

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2210

SPONSOR: Regulated Industries Committee and Senator Campbell

SUBJECT: Business & Professional Regulation

DATE: April 19, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill increases the enforcement authority of the Division of Land Sales, Condominiums, and Mobile Homes; decreases the jurisdiction of the Division's arbitration program; transfers regulation of land sales from the Division to the Division of Real Estate; decreases the membership of the Construction Industry Licensing Board by two members; transfers the regulation of yacht and ship brokers from the Division of Land Sales, Condominiums, and Mobile Homes to the Division of Professions; decreases the level of regulation of talent agencies; and merges the Barbers' Board and the Board of Cosmetology.

The bill substantially amends the following sections of the Florida Statutes: 20.165, 326.001, 326.002, 326.003, 326.004, 326.006, 399.061, 455.213, 455.224, 468.401, 468.402, 468.403, 468.404, 468.406, 468.407, 468.410, 468.412, 468.413, 468.414, 468.415, 468.609, 468.627, 471.025, 472.003, 472.005, 472.029, 810.12, 472.001, 472.011, 472.015, 472.021, 472.027, 472.031, 472.037, 476.034, 476.054, 476.064, 476.014, 476.074, 476.154, 476.194, 476.214, 476.234, 477.013, 477.019, 477.026, 481.209, 481.223, 489.107, 489.115, 489.118, 489.511, 498.005, 498.019, 498.049, 190.009, 718.103, 718.105, 718.1255, 718.501, 718.502, 718.504, 718.508, 718.509, 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, 721.82, 721.84, 723.003, 723.006, 723.0065, 723.009, 73.073, 192.037, 213.053, 215.20, 380.0651, 455.116, 475.455, 509.512, 559.935, 468.452, 468.453, 469.454, 468.456, 468.45615, 468.4562, and 468.4565.

The bill also creates section 489.1133 and as yet un-numbered sections of the Florida Statutes.

The bill also repeals the following sections of the Florida Statutes: 468.405, 468.408, 477.015, 489.507(6), 468.4563, and 468.4564.

**II. 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.

**III. Effect of Proposed Changes:****Chapter 20, F.S., DBPR Organization****Present Situation:**

Section 20.165, F.S., establishes the organizational structure of the DBPR, including the divisions and boards within the DBPR. It also establishes the number of consumer representatives that must be on each board. A board with five or more members must have at least two consumer members who are not, and have never been, members or practitioners of the profession regulated. A board with fewer than five members must have one such consumer member.

**Effect of Proposed Changes:**

**Section 1** amends s. 20.165, F.S., to decrease consumer representation on boards. Each board with seven members must have at least two consumer members, and each board with fewer than seven members must have at least one consumer member. The bill also changes references to divisions and boards that are being reorganized in the bill.

**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.

Section 326.004, F.S., authorizes the division to deny a license based on specified criteria. Applicants' fingerprints are submitted to the Florida Department of Law Enforcement for criminal history analysis.

Section 326.006, F.S., provides that when the division is conducting an investigation and a person fails to obey a subpoena or answer questions, the division may apply to the circuit court for an order compelling compliance. The section also provides that the division may suspend or revoke the license of a broker or salesperson who does specified acts.

**Effect of Proposed Changes:**

**Sections 2, 3, and 4** amend ss. 326.001, 326.002, and 326.003, F.S., to make conforming changes.

**Section 5** amends s. 326.004, F.S., to authorize the DBPR to deny the renewal of a license based on the same criteria currently used to deny the initial license. The section provides that the DBPR is to submit fingerprints to the Federal Bureau of Investigation for criminal history analysis, as well as to the Florida Department of Law Enforcement.

**Section 6** amends s. 326.006, F.S., to create additional remedies for failure of a person to obey a subpoena or answer questions, authorizing the DBPR to impose a civil penalty or to suspend or revoke a licensee's license. The bill also adds to the current authority to suspend or revoke a license the authority to suspend or revoke the license of a broker or salesman for engaging in actions that show a lack of good moral character, for being convicted of a felony, or for having had a license suspended, revoked, or sanctioned in another state.

**Section 7** 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 and provides for the transfer and deposit of funds between trust accounts.

