

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 2498

INTRODUCER: Senator Bennett

SUBJECT: Department of Business and Professional Regulation

DATE: March 21, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			GO	
3.			JU	
4.			GA	
5.				
6.				

I. Summary:

The bill repeals ch. 498, F.S., to end the regulation of subdivided land sales by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) within the Department of Business and Professional Regulation (department). The bill amends s. 20.165, F.S., to rename the division as the Division of Florida Condominiums, Timeshares, and Mobile Homes. Current law provides that the division has the powers and duties prescribed to it by ch. 498, F.S. The bill transfers the powers of the division that are contained in ch. 498, F.S., to ch. 718, F.S.

The bill permits the department to perform the following functions on behalf of the boards under its jurisdiction:

- Close and terminate license applications two years after the board or the department has notified the applicant of the deficiency;
- Approve applications for professional licenses that meet all statutory and rule requirements for licensure.

The bill increases the experience requirement for real estate brokers from 12 months to 24 months and deletes the requirement for real estate schools to submit course rosters to the department. It eliminates the requirement for farm labor contractors to file fingerprints with the department.

The bill permits applicants for the electrical and alarm system contractors' certification examination to take the examination before the Electrical Contractor's Licensing Board has

reviewed the applicant's experience and training qualifications. The board must provide by rule the number of times per year the applicant may take the examination.

The bill authorizes amateur mixed martial arts events in Florida. It requires, before licensure, participants in matches to have competed in 10 amateur boxing matches, or five amateur mixed martial arts events.

The bill provides an effective date of July 1, 2008.

This bill substantially amends the following sections of the Florida Statutes: 20.165, 73.073, 190.009, 192.037, 213.053, 215.20, 326.002, 326.006, 380.05, 380.06, 380.0651, 381.0065, 450.33, 455.116, 455.203, 475.17, 475.451, 475.455, 489.511, 489.515, 494.008, 509.512, 517.301, 548.0065, 548.008, 548.041, 559.935, 718.103, 718.105, 718.1255, 718.5011, 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, 720.301, 720.401, 721.05, 721.07, 721.08, 721.26, 721.28, 721.301, 721.50, 723.003, 723.006, 723.009, and 723.0611. This bill creates the following sections of the Florida Statutes: 718.50152, 718.50154, and 718.50155. This bill repeals chapter 498 of the Florida Statutes, consisting of the following sections: 498.001, 498.003, 498.005, 498.007, 498.009, 498.011, 498.013, 498.017, 498.019, 498.021, 498.022, 498.023, 498.024, 498.025, 498.027, 498.028, 498.029, 498.031, 498.033, 498.035, 498.037, 498.039, 498.041, 498.047, 498.049, 498.051, 498.053, 498.057, 498.059, 498.061, and 498.063.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹ The department is created in s. 20.165, F.S., and has ten divisions.² Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Division of Florida Land Sales, Condominiums, and Mobile Homes (division) is created by s. 20.165(2)(d), F.S.. The division administers the provisions of ch. 498, F.S., relating to land sale practices, ch. 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, ch. 721, F.S., relating to vacation plans and timesharing, and ch. 723, relating to mobile homes. The

¹ Chapter 93-220, L.O.F.

² Section 20.165, F.S., creates the following divisions in the DBPR: (1) Administration; (2) Alcoholic Beverages and Tobacco; (3) Certified Public Accounting; (4) Florida Land Sales, Condominiums, and Mobile Homes; (5) Hotels and Restaurants; (6) Pari-mutuel Wagering; (7) Professions; (8) Real Estate; (9) Regulation; and (10) Technology, Licensure, and Testing.

division also conducts mediation for certain homeowners' association disputes under ch. 720, F.S.

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. Chapter 498, F.S., regulates 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.³ 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.⁴

Section 498.005(20), F.S., defines the term "subdivider" to mean "a person who owns any interest in subdivided lands or is engaged in the disposition of subdivided lands either directly, indirectly, or through the services of an employee, agent, or independent contractor."

Section 498.005(21), F.S., defines the terms "subdivision" or "subdivided lands" to mean:

- (a) Any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 50 or more lots, parcels, units, or interests; or
- (b) Any land, whether contiguous or not, which is divided or proposed to be divided into 50 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

Section 498.023, F.S., prohibits the sale of subdivided lands without first registering with the division. Section 498.017, F.S., sets a registration base fee of \$450 per subdivision registration application plus a fee of \$4 for each of the first 2,000 lots, parcels, units, or interests in the subdivision. It also provides a fee of \$2 for each additional lot, parcel, unit, or interest. Each registration may be renewed annually with a base fee of \$300.

