ECONOMIC AFFAIRS COMMITTEE

Thursday, March 24, 2011
8:30 AM
Reed Hall (102 HOB)

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

ECONOMIC AFFAIRS COMMITTEE

AGENDA

Reed Hall (102 HOB)
Thursday, March 24, 2011
8:00 am

I. **CALL TO ORDER AND WELCOME REMARKS**

II. **CONSIDERATION OF THE FOLLOWING BILLS:**

CS/HB 259 Beverage Law By Business & Consumer Affairs Subcommittee, Hooper

HB 639 Affordable Housing by Aubuchon

HJR 1321 Miami-Dade County Home Rule Charter by Lopez-Cantera

HB 4011 Dance Studios by Gaetz

HB 4165 Community-Based Development Organizations by Rouson

HB 4183 Brevard County Expressway Authority Law by Nelson

III. **CONSIDERATION OF THE FOLLOWING PROPOSED COMMITTEE SUBSTITUTE(S):**

PCS FOR HB 5005 -- Deregulation of Professions and Occupations

PCS FOR HB 5007 -- Reducing and Streamlining Regulations

IV. **ADJOURNMENT**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 259 Beverage Law
SPONSOR(S): Business & Consumer Affairs Subcommittee, Hooper
TIED BILLS: **IDEN./SIM. BILLS:** SB 462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N, As CS	Livingston	Creamer
2) Economic Affairs Committee		Livingston	Tinker

SUMMARY ANALYSIS

The bill creates an exemption from being approved by the division as parties of interest in an alcoholic beverage license for the volunteer officers or directors of a performing arts center. The bill allows volunteer officers or directors to serve without having to be approved as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose the identity of the volunteer officers or directors.

The bill is not anticipated to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Currently, subsection 561.01(17), F.S., of the alcoholic beverage laws, defines "performing arts center" to mean

> a facility consisting of not less than 200 seats, owned and operated by a not-for-profit corporation qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986 or of the corresponding section of a subsequently enacted federal revenue act, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

In addition to other special licenses issued under the beverage law, the division is authorized to issue a special alcoholic beverage license for consumption on the premises to a performing arts center, provided that any consumption of alcoholic beverages under the license may occur only in conjunction with an artistic, educational, cultural, promotional, civic, or charitable type of event occurring on the premises under the authorization of the arts center as the licensee.

Upon application for licensure, officers, shareholders, and directors of a legal or business entity applying for a license must file a sworn application to determine whether or not requirements for licensure are met, such as good moral character and not being under the age of 21. The beverage law also restricts the issuance of an alcoholic beverage to persons with a specified criminal history, including businesses whose officers possess a disqualifying criminal history.

If the licensed entity is unable to qualify for or continue to hold an alcoholic beverage license because management personnel is disqualified due to a prior criminal conviction, the company must terminate its relationship with the individual in order to continue to qualify for an alcoholic beverage license.

By contract, the performing arts center may transfer the license to a qualified food and beverage service provider for the arts center. However, the license remains the exclusive property of the performing arts center, and upon termination of the contract concerning the furnishing of food and beverage service, the license reverts to the performing arts center by operation of law.

The beverage law exempts certain companies, such as insurers, banks, and savings and loan associations that have an interest in an alcoholic beverage license (usually associated to a lending and foreclosure circumstance), from having to obtain the division's approval of their officers, directors, or stockholders. This exemption does not apply to performing arts centers. If the license is held in the name of the performing arts center, its officers, shareholders or directors are required to submit a personal data questionnaire and at the discretion of the division may be fingerprinted.

If the license is used by a food and beverage service provider under a contract for services with the performing arts center, then the officers, shareholders or directors of the food and beverage provider are required to complete a personal data questionnaire and may be fingerprinted.

In both cases, changes to the officers, shareholders or directors are required to submit a change of officer application and new officers, shareholders or directors are required to submit a personal data questionnaire and may be required to submit fingerprints.

Effect of proposed changes

The bill amends the qualification requirements for an alcoholic beverage license in s. 561.15(3), F.S., and the license application requirements in s. 561.17(1), F.S., to provide an exemption for performing

arts centers from the requirement that all persons with an interest, directly or indirectly, in an alcoholic beverage license must obtain division approval. The exemption applies to the performing arts center's volunteer officers or directors or any change of volunteer personnel.

The bill permits volunteer officers or directors of a performing arts center to continue to serve without having to be approved as part of the alcoholic beverage license application process. The bill does not affect the requirement that the performing arts center must disclose on the application the identity of volunteer officers or directors.