### **Elevator Inspections**

**Present Situation:**

Section 399.061, F.S., provides for inspection of elevators, requiring an inspection by a third-party inspection service certified as a qualified elevator inspector or maintained pursuant to a service maintenance contract continuously in force. A statement verifying the existence, performance, and cancellation of each service maintenance contract must be filed annually with the division as prescribed by rule. All elevators covered by a service maintenance contract must be inspected by a certificate-of-competency holder at least once every 2 years; however, if the elevator is not an escalator or a dumbwaiter and the elevator serves only two adjacent floors and is covered by a service maintenance contract, no inspection is required so long as the service contract remains in effect. Additionally, the division may inspect an elevator whenever necessary to ensure its safe operation.

The division must employ state elevator inspectors to conduct inspections. Each state elevator inspector must hold a certificate of competency issued by the division.

Whenever the division determines from the results of any inspection that, in the interest of the public safety, an elevator is in an unsafe condition, the division may seal the elevator or order the

discontinuance of the use of the elevator until the division determines by inspection that such elevator has been satisfactorily repaired or replaced so that the elevator may be operated in a safe manner.

When the division determines that an elevator is in violation of this chapter, the division may issue an order to the elevator owner requiring correction of the violation.

**Effect of Proposed Changes:**

**Section 8** amends s. 399.061, F.S., to require that inspections be done annually and that they be done by either the third-party inspection service or by a municipality or county under contract with the division. The division is to inspect an elevator when a third-party inspection service is not available. The division is authorized to charge a fee for inspections.

**Chapter 455, F.S., DBPR General Powers**

**Present Situation:**

Chapter 455, F.S., provides the general powers and duties of the DBPR in regulating various non-medical professions. This regulation is intended to protect the public by ensuring that regulated industries and professionals meet prescribed standards of education, competency, and practice.

Section 455.213, F.S., provides for licensure, requiring that any person desiring to be licensed apply in writing on a form prepared and furnished by the DBPR.

Section 455.224, F.S., provides that the board or the DBPR is to adopt rules to permit the issuance of a citation for violation of a law for which there is no substantial threat to the public health, safety, or welfare.

Section 455.017, F.S., provides that the provisions of chapter 455 apply only to the regulation of professions by the department.

**Effect of Proposed Changes:**

**Section 9** amends s. 455.213, F.S., *effective July 1, 2001*, to make DBPR responsible for the content of all initial and renewal licensure documents, and to specify required information. Any submission that is required to be in writing may be done electronically. Finally, a license may not be issued or renewed to any person who has not complied with all provisions of a final order of a board or the DBPR or with all legal requirements of chapter 455 or the relevant practice act, including the obligations to pay all fees and to complete all continuing education.

**Section 10** amends s. 455.224, F.S., to say that, s. 455.017, F.S., notwithstanding, any division within the DBPR may establish a citation program.

## Talent Agencies

### Present Situation:

Part VII of chapter 468, F.S., requires the DBPR to license and discipline talent agents and their businesses. 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).

**Section 11** amends s. 468.401, F.S., to change the defined terms “license” and “licensee” to “registration” and “registrant.”

**Section 12** amends s. 468.402, F.S., on discipline, deleting the remedies of administrative fine, restitution, public reprimand, and probation, leaving the remedies of denial or revocation or suspension of a registration.

**Section 13** of professions 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 14** amends s. 468.404, F.S., to make conforming changes.

**Section 15** amends s. 468.406, F.S., to require talent agencies to distribute fee schedules and fee increases to clients rather than the DBPR.

**Sections 16 and 17** amend ss. 468.407 and 468.410, F.S., to make conforming changes.

**Section 18** amends s. 468.412, F.S., to delete requirements that a talent agency make records open for DBPR inspection.

**Section 19** amends s. 468.413, F.S., to create a civil action for any person injured by a prohibited act for injunctive relief or appropriate civil relief, including a \$5,000 civil penalty, restitution, treble damages, and court costs and attorney’s fees. The section also deletes DBPR fine authority.

**Section 20** amends s. 468.414, F.S., to delete language relating to the deposit of fines and penalties into the DBPR trust fund.

