

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 2, 1998 Revised: 3/13/98 _____

Subject: Mortgage Lenders (Rule Authorizing Bill)

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|-------------------------|
| 1. | <u>Johnson</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Fav/2 amendments</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

This is a rule authorizing bill that authorizes a one time transfer of at least 50 percent of the ownership, control, or voting power of a licensed mortgage lender (under s. 494.0065, F.S.) by an ultimate equitable owner of the lender. The bill also authorizes a person who is an ultimate equitable owner, as of the bill's effective date, to transfer at least 50 percent of the ownership, control, or voting power to the person's spouse or child, and any such transferee may transfer, at any time, such ownership, control, or voting power to a spouse or child of such transferee, in perpetuity. The transfers authorized by the bill would be subject to the old licensure requirements, including the \$25,000 net worth requirements. All subsequent transfers, excluding the spouse or child transfer, would require approval by the Department of Banking and Finance and would be subject to the \$250,000 net worth requirement.

The bill provides the statutory authorization for three department rules, which the agency deems necessary, that currently exceed the agency's rulemaking authority.

This bill substantially amends section 494.0065 of the Florida Statutes.

II. Present Situation:

During the 1996 Legislative Session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority, if it was reasonably related to the stated purpose of the enabling legislation.

Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

During the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted, pursuant to s. 120.536, F.S.

Rules not included on the list submitted by the agency, along with rules adopted after October 1, 1996, could be challenged on grounds of exceeding the agencies rulemaking authority after November 1, 1997. Rules included on the submitted list may not be challenged on such grounds until July 1, 1999. Thus, while the statutes direct the 1998 Legislature to consider whether legislation authorizing identified rules should be enacted and while agencies must begin the rule repeal process for identified rules before January 1, 1999, rules identified as exceeding the new rulemaking authority are not subject to challenge on such grounds until July 1, 1999, after the 1999 Legislative Session.

The Department of Banking and Finance has identified three rules, relating to mortgage lenders, that exceed statutory authority. Section 494.0061, F.S., authorizes the department to issue an initial mortgage lender's license to any person that submits: 1) a completed application form, 2) a nonrefundable fee, not to exceed \$500, 3) audited financial statements documenting a net worth of \$250,000, 4) a surety bond in the amount of \$10,000, and 5) documentation that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited liability company, or other lawful entity.

As a result of legislation enacted by ch. 91-245, L.O.F., any person in good standing who held an active registration (on September 30, 1991) and met certain requirements was eligible to apply to the department for a mortgage lender's license if the person had documented a net worth of \$25,000 in audited financial statements, under the provisions of s. 494.0065, F.S., ("Savings Clause"). Rules 3D-99, 3D-40.100, and 3D-105, F.A.C., authorize a change in ownership or control of savings clause mortgage lenders' license and branch office through a sale or transfer.

Presently, 343 of the approximately 1,750 mortgage lenders are licensed under the savings clause provisions. Of these licenses, 68 have been transferred at least once since 1993. Persons that were grand fathered under the savings clause and persons that have subsequently purchase done of these licenses are authorized to sell the license and all subsequent holders of that license are subject to the lower financial requirements (i.e., net worth).

In contrast, under the provisions of s. 494.0061(5), F.S., a license issued in accordance with ss. 494.006 - 494.0077, F.S., on or after October 1, 1991, is not transferable or assignable; therefore businesses licensed under chapter 494, F.S., must apply for a new license (under the higher net worth requirements) when the company is sold or transferred.

III. Effect of Proposed Changes:

Section 1. Amends subsections (3) and creates subsections (4) - (7) of s. 494.0065, F.S., relating to the Saving Clause, to authorize the department to prescribe by rule for a *one-time* transfer by the ultimate equitable owner, as of the effective date of the bill, of a mortgage lender licensed under this section, at least 50 percent of the ownership, control, or power to vote any class of equity securities of such mortgage lender. However, the ownership, control, or power to vote any class of equity securities may be transferred to the person's spouse or child, and any transferee may transfer, at any time, such ownership, control, or power to vote to a spouse or child of such transferee, in perpetuity.

The department is authorized to require each applicant for any transfer to provide any information necessary to make a determination of the applicant's eligibility for licensure. The department is authorized to issue the transfer of licensure to any person who submits the following documentation: 1) a completed application, 2) a nonrefundable fee, not to exceed \$500, as prescribed by rule; 3) audited financial statements documenting a net worth of at least \$25,000, and 4) documentation that the applicant is incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity.

The department is also authorized to require that each officer, director, and ultimate equitable owner of a 10 percent or greater interest in the applicant submit a complete set of fingerprints taken by an authorized law enforcement officer.

The department is authorized to deny a transfer if the applicant, any principal officer or director of the applicant, or any natural person owning a 10 percent interest in the applicant has committed a violation of s. 494.0072, F.S., or has entered a plea of nolo contendere, regardless of the adjudication, or has an action pending against the applicant in any criminal prosecution or administrative enforcement action, in any jurisdiction, which involves fraud, dishonest dealing, or any moral turpitude.

Section 2. This act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Once the one-time transfer has been exercised, any further transfers, except for transfers to spouses or children, would be subject to a new license application and the higher net worth requirements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 1 of the bill does not provide specific authority for the department to prescribe by rule forms and procedures for a branch office permit application and amendments and withdrawals of applications for licensure of branch offices.

VII. Related Issues:

None.

VIII. Amendments:**#1 by Banking and Insurance:**

Includes authorization for the department to adopt rules regarding withdrawal and amendment of applications for transfer of a license, including transfer of branch office permits.

#2 by Banking and Insurance:

Specifies that any transfer of a branch permit would be subject to the branch permit fee and informational requirements of s. 494.0066. (WITH TITLE AMENDMENT)