Since the volunteer officers and directors of a performing arts center would not be subject to division approval as a condition for a license, the division could not suspend, revoke, or refuse to issue an alcoholic beverage license based on any disqualifying criteria associated with a volunteer officer or director.

If a performing arts center changed a volunteer officer or director, the division could still require that the center identify the new officer by submitting a change of officer application to the division, but the officer would not have to submit a personal data questionnaire or be subject to fingerprinting.

B. SECTION DIRECTORY:

Section 1. Amends s. 561.15, F.S., to create an exemption for the volunteer officers or directors of a performing arts center or changes in those positions from being approved by the division as parties of interest in a special alcoholic beverage license.

Section 2. Amends s. 561.17, F.S., to create an exemption for the volunteer officers or directors of a performing arts center or changes in those positions from being approved by the division on the application form and be subject to fingerprinting.

Section 3. Effective date – July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DBPR indicates that no fiscal impact is anticipated as a result of the provisions of the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Business & Consumer Affairs Subcommittee took up the bill, adopted two technical amendments, and passed the bill as a Committee Substitute by a vote of 15-0.

The CS differs from the bill as filed in the following areas:

- Specifies in two places of the bill that references to performing arts center means centers as defined in s. 561.01, F.S., of the alcoholic beverage code.

A bill to be entitled

An act relating to the Beverage Law; amending ss. 561.15 and 561.17, F.S.; providing that a performing arts center that has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain from the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation approval of its volunteer officers or directors or any change of such positions or interests; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 561.15, Florida Statutes, is amended to read:

561.15 Licenses; qualifications required.—

(3) The division may suspend or revoke the license under the Beverage Law of, or may refuse to issue a license under the Beverage Law to:

(a) Any person, firm, or corporation the license of which under the Beverage Law has been revoked or has been abandoned after written notice that revocation or suspension proceedings had been or would be brought against the license;

(b) Any corporation if an officer, director, or person interested directly or indirectly in the corporation has had her or his license under the Beverage Law revoked or has abandoned her or his license after written notice that revocation or suspension proceedings had been or would be brought against her

or his license; or

(c) Any person who is or has been an officer of a corporation, or who was interested directly or indirectly in a corporation, the license of which has been revoked or abandoned after written notice that revocation or suspension proceedings had been or would be brought against the license.

Any license issued to a person, firm, or corporation that would not qualify for the issuance of a new license or the transfer of an existing license may be revoked by the division. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is ~~shall~~ not ~~be~~ required to obtain the division's ~~division~~ approval of its officers, directors, or stockholders or any change of such positions or interests. Any such company, insurer, bank, or savings and loan association which has a direct or indirect interest or which has an ownership interest in the business sought to be licensed, but which does not operate that business, may elect to place the license solely in the name of the operator. The operator's license application shall list the direct, indirect, or ownership interest and the names of the officers, directors, stockholders, or partners of such company, insurer, bank, or association. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required

under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, shall not be considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, that has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its volunteer officers or directors or any change of such positions or interests.

Section 2. Subsection (1) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is

approved, the division may require the applicant to file a set of fingerprints on regular United States Department of Justice forms for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, that has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its volunteer officers or directors or any change of

such positions or interests.

Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 Affordable Housing
SPONSOR(S): Aubuchon and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Duncan	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Fennell	Davis
3) Economic Affairs Committee		Duncan pdd	Tinker TBT

SUMMARY ANALYSIS

The Florida Housing Finance Corporation (FHFC) is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida. This bill revises statutes which govern the implementation of affordable housing programs, practices and procedures administered by the FHFC. The bill:

- Removes the statutory limitations on the amount of documentary stamp revenue that goes into the State Housing Trust Fund and the Local Government Housing Trust Fund.
- Repeals section 8 of chapter 2009-131, L.O.F., retroactively. This eliminates a conflicting version of s. 201.15, F.S., relating to the service charge on taxes collected, which passed concurrently with a different version during the 2009 legislative session, consistent with statutory revision's placement in the statute.
- Revises the state housing strategy to provide targeted assistance for persons with special needs and requires the periodic reviews and reports to include an analysis of persons with special needs.
- Creates two additional definitions to enact the newly established state housing strategies. Those new definitions are aimed to serve populations defined as suffering from a "disabling condition" and those defined as a "person with special needs."
- Removes domicile of the developer and general contractor as criteria to be considered by the FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program and replaces it with developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.
- Requires local government comprehensive plans to include affordable housing for seniors as a part of the plan's housing element.
- Authorizes the FHFC to receive federal funding for which no corresponding program has been previously created by statute and to establish selection criteria for such funds by request for proposals or other competitive solicitation.
- Provides that funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the State Apartment Incentive Loan Program, Florida Homeownership Assistance Program, Community Workforce Housing Innovation Pilot Program, or the State Housing Initiatives Partnership Program may not be used to finance or otherwise assist new construction until July 1, 2012.

The Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of $33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The State Housing Initiatives Partnership (SHIP) Program and the Distribution of Documentary Stamp Taxes

Overview

The Florida Housing Finance Corporation (FHFC) [1] is the state entity primarily responsible for encouraging the investment of private capital in residential housing and stimulating the construction and rehabilitation of affordable housing in Florida.[2] Originally, federal funds were the only resources that funded housing programs administered by the FHFC. To leverage these federal funds, in the late 1980s the Legislature appropriated funding for state programs.[3] With the enactment of the William E. Sadowski Act[4] which created the State Housing Initiatives Partnership (SHIP) Program,[5] the FHFC's programs are funded in part with revenues generated by the documentary stamp tax, which are often combined with federal funding. The FHFC administers a number of multifamily and single family housing programs that help local governments assist Floridians in obtaining safe, decent affordable housing.

The SHIP Program was created for the purpose of providing funds to local governments as an incentive for the creation of partnerships to produce and preserve affordable housing, further the housing element of the local comprehensive plan specific to affordable housing, and increase housing-related employment.[6] Portions of the documentary stamp tax are transferred into the Local Government Housing Trust Fund and distributed to counties and eligible municipalities[7] participating in the SHIP Program.[8] Counties and eligible municipalities must meet a number of requirements in order to receive funding.[9]

Current Law

The documentary stamp tax is imposed on documents that transfer interest in Florida real property[10] and current law provides for the distribution of documentary stamp taxes.[11] Documents subject to the tax include deeds; bonds; notes and written obligations to pay money; and mortgages, liens, and other evidences of indebtedness.[12] The taxes are primarily used to fund varied land and water conservation, preservation, and maintenance, as well as transportation programs.[13]

---

[1] The Florida Housing Finance Corporation (FHFC) was created as a public corporation within the Department of Community Affairs (DCA). However, the FHFC is a separate budget entity and is not subject to the control, supervision, or direction of DCA. Section 420.504, F.S.

[2] Section 420.502(7), F.S.

[3] Florida Housing Finance Corporation, *Sadowski Act Overview, available at* http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/SadowskiAct_Outline.pdf.

[4] Sections 1-35, ch. 92-317, L.O.F.

[5] Section 32, ch. 92-317, L.O.F.

[6] Section 420.9072, F.S.

[7] "Eligible municipality" means a municipality that is eligible for federal Community Development Block Grant entitlement moneys as an entitlement community identified in 24 C.F.R. s. 570, subpart D, Entitlement Grants, or a nonentitlement municipality that is receiving local housing distribution funds under an interlocal agreement that provides for possession and administrative control of funds to be transferred to the nonentitlement municipality. An eligible municipality that defers its participation in the community development block grants does not affect its eligibility for participation in the State Housing Initiatives Partnership Program. Section 420.9071(9), F.S.

[8] Sections 420.9071(17), F.S. and 420.9073, F.S.

[9] Section 420.9072(2)(a), F.S.

[10] Chapter 201, F.S.

[11] Section 201.15, F.S.

[12] Florida Department of Revenue, *Documentary Stamp Tax*, Nov. 2009, *available at* http://dor.myflorida.com/dor/forms/2009/gt800014.pdf.

[13] Section 201.15, F.S.

After the distribution specified by law,[14] the lesser of 7.53 percent of remaining documentary stamp taxes or $107 million in each fiscal year must be paid into the State Treasury, of which half of this amount must be to the credit of the State Housing Trust Fund and the remaining half must be to the credit of the Local Government Housing Trust Fund.[15]

After the distribution specified by law,[16] the lesser of 8.66 percent of remaining documentary stamp taxes or $136 million in each fiscal year must be paid into the State Treasury, of which 87.5 percent must be paid to the credit of the Local Government Housing Trust Fund and the remaining 12.5 percent must be paid to the credit of the State Housing Trust Fund.[17] In total, the distributions to the State and Local Government Housing Trust Funds are limited to a percentage of the collected documentary stamp taxes or $243 million, whichever is less.

