., to authorize the DBPR to close deficient license application files after two years.

Section 16 relates to **real estate schools**. **The bill** amends s. 475.451, F.S., to delete the requirement that classroom rosters for real estate courses be submitted to the DBPR.

The licensing and regulation of **electrical and alarm contractors** is governed by part II, chapter 489, F.S. Part II, chapter 489, F.S., provides for registered and certified contractors. Registered contractors satisfy local requirements for a specific county or municipality and register with the DBPR. They are limited to practice within their local areas. Certified contractors apply directly to the DBPR to take an examination for statewide licensure. Section 489.511(1), F.S., requires the applicant to submit the application for certification to the DBPR for review by the Electrical Contractors' Licensing Board for determination of eligibility to sit for the examination. The board determines the applicant's eligibility based upon a review of the applicant's moral character, experience and training. Upon the board's approval, the applicant is scheduled for the examination. Section 489.511(3), F.S., allows for the applicant to take the examination three times. After three unsuccessful attempts the applicant may have to complete additional training before re-attempting the examination.

Section 18 amends s. 489.511(1), F.S., to allow an applicant to take the electrical/alarm contractor certification examination prior to being reviewed by the Electrical Contractor's Licensing Board. Upon successfully passing the examination, the applicant applies to the DBPR for board review of additional qualifications, including moral character, experience and training. Upon the board's determination that the applicant meets the additional criteria the license is granted. The bill authorizes the board to establish by rule the number of times per year the applicant may take the examination. After three unsuccessful attempts the board may require additional training before the applicant may re-attempt the examination.

Chapter 548, F.S., provides for the licensure and regulation of pugilistic events, including **boxing, kickboxing, and mixed martial arts**. Chapter 548, F.S., authorizes the Florida State Boxing Commission to administer the provisions of the chapter. Section 548.0065, F.S., provides that no boxing or kickboxing match involving amateurs may be held in Florida unless it is sanctioned and supervised by an amateur sanctioning organization approved by the commission. Section 548.008, F.S., prohibits amateur mixed martial arts events in Florida.

Sections 29 and 30 amend provisions of chapter 548, F.S., to provide for amateur mixed martial arts events in Florida to be sanctioned and supervised by amateur sanctioning organizations approved by the Florida State Boxing Commission.

The bill contains numerous sections that amend various statutory provisions to make **conforming changes and correct references**. See bill sections 1, 2, 4, 5, 6, 7, 8, 9, 11, 15, 17, 19, 20, 27, 28, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 63.

Section 64. Effective date - July 1, 2008

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The filing fee for mobile home park owners contained within the legislation is expected to increase revenues to the mobile home account in the Land Sales, Condominiums, and Mobile Homes Trust Fund by \$33,800 annually. The department anticipates an annual loss of revenue of \$276,635 in the land sales account in the Land Sales, Condominiums, and Mobile Homes Trust Fund as a result of provisions in the bill that no longer require the department to regulate subdivided land.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

Developers will no longer have to pay fees and fines associated with subdivided lands. Mobile home park owners will now be subjected to a filing fee when they make amendments to their prospectus documents.

### D. FISCAL COMMENTS:

The department will receive some revenues every year related to the mobile home filing fee provision contained in the bill but will ultimately experience an annual net loss of revenue of approximately \$243,000 due to non-retention of regulatory oversight of subdivided lands.

### 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.

#### B. RULE-MAKING AUTHORITY:

The repeal of chapter 498, F.S., will result in the repeal of Chapters 61B-3 through 61B-13, FAC.

The bill authorizes the Electrical Contractors' Licensing Board to establish by rule the number of times per year an applicant may take the certification examination and specifies that after three unsuccessful attempts the board may require additional training before the applicant may re-attempt the examination.

Sections 29 and 30: The Florida State Boxing Commission will need to amend its amateur sanctioning rules to reflect the inclusion of mixed martial arts events. The practice act as amended by the bill will provide sufficient authority for the amendments.

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

The DBPR points out that "section 28 of the bill amends section 517.301(2)(a), F.S., to change a cross reference to chapter 498, F.S., to cross reference chapter 718, F.S. This amendment should have repealed the cross reference as persons engaged in the sale of a business opportunity are not registered under chapter 718, F.S."

The DBPR further notes that "section 36 of the bill amends section 718.501, F.S., to include the enforcement authority transferred from chapter 498, F.S. However, lines 1213 through 1221, regarding rescission rights and establishment of refund assurances are not currently found in chapter 498, F.S., and are not applicable to condominiums. These lines should be removed from the bill."

#### D. STATEMENT OF THE SPONSOR

This bill will allow DBPR to better serve its 1.1 million licensees by streamlining the application and renewal processes by eliminating duplicative processing requirements, allow quicker entry to the marketplace by allowing potential licensees to sit for exams before applying for licensure. Furthermore, this bill de-regulates the sale of subdivided land by the Department of Business and Professional Regulation's Division of Florida Land Sales, Condominiums and Mobile Homes (LSC). Although, the analysis shows a revenue loss of \$237,000, the long range forecast is that by eliminating this duplicative process of Federal law, it stops a yearly budget deficit within the FLSCMH Trust fund, and allows the Agency to provide a better allocation of resources to better serve it's licensees.

Other Legislative Proposal Cause/Effect Points:

- Removes requirement for a background check to Farm Labor Contractors who are already Federally registered.
- Allows the Department the authority to administratively close deficient license application files after two years.

- Provides the Department with administrative authority to approve complete, non-controversial applications for professional licenses. (Improves processing times)
- Allows the Florida State Boxing Commission to oversee sanctioned amateur mixed martial arts events.
- Removes requirements that real estate classroom rosters is unnecessary to the Department.

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

On March 20, 2008, the Business Regulation Committee adopted a strike-all amendment and passed the bill, as amended. The strike-all is traveling with the bill. The major differences of the amendment and the bill as originally filed include the following.

- Deletes the \$100 prospectus fee for mobile home lots.
- Deletes submission of annual budgets by homeowner associations.
- Allows a real estate broker to gain experience over a 24 month period instead of a 12 month period.
- Adds language granting the boxing commission rule authority to require amateur fighters to compete in a certain number of amateur fights prior to licensure.
- Clarifies that individuals who sell manufactured and factory-built buildings can legally enter into contracts for those sales.
- Allows the Hotels & Restaurant Division the statutory authority, similar to other divisions within the department, to establish disciplinary guidelines pursuant to section 455.2255 F.S.