**Section 21** amends s. 468.415, F.S., to make conforming changes.

**Section 22** 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. The program is funded by license fees and a one-half of 1% surcharge on building permits.

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.

Section 468.609, F.S., requires that a newly employed person be supervised by a certified building code inspector who holds a standard certification, however, a building code inspector with a limited or provisional certificate may provide direct supervision in a county with a population of less than 75,000 and in any municipality within such a county.

Section 468.627, F.S., exempts employees of local governments from application or exam fees.

#### **Effect of Proposed Changes:**

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 23** amends s. 468.609, F.S., to allow direct supervision by telecommunication in a county with a population of less than 75,000 persons or in a city within such a county.

**Section 24** amends s. 468.627, F.S., to require the payment of examinations fees by employees of local government when they fail to report for the scheduled exam. The DBPR has discretion to waive fees in hardship cases.

## Engineers

### Present Situation:

Section 471.025, F.S., requires engineers to sign, date, and seal, using an impression type metal seal, all final drawings, specifications, plans, reports, or documents they prepare.

### Effect of Proposed Changes:

**Section 25** amends s. 471.025, F.S., to authorize the Board of Engineers to adopt rules on the forms of seals.

## Land Surveying and Mapping

### Present Situation:

Section 472.003, F.S., exempts specified persons from regulation as surveyors and mappers, including certain government employees.

Section 472.029, F.S., allows surveyors and mappers to go on lands of others when necessary to make surveys or maps without being subject to arrest or civil action.

### Effect of Proposed Changes:

**Section 26** amends s. 472.001, F.S., to correct a cross-reference.

**Section 27** amends s. 472.003, F.S., to expand licensure exemptions to include persons who are subordinate to registered surveyors or mappers in their position as an employee of government units, employee leasing companies, and surveyors and mappers.

**Section 28** amends s. 472.005, F.S., to define “employee,” “subordinate,” “monument,” and “legal entity.”

**Sections 29, 30, 31, and 32** amend ss. 472.011, 472.015, 472.021, and 472.027, F.S., to conform references.

**Section 33** amends s. 472.029, F.S., to allow surveyors, mappers, and their subordinates to enter upon private property to locate monuments. No landowner is liable to any third party for any civil or criminal act resulting from such entry. If a landowner is given at least 72 hours written actual notice, the duty of care owed to those entering the property is that due a licensee. If no such notice is given, the duty of care owed is that due an unforeseen trespasser.

**Section 34** amends s. 810.12, F.S., on trespass, to conform.

**Sections 35 and 36** amends ss. 472.031 and 472.037, F.S., to conform references.

## Merger of Barber and Cosmetology Boards

### Present Situation:

The Barbers' Board is established pursuant to 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 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 chapters 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 two licensed barbers, four 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 37** amends s. 476.014, F.S., to make conforming changes.

**Section 38** amends s. 476.034, F.S., to define "Board" as the Board of Barbering and Cosmetology.

**Section 39** amends s. 476.054, F.S., to replace the Barbers' Board with the Board of Barbering and Cosmetology. The newly created Board of Barbering and Cosmetology consists of two barbers, four cosmetologists, and a Florida citizen who is neither.



Board members receive compensation in the amount of \$50 for each day, up to a maximum of \$2,000 per year, 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.

Each January, board members shall elect from among themselves a chair and vice-chair.

**Sections 40, 41, 42, 43, 44, 45, and 46** amend ss. 476.064, 476.074, 476.154, 476.194, 476.214, 476.234, and 477.013, F.S., to make technical and conforming changes.

**Section 47** repeals s. 477.015, F.S., which establishes the present Board of Cosmetology.

**Section 48** abolishes the Barbers' Board and the Board of Cosmetology 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 49** provides that all appointments to the Board of Barbering and Cosmetology are new and shall be made by the Governor, subject to confirmation. Initial terms are for a period of four years or less so that no more than two terms will 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 50** establishes that the Board of Barbering and Cosmetology is to be substituted as the party of interest in any legal action that names the Barbers' Board or the Board of Cosmetology as a party.

**Section 51** amends s. 477.019, F.S., to provide that the board is to establish criteria for the approval of continuing education courses and providers, is to approve such courses and providers, and may not approve any course that does not substantially and exclusively relate to the practice of cosmetology.