Regarding the regulation of land sales practices and the division's responsibilities under ch. 498, F.S., the division has reported:

Currently, most sellers are either exempt or are under the jurisdiction of the federal Interstate Land Sales Act⁵ regulated by [the U.S. Department of Housing and Urban Development]. 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

³ See s. 498.003, F.S.

⁴ See s. 498.017, F.S.,

⁵ See 15 U.S.C. 1701 et seq. The Interstate Land Sales Full Disclosure Act was enacted in 1968. It requires land developers to register subdivisions of 100 or more non-exempt lots with HUD and to provide each purchaser with a disclosure document called a "Property Report." Information about the act is available at the Internet site for HUD located at: <http://www.hud.gov/offices/hsg/sfh/ils/ilshome.cfm> (Last visited March 20, 2008).

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 department 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.”

Farm Labor Contractor Registration

Section 450.30, F.S., requires that a person must obtain a certificate of registration with the department before acting as a farm labor contractor. Section 450.28(1), F.S., defines the term “farm labor contractor” to mean:

- (a) Any person who, for a fee or other valuable consideration, recruits, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers to work for, or under the direction, supervision, or control of, a third person; or
- (b) Any person who recruits, transports into or within the state, supplies, or hires at any one time in any calendar year one or more farm workers and who, for a fee or other valuable consideration, directs, supervises, or controls all or any part of the work of such workers.

Section 450.33(8), F.S., requires that a person acting as a farm labor contractor must file, within such time as the department may prescribe,⁶ a set of his or her fingerprints.

Florida State Boxing Commission

The Florida State Boxing Commission (commission) is created and assigned to the Department of Business and Professional Regulation by s. 548.003, F.S. The commission consists of five members who are appointed by the Governor subject to Senate confirmation. The commission is the agency responsible for the enforcement of ch. 548, F.S., relating to the regulation of pugilistic exhibitions. Section 548.001, F.S., provides that the provisions constituting ch. 548, F.S., shall be known and may be cited as the "Joe Lang Kershaw Act."⁷

Section 548.006(1), F.S., grants the commission exclusive jurisdiction over every match held within the state which involves a professional, including boxing, kickboxing, and mixed martial arts. The commission has exclusive jurisdiction of all amateur sanctioning organizations of

⁶ Rule 61L-1.004(4), F.A.C., requires that applicants for the issuance or renewal of a certificate must submit a fingerprint identification card (Form FD-258), and that applicants for renewal must submit the card every three years after the initial application.

⁷ In 1968, Joe Lang Kershaw became the first African-American elected to the Florida Legislature in the 20th Century.

amateur boxing and kickboxing matches. Section 548.006(4), F.S., also provides that professional and amateur matches shall be held in accordance with ch. 548, F.S., and the rules adopted by the commission.

Chapter 548, F.S., requires the licensure or permits for promoters,⁸ and foreign co-promoters⁹. A permit is also required for any participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.¹⁰ The physician must be licensed pursuant to ch. 458, F.S., or ch. 459, F.S. (pertaining to automobile race meets), the license must be in good standing, and the physician must have medical training or experience in boxing.

Section 548.002(1), F.S., defines the term “amateur” to mean:

a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in a match, other than a prize of \$50 in value or less.

Section 548.002(2), F.S., defines the term “amateur sanctioning organization” to mean “any business entity organized for sanctioning and supervising matches involving amateurs.”

Section 548.002(3), F.S., defines the term “boxing” to mean a competition with fists.

Section 548.002(6), F.S., defines the term “contest” to mean:

a boxing, kickboxing, or mixed martial arts engagement in which the persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(8), F.S., defines the term “exhibition” to mean:

a boxing, kickboxing, or mixed martial arts engagement in which the persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(11), F.S., defines the term “kickboxing” to mean “... to compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions.”

Section 548.002(15), F.S., defines the term “mixed martial arts” to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

⁸ Section 548.012, F.S.

⁹ Section 548.013, F.S.

¹⁰ Section.548.017, F.S.

Section s. 548.0065, F.S., provides the standards and requirements for the regulation of amateur matches by the commission.

III. Effect of Proposed Changes:

Deregulation of Land Sales

The bill repeals ch. 498, F.S., to de-regulate the sale of subdivided land by the division. It also amends several sections in the Florida Statutes to correct references to ch. 498, F.S., and the division obligations and duties under that chapter.