Effect of the Proposed Changes

The bill removes the statutory limitations on the amount of documentary stamp revenue that goes into the State Housing Trust Fund and the Local Government Housing Trust Fund. The bill accomplishes this by:

- Deleting the language providing that the money to be distributed to the State Treasury to the credit of the State Housing Trust Fund for certain purposes will be the lesser of 7.53 percent or $107 million[18] and replacing it with "seven and fifty-three hundredths" percent.
- Deleting the language providing that the money to be distributed to the State Treasury to the credit of the State Housing Trust Fund for certain purposes will be the lesser of 8.66 percent or $136 million[19] and replacing it with "eight and sixty-six hundredths" percent.

The caps on the above trust fund distributions are eliminated, so that 7.53 percent of net documentary stamp tax collections are split 50 percent to the State Housing Trust Fund and 50 percent to the Local Government Housing Trust Fund, and 8.66% of the net collections are split 12.5 percent to the State Housing Trust Fund and 87.5 percent to the Local Government Housing Trust Fund.

The FHFC asserts that removal of the statutory limitations on the amount of documentary stamp revenue that goes into the trust funds would increase the amount of funds that could be allocated to FHFC for its various affordable housing programs.

The Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of $33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

Repeal of s. 8, ch. 2009-131, Laws of Florida; Taxes Collected Subject to Service Charge

Current Situation

All taxes collected under this chapter are subject to a service charge[20] imposed by law.[21] In addition, prior to distribution under this section, the Department of Revenue deducts the amounts necessary to pay the costs of the collection and enforcement of the tax levied.[22] Section 8 of chapter 2009-131, L.O.F., amended s. 201.15, F.S., by adding language that provided for all costs of collection and enforcement of the tax and the service charge to be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before July 1, 2009.

---

[14] Section 201.15(1)-(8), F.S.
[15] Section 201.15(9), F.S.
[16] Section 201.15(1)-(9), F.S.
[17] Section 201.15(10), F.S.
[18] Section 201.15(9), F.S.
[19] Section 201.15(10), F.S.
[20] Section 201.20(1), F.S.
[21] Section 201.15, F.S.
[22] *Id.*

This chapter of law also created subsection 201.15(16), F.S., which provides that, if amounts necessary to pay debt service or any other amounts payable with respect to Preservation 2000 bonds, Florida Forever bonds, or Everglades Restoration bonds authorized before July 1, 2009, exceed the amounts distributable pursuant to subsection 201.15(1), F.S., all moneys, distributable pursuant to this section, are available for such obligations and transferred in the amounts necessary to pay such obligations when due. Those amounts distributable pursuant to subsection 201.15(2), (3), (4), and (5), and paragraphs (9)(a) and (10)(a), F.S., are not available to pay such obligations to the extent that such moneys are necessary to pay debt service on bonds secured by revenues pursuant to those provisions.

Effect of the Proposed Changes

The bill repeals section 8 of chapter 2009-131, L.O.F., retroactively to June 30, 2009, which predates its effective date of July 1, 2009. The purpose of this retroactive repeal is to eliminate a conflicting version of s. 201.15, F.S., that was included in SB 2430 (Relating to Taxation of Documents) from 2009. This version provides certain distribution guidelines for tax collections after subtracting costs and the service charge, and refers to bonds authorized before July 1, 2009. SB 2430 was signed into law by the Governor on June 10, 2009, and became ch. 2009-131, L.O.F.

The version that statutory revision included in the body of s. 201.15, F.S., provides different distribution guidelines for tax collections after subtracting costs and the service charge. This version of s. 201.15, F.S., was included in SB 1750 (Relating to Disposition of Tax Revenues) from 2009, and refers to bonds authorized before January 1, 2010. SB 1750 was signed into law by the Governor on May 27, 2009, and became ch. 2009-68, L.O.F.

Powers of the Florida Housing Finance Corporation (FHFC)

Current Law

Florida law grants the FHFC with specific powers necessary or convenient to carry out and effectuate the purposes for providing affordable housing.[23] Among the powers granted by the Legislature is the power to receive federal funding in connection with programs administered by the FHFC directly from the Federal Government.[24]

Effect of Proposed Changes

The bill authorizes the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establish selection criteria for such funds by request for proposals or other competitive solicitation. This expands the ability of the FHFC to expend federal housing relief funds in an expedient and efficient manner.