**Section 52** 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:**

Section 481.209(1), F.S., provides that to take the architect exam, an applicant must have either successfully completed all architectural curriculum courses required by and be a graduate of a school or college of architecture accredited by the National Architectural Accreditation Board; or be a graduate of an approved architectural curriculum, evidenced by a degree from an unaccredited school or college of architecture approved by the board, with the board to adopt rules providing for the review and approval of unaccredited schools and colleges of architecture and courses of architectural study based on a review and inspection by the board of the

curriculum of accredited schools and colleges of architecture in the United States, including those schools and colleges accredited by the National Architectural Accreditation Board.

Section 481.223, F.S., prohibits a person from knowingly: practicing architecture unless the person is an architect or a registered architect; practicing interior design unless the person is a registered interior designer unless otherwise exempted herein; or using the name or title “architect” or “registered architect,” or “interior designer” or “registered interior designer,” or words to that effect, when the person is not then the holder of a valid license.

### **Effect of Proposed Changes:**

**Section 53** amends s. 481.209, F.S., to delete the requirement that an applicant successfully complete all architectural curriculum courses, leaving the requirement that the applicant be a graduate of a school or college of architecture accredited by the National Architectural Accreditation Board.

**Section 54** 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 directly affected by the violation 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 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:**

**Section 55** amends s. 489.107, F.S., *effective July 1, 2001*, to reduce the statutory membership of the Construction Industry Licensing Board from 18 members to 16 members, deleting one consumer member and one building official member.

**Section 56** creates s. 489.1133, 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.) If the CILB determines that the applicant does not meet all requirements of certification, it is to revoke the temporary certification, after notice to the applicant.

**Section 57** amends s. 489.115, F.S., to correct a reference.

**Section 58** 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:**

**Section 59** amends s. 489.507, F.S., to delete the requirement that the ECLB meet semi-annually with the CILB.

**Section 60** requires that the ECLB review its operations and develop a plan to reduce operating costs by \$25,000, submitting the plan to the DBPR by January 1, 2002.

**Section 61** amends s. 489.511, F.S. This section currently provides that a person is qualified for certification by endorsement if the person: meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.521; or holds a valid license to practice electrical or alarm system contracting issued by another state or territory of the United States, if the criteria for issuance of such license was substantially equivalent to the certification criteria that existed in this state at the time the certificate was issued. The bill deletes the provision on licensure in another state and replaces it with a provision for licensure of electrical and alarm system contractors by reciprocal agreement with other states, if the person also meets the other requirements for certification.

### **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:**

**Sections 62 through 106** of the bill 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, make conforming and technical changes to reflect the transfer of the land sales registration program, make changes to the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes unrelated to the transfer of land sales regulation, and provide for appointment of a successor registered agent for timeshare foreclosures. Most of these sections are technical and conforming in nature. The operative sections are discussed below.

**Section 63** amends s. 498.019, F.S., which currently creates within the State Treasury the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to be used for the administration and operation of chapter 498 and chapters 718 (condominiums), 719 (cooperatives), 721 (timeshare), and 723 (mobile home park lot tenancies) by the division. All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court are paid into the Division of Florida Land Sales, Condominiums, and Mobile

Homes Trust Fund and the Legislature appropriates funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to each category of business covered by this trust fund. The division maintains separate revenue accounts in the trust fund for each of the businesses regulated by the division and provides for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division prepares an annual report of revenue and allocated expenses related to the operation of each of these businesses, which may be used to determine fees charged by the division.

The bill deletes from s. 489.019, F.S., the language creating and providing for its administration. The bill directs that all money collected as a result of regulation of land sales be deposited into the Professional Regulation Trust Fund and used to administer and enforce chapter 498 and the rules adopted thereunder.

**Section 76** amends s. 718.509, F.S., to re-create the Florida Land Sales, Condominiums, and Mobile Homes Trust Fund, including all provisions for administration of the trust fund and for use of the trust fund to regulate condominiums, cooperatives, timeshare, and mobile home park lot tenancies.