The bill amends or repeals the following provisions that may be affected by the repeal of ch. 498, F.S.:

- Section 190.009(2), F.S. is repealed. This provision requires that the disclosures to be filed with the division pursuant to ch. 498, F.S, meet the disclosures required under s. 190.009(1), relating to public financing and maintenance of improvements to real property applicable to developers of community development districts.
- Section 380.06, F.S., relating to statewide guidelines and standards for developments of regional impact, is amended to provide that the rights of any person to complete any development are not affected by the repeal of chapter 498, F.S.
- Section 381.0065(4)(c), F.S., relating to the installation of a central water system regulated by a public utility based on a density formula is amended to delete the requirement that the Department of Environmental Protection may consider the financial assurances securing the completion of promised improvements for subdivisions platted on or before October 1, 1991
- Section s. 494.008, F.S., relating to the regulation of mortgages offered by land developers licensed pursuant to the Florida Uniform Land Sales Practices Law, is amended to remove a reference to developers registered under ch. 498, F.S.

Farm Labor Contractor Registration

The bill amends s. 450.33, F.S., to eliminate the requirement for farm labor contractors to file a set of his or her fingerprints with the department.

Regulation of Professions

The bill amends several provisions of ch. 455, F.S., to, according to the department, improve the agency's ability to protect the public and process applications more efficiently.

The bill amends s. 455.203, F.S., relating to the department's powers and duties, to authorize the department, for the boards under its jurisdiction, to close and terminate license applications two years after the board or the department has notified the applicant of the deficiency. The effect of this provision is limited to deficient applications, i.e., applications that contain an error or

omission. A complete application would be deemed approved if not denied within 90 days after receipt of the completed application.¹¹

The bill also amends s. 455.203, F.S., to authorize the department to approve applications for professional licenses that meet all statutory and rule requirements for licensure.

Real Estate

The bill amends s. 475.17, F.S., relating to the license qualifications for real estate broker or sales associates, to increase the experience requirement for real estate brokers from 12 months to 24 months. According to the department, this increase is consistent with the experience requirements of other states. The bill also deletes the exception to the experience requirement for the Division of Real Estate's investigators.

The bill amends s. 475.451(9), F.S., to delete the requirement for real estate schools to submit course rosters to the department.

Electrical and Alarm System Contractors

The bill amends ss. 489.511 and 489.515, F.S., relating to the certification requirements for electrical and alarm system contractors, to permit applicants to take the certification examination before the Electrical Contractor's Licensing Board has reviewed 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. It deletes the provision that an applicant may only take the examination three times. It eliminates the requirement that the applicant submit a new application after failing the examination three times.

Florida State Boxing Commission/Amateur Mixed Martial Arts

The bill amends s. 548.0065, F.S., to authorize amateur mixed martial arts events in Florida. It amends s. 548.008, F.S., to delete the prohibition against amateur mixed martial arts events.

The bill also amends s. 548.041, F.S., to expand the licensure requirements for participants in matches in Florida. The bill would require participants to have competed in 10 amateur boxing matches before licensure, or five amateur mixed martial arts events before licensure.

The Division of Florida Condominiums, Timeshares, and Mobile Homes

The bill amends s. 20.165, F.S., to rename the division as the Division of Florida Condominiums, Timeshares, and Mobile Homes. The bill implements the division's name change by amending several sections in the Florida Statutes that reference the division by name.

¹¹ Chapter 120, F.S., the Administrative Procedure Act, does not provide a time limit for responses to a notice for an incomplete application. Pursuant to s. 120.60, F.S., a license application is deemed complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. It also provides that every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

The bill amends s. 718.501(1), F.S., to provide that the division has the powers and duties prescribed by ch. 718, F.S. Current law provides that the division has the powers and duties prescribed by ch. 498, F.S. The following powers and duties of the division are transferred by the bill from ch. 498, F.S., to ch. 718, F.S.:

- Section 498.009, F.S., is renumbered as s. 718.50152, F.S. This provision establishes the executive offices of the division in Tallahassee, Florida, and authorizes the division to establish and maintain branch offices.
- Section 498.011, F.S., is renumbered as s. 718.50153, F.S. This provision provides for the payment of per diem, mileage, and other expenses incurred in connection with on-site reviews or investigations. This provision is currently limited to investigations of submerged land. The bill would extend this authority to on-site reviews and investigations of condominiums under ch. 718, F.S.
- Section 498.013, F.S., is renumbered as s. 718.50154, F.S. This provision requires that the division adopt a seal by which it shall authenticate its records. It also provides that copies of the division's records, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, are prima facie evidence of the records in all the courts of this state.
- The bill renumbers s. 498.057, F.S., as s. 718.50155, F.S. This provision permits the division, when acting as a petitioner or plaintiff, to provide serve of process by certified mail. The division must file an affidavit of compliance with this section within the time set by the court. This method of service of process is in addition to the methods for service of process provided for in the Florida Rules of Civil Procedure and the Florida Statutes. This provision is currently limited to court actions under ch. 498, F.S. The bill would extend this authority to court actions under ch. 718, F.S.
- The bill amends s. 718.501(1)(a), F.S., to authorize the division to submit official worksheets, investigative reports, other related documents from a financial examiner or analyst as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant under ch. 718, F.S.¹²
- The bill amends s. 718.501(1)(d)2., F.S., to authorize the division to issue an emergency cease and desist order to any developer, association, officer, or member of the board of administration, or its assignees or agents, that it finds is violating or is about to violate any provision of ch. 718, F.S., rule or of the division, or any written agreement with the division. The violation must present an immediate danger to the public requiring an immediate final order. The emergency cease and desist order is effective for 90 days. The bill provides that, if the division begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57, F.S.¹³
- The bill creates s. 718.501(1)(d)4., F.S., to authorize the division to petition the court for the appointment of a receiver or conservator, and to delineate the duties of the receiver or conservator. It also authorizes the circuit court to impound or sequester the property of a party defendant, including books, papers, documents, and related records, and to allow