**Section 66** transfers regulation of land sales to the Division of Real Estate, along with trust fund balances.

**Section 69** amends s. 718.1255, F.S., which creates the condominium arbitration program.

#### **Present Situation:**

In 1991, the Florida Legislature implemented a recommendation of the 1991 Condominium Study Commission and adopted a law requiring mandatory non-binding arbitration to help alleviate crowded court dockets and in recognition that many unit owners are unable to afford the high cost of litigation. Shortly thereafter the Arbitration Section was created within the Department. Now a part of the Bureau of Condominiums, Florida Division of Florida Land Sales, Condominiums and Mobile Homes, the section is staffed by five full-time attorney arbitrators, one certified mediator, and support staff. The Arbitration Section also handles recall arbitrations.

Section 718.1255, F.S., establishes the condominium arbitration program. Section 719.1255, F.S., provides that the division is to provide for alternative dispute resolution for cooperative disputes in accordance with s. 718.1255, F.S.

Section 718.1255(4)(a), F.S., requires that, prior to the institution of court litigation, a party to a “dispute” must petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of \$50. The term “dispute” means any disagreement between two or more parties that involves:

- The authority of the board of directors to require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto, or alter or add to a common area or element.

- The failure of a governing body, when required by this chapter or an association document, to properly conduct elections; give adequate notice of meetings or other actions; properly conduct meetings; or allow inspection of books and records.

“Dispute” does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The division is required to employ full-time attorneys to act as arbitrators to conduct the arbitration hearings. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar.

Historically, the arbitration program has had approximately 500 cases filed annually.

#### **Effect of Proposed Changes:**

**Section 69** amends s. 718.1255, F. S., *effective July 1, 2001*, to substantially change the condominium and cooperative arbitration program. The existing arbitration procedure is preserved for disputes regarding the failure of a governing body, when required by ch. 718, F.S. (condominiums), or ch. 719, F.S. (cooperatives), to properly conduct elections or to recall a board member.

However, the division is no longer required to employ full-time arbitrators, and may privatize the service if it chooses to do so.

Other disputes that were formerly resolved through the arbitration program are to be referred to a Citizen Dispute Settlement Center or a mutually acceptable mediator prior to filing suit, including disputes between two or more parties that involve:

- The authority of the board of directors to require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto; or alter or add to a common area or element; or
- The failure of a governing body, when required by this chapter or an association document, to give adequate notice of meetings or other actions; properly conduct meetings; or allow inspection of books and records.

In the resolution of these cases on the local level, past precedent of prior division arbitration decisions must be considered and followed where appropriate.

A dispute is not subject to resolution by the local government alternative dispute resolution, mediation, or arbitration program if it includes any disagreement that primarily involves:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

**Section 70** provides that, as a transition, the division is required to continue the arbitration of any cases that qualified for arbitration on the date the case was filed with the division and which were filed with the division prior to July 1, 2001.

**Section 71** appropriates 1 FTE and \$440,626 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to the Department of Business and Professional Regulation for the purpose of investigating and resolving disputes and dealing with compliance issues relating to condominiums and cooperatives. This appropriation will not take effect if a similar amount of funding is included in the various appropriations for compliance and enforcement in the Florida Land Sales, Condominiums, and Mobile Homes program in the fiscal year 2001-2002 General Appropriations Act.

**Section 72** amends s. 718.501, F.S., on the powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes.

**Present Situation:**

Section 718.501, F.S., gives the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) the power to enforce and ensure compliance with the provisions of chapter 718 and rules promulgated pursuant thereto relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. Specifically, the section gives the division the following powers and duties:

- The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms hereunder.
- The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

- For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, and, upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.
- Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, association, officer, or member of the board of administration, or its assignees or agents, as follows:
  - The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.
  - The division may issue an order requiring the developer, association, officer, or member of the board of administration, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.
  - The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.
  - The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant hereto, or a final order of the division. The term “willfully and knowingly” means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the relevant requirements. Prior to initiating formal agency action, the division must give the officer or board member an opportunity to voluntarily comply with those requirements, and if the officer or board member does so within 10 days, he or she is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. Pursuant to this paragraph, the division has adopted a rule setting forth penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the



division, rule 61B-21.003, F.A.C. The guidelines specify a range of civil penalties for each such violation of the statute and rules and include possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those that endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

- When a complaint is made, the division must conduct its inquiry with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division must acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division must conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not timely completed, the division must notify the complainant in writing of the status of the investigation on a monthly basis.

#### **Effect of Proposed Changes:**

The bill amends s. 718.501, F.S., to add remedies and procedural provisions.

If it appears that a person has violated or is about to violate a provision of chapter 718 or a division rule or order, the division, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the violation and to enforce compliance with this chapter or any division rule or order. Injunctive relief or temporary restraining orders may be granted, and a receiver or conservator may be appointed to implement the provisions of the court order, to ensure the performance of the order, and to remedy any breach of the order. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order,

the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and records pertaining thereto, and allow the examination and use of such property by the division and a court-appointed receiver or conservator. The division is not required to post a bond in any court proceedings.

In such an action, the division may apply to the circuit court for an order of restitution, with restitution payable, at the option of the court, to the conservator or receiver or directly to the injured persons. The division may also seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause. The civil penalty is to be no less than \$500 and no more than \$10,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, in the event the division prevails, may also award reasonable costs of investigation.

The division may issue a notice to show cause to initiate administrative action to enforce the provisions of this chapter. In addition, the division may issue an order to show cause if it finds that another state or federal agency has taken similar action against the party. The notice to show cause shall provide for a hearing, upon written request, in accordance with chapter 120.

A person who furnishes information or evidence to the division is immune from civil liability unless such person acts in bad faith or with malice in providing such information as evidence.

Any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made and duly authenticated by a financial examiner or analyst employed by the division may be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests to under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to the authority of this chapter.

Notice to a developer, association, unit owner, or any other person having duties and obligations under this chapter shall be complete when delivered to the developer, association, unit owner, or the person's address currently on file with the division.

The division may intervene in any suit against a developer or a condominium association concerning violations of any provision of this chapter and the rules promulgated hereunder. The developer or association shall promptly furnish the division a copy of the complaint and, if requested by the division, copies of all pleadings.

In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, the division may effect service of process to a developer, association, or any other person having duties and obligations under this chapter by delivering a copy of the process to the director of the division, which shall be binding upon the defendant or respondent, if:

- The division immediately sends a copy of the process and the pleading by certified mail to the defendant or respondent at her or his last known address.
- The division director files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

The executive offices of the division shall be established and maintained in Tallahassee. The division may establish and maintain branch offices.

The division may adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, shall be prima facie evidence of the records in all the courts of this state.

The powers and duties contained in this section are made available to the division in its enforcement of this chapter, chapter 719, chapter 721, and chapter 723, F.S.

**Section 92** amends s. 721.82, F.S., to conform to changes made in s. 732.84, F.S.

**Section 93** amends s. 721.84, F.S., to provide a procedure for appointing a successor registered agent for timeshare foreclosures.

**Section 107** amends s. 489.537, F.S., to allow local governments to require that a licensed electrical journeyman be present at certain construction sites.

**Section 108** amends subsection 468.452(2), F.S., to include in the definition of the term “athlete agent” all employees and other persons acting on behalf of an athlete agent. It specifies that the definition does not include the spouse, parent, sibling, grandparent, or guardian of the student athlete, nor does it include an individual acting on behalf of a professional sports team or professional sports association.

**Section 109** amends section 468.453, F.S., to eliminate the examination requirement and related fee for licensure, and the surety bond requirement. Prior to obtaining a certificate of registration, an individual may act as an athlete agent if communication is initiated by a student athlete or a person acting on behalf of a student athlete, and the individual acting as an athlete agent submits an application with the department within seven days of such contact. This bill also provides that a non-resident athlete agent, by doing business in Florida, appoints the department as the individual’s agent for service of process in Florida civil actions relating to the individual’s actions as an athlete agent in this state. Finally, the department may issue a temporary registration while an application is pending.

**Section 110** amends section 468.454, F.S., to require that agent contracts be a signed, or otherwise authenticated, record. It also expands the provisions contained in the agent contract to include: (a) the name of any person not listed in the athlete agent license application who receives compensation from the agent contract; (b) a description of any expenses the student athlete agrees to reimburse; and (c) a description of the services to be provided by the student athlete.