¹² The division currently has this authority under s. 498.047(7), F.S.

¹³ The division has this authority under s. 498.051, F.S.

- the examination and use of the property by the division and a court-appointed receiver or conservator.¹⁴
- The bill creates s. 718.501(1)(d)5., F.S., to authorize the division to apply to the circuit court for an order of restitution, payable to the appointed conservator or receiver or directly to the persons whose funds or assets were obtained in violation of ch. 718, F.S.¹⁵
 - The bill creates s. 718.501(1)(d)7., F.S., to authorize the division to 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 under s. 718.501(1)(q), F.S. It limits the civil penalty to at least \$500 but no more than \$5,000 for each violation. It also provides court costs and reasonable attorney's fees to the prevailing party. If the division prevails, the court may also award the division the reasonable costs of its investigation.¹⁶
 - The bill creates s. 718.501(1)(n), F.S., to authorize the division to contract with agencies in this state or in other jurisdictions to perform investigative functions. It also authorizes the division to accept grants-in-aid from any source.¹⁷
 - The bill creates s. 718.501(1)(o), F.S., to require the division to cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.¹⁸
 - The bill creates s. 718.501(1)(p), F.S., to deem the division's notice to a developer to be complete when it is delivered to the developer's address currently on file with the division.¹⁹
 - The bill creates s. 718.501(1)(q), F.S., to authorize the division to issue a notice to show cause and that provides a hearing, upon written request, in accordance with ch. 120, F.S.²⁰

The bill amends s. 718.509, FS, to rename the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund as the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The bill deletes the provision that requires the division to deposit all funds collected into the current Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. The current provision for the trust fund is deleted by the repeal of ch. 498, FS.²¹ The bill requires that the division maintain separate revenue accounts in the trust fund for each business regulated by the division, that the division allocate its expenses by each program area, and that it prepare an annual report of revenues and expenses. According to the department, the division currently maintains individual accounts and prepares annual reports in this manner.

Effective Date

The bill provides an effective date of July 1, 2008.

¹⁴ The division currently has this authority under s.498.007(2), F.S.

¹⁵ The division currently has this authority under s.498.007(3)(a), F.S.

¹⁶ The division currently has this authority under s. 498.007(3)(b), F.S.

¹⁷ The division currently has this authority under ss.498.007(5)(b) and (c), F.S.

¹⁸ The division currently has this authority under s.498.007(6), F.S.

¹⁹ The division currently has this authority under s.498.007(8), F.S.

²⁰ The division currently has this authority under s. 498.053, F.S.

²¹ The division's trust fund is created by s. 498.019, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because of the repeal of s. 498.023, F.S., persons who sell subdivided lands would not have to pay the registration base fee of \$450 per subdivision registration application, the fee of \$4 for each of the first 2,000 lots, parcels, units, or interests in the subdivision, and the fee of \$2 for each additional lot, parcel, unit, or interest. The annual renewal base fee of \$300 would also not have to be paid. According to the department, the elimination of the land sales regulation program will save land sales developers approximately \$92,000 in fees per year.

C. Government Sector Impact:

According to the department, the elimination of its regulatory responsibilities for subdivided lands will eliminate revenue associated with developer fees and penalties. Fees collected in FY 2006-2007 were \$92,619, penalties were \$177,015, other revenues were \$8,001. The department currently has one full time staff member, who borrowed from another division program, assigned to this function. The primary costs are allocated costs which will be absorbed by the other business entities within the division. The land sales account within the Land Sales, Condominiums and Mobile Homes Trust Fund reflects a deficit balance at June 30, 2007 of (\$1,891,403). According to the department, the regulation of subdivided land has not generated revenue sufficient to fund costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