Noticing requirements are similar to the provisions set forth under the current law. There is still a 72-hour notification period; however, the athlete agent and student athlete are only required to provide notice to the athletic director, not the president, of the college or university. The actual reference to the term “notice” also changes. The bill specifies that the athlete agent is required to

give “record notice” to the athletic director, whereas the student athlete is required to “inform” the athletic director of the contract.

This bill modifies the period of time for which a student athlete may rescind a contract, and provides the student athlete with additional rights. Under the proposed law, the student may rescind within 14 days of entering the contract. Further, the student athlete is not required to pay consideration under the contract or to return any consideration received by the athlete agent to induce the student athlete to enter the contract, in the event the student athlete cancels or voids the contract. The bill still maintains the requirement that the agent contract include notice regarding eligibility, the student athlete’s right to cancel, and the notification requirements, but the language is abbreviated. Finally, the bill requires that the athlete agent provide the student athlete with a record of the contract.

**Section 111** amends subsection (3) of section 468.456, F.S. to increase the administrative fine assessed by the department from \$5,000 to \$25,000.

**Section 112** creates subsection (4) of section 468.4615, F.S. to provide for additional prohibitions that constitute criminal activity. The athlete agent is prohibited from doing the following to induce a student athlete to enter a contract: (a) giving any false or misleading information or making a materially false promise; (b) furnishing anything of value to the student athlete prior to entering the contract; and (c) furnishing anything of value to any individual other than the student athlete or another athlete agent. Further, the athlete agent may not intentionally: (a) initiate contact with a student unless registered; (b) refuse to retain or permit inspection of records; (c) provide false or misleading information in an application; (d) predate or postdate a contract; (e) fail to give notice of the existence of an agent contract as required by section 468.454(6), F.S.; and (f) fail to notify a student athlete prior to signing or authenticating a contract that the student may become ineligible to participate in intercollegiate athletics.

**Section 113** amends section 468.4562, F.S., to provide additional civil remedies to educational institutions. Pursuant to the bill, these institutions are deemed to suffer damages resulting from self-imposed disciplinary action taken to mitigate sanctions imposed by an organization such as a national association for the promotion and regulation of athletics or an athletics conference. Further, the educational institution is permitted to seek damages from former student athletes for a violation of part IX, chapter 468, F.S., and provides that a right of action does not accrue until the educational institution discovers, or by exercise of reasonable diligence would have discovered, the violation. Finally, the amendment provides that this part does not restrict the rights, remedies, or defenses of any person under law or equity.

**Section 114** amends section 468.4565, F.S., to remove the reference to licensure, increase the records period to five years, and to specify the information contained therein.

**Section 115**, *effective July 1, 2001*, repeals sections 468.4563 and 468.4564, F.S., relating to authority to require continuing education by athlete agents and license display requirements, respectively.

**Section 116** provides an effective date of October 1, 2001, except as otherwise provided.

**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:

Currently talent agency 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. Based on the savings to the state projected below, these fees would be reduced to cover only administrative costs of registering applicants and renewing registrations.

Persons who would formerly pay \$50 for non-binding arbitration of their condominium or cooperative dispute will be required by this bill to utilize local dispute resolution programs instead, and to pay the prevailing fee for such program. It is unknown whether those programs will charge more or less than \$50 per case.

## C. Government Sector Impact:

The Department of Business and Professional Regulation provided the following:

The transfer of yacht and ship broker regulation will involve six FTE positions and \$269,343. Based on historical data, it is projected that no cash balance will be transferred. It is anticipated that revenues totaling more than \$550,000 will be generated annually. There should be no additional workload for staff.

The proposal to lower the level of regulation for talent agencies would reduce board administrative costs and eliminate the investigative costs. Savings are projected to be \$16,626.

The proposal to charge exam fees to government employees who apply for building code administrators and inspectors exams but do not report for the scheduled exam is projected to save \$38,630.

The proposed merger of the boards on cosmetology and barbers is projected to save \$32,607.

The Department states that the transfer of regulation of land sales will involve 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. There is an existing deficit for this business area, and the negative cash balance will be retained in the Florida Land Sales, Condominiums and Mobile Homes Trust Fund.

The Department indicates that the changes in the condominium arbitration program will save \$18,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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