The State Apartment Incentive Loan (SAIL) Program annually provides low interest loans on a competitive basis to affordable housing developers. The bill removes domicile of the developer and general contractor as criteria to be considered by the FHFC in its scoring and competitive evaluation of applications for funding under the SAIL Program to prevent conflict with federal rules. The bill replaces the domicile preference with developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing.

State Housing Strategy

Current Law

The state's housing strategy is intended to carry the state towards the goal of assuring that by the year 2010 each Floridian would have decent and affordable housing. The strategy must involve state, regional, and local governments working in partnership with communities and the private sector and must involve financial as well as regulatory commitment to accomplish the goal.[25] The strategy includes specific policies relating to housing need; public-private partnerships; preservation of housing stock; public housing; and housing production or rehabilitation programs.[26]

[23] Sections 159.608 and 420.507, F.S.
[24] Section 420.507(33), F.S.
[25] Section 420.0003, F.S.
[26] Section 420.003(3), F.S.

The Shimberg Center for Affordable Housing at the University of Florida, in consultation with DCA and the FHFC, is directed to review and evaluate existing housing rehabilitation, production, and finance programs to determine their consistency with relevant policies of the state's housing strategy and identify the needs of specific populations, including, but not limited to, elderly and handicapped persons, and must recommend statutory modifications where appropriate.[27]

Currently, the set-aside or prioritization requirements for affordable housing are for commercial fishing workers, farm-workers, elderly, and homeless. Current law does not specifically address affordable housing for persons with disabilities, youth aging out of foster care, disabled veterans and survivors of domestic violence who are groups at great risk of becoming homeless.

Effect of the Proposed Changes

The bill revises the state housing strategy to provide targeted assistance for persons with special needs, includes an analysis of persons with special needs in the strategy's periodic review and report, and provides for the distribution of housing funds for multifamily rental housing to be administered to address the housing needs of persons most in need of housing. Specifically, the bill:

- Includes persons with special needs as a tenant group for specified purposes of the State Apartment Incentive Loan (SAIL) Program.
- Extends low interest mortgage loans for the SAIL Program to sponsors of projects who set aside units for persons with special needs.
- Establishes a maximum threshold of ten percent of the SAIL funds available at that time to be used for persons with special needs.

The bill creates two new definitions to enact the newly established state housing strategies:

- "Disabling Condition" means a diagnosable substance abuse disorder, serious mental illness, development disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions, and a determination that the condition is:
    - Expected to be of long-continued and indefinite duration; and
    - Not expected to impair the ability of the person with special needs to live independently with appropriate supports.
- "Person with special needs" means an adult person requiring independent living services in order to maintain housing or to develop independent living skills. This individual must also have a disabling condition; be a young adult existing foster care; a survivor of domestic violence; or a person receiving benefits under Social Security Disability Insurance (SSDI) program, Supplemental Social Security (SSI) program, or veterans' disability benefit.

The bill also amends the provisions of law related to the housing element of the local government comprehensive planning process and provides that local comprehensive plans may include affordable housing for persons 60 years of age and older as a part of their housing element.

New Construction and the Preservation of Existing Affordable Multifamily Rental Housing

Job Creation

The FHFC generally provides debt and equity financing to developers who leverage federal and state resources with private and other public sector funding to develop new rental apartments or rehabilitate existing affordable units. Both rehabilitation and new construction provide sources of direct and indirect economic benefit and jobs.

Currently, there are a variety of economic conditions that impact the ability of construction jobs to be a useful economic generator in Florida.[28] With the proliferation of unsold single family homes that are now available for rent, housing rents have been pushed down in many markets, leading to an oversupply of affordable rental housing and high vacancy rates in those rental markets with slow or no population

[27] Section 420.003(4), F.S.

[28] Florida Housing Finance Corporation, *Financing Affordable Rental Development,* March 2011, p. 1, *available at* http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements.

growth (or new household formations). However, in some markets, vacancy rates are low and there is a continued demand for new rental housing.[29]

The FHFC has determined that each new construction development, on average, creates more jobs than each preservation development: 347 jobs per new construction property, versus 215 jobs per preservation property. However, when equal allocations to new construction and preservation are made, as proposed in the FHFC's proposed 2011 rules,[30] more total jobs are created overall by the preservation activities. This is because preservation developments require fewer Low Income Housing Tax Credits to complete and the cost of preservation development is generally lower than new construction. Thus, the state's Low Income Housing Tax Credit allocation goes further for these developments and more developments can be financed with an equal amount of Low Income Housing Tax Credits – an estimated 22 preservation developments versus 12 new construction developments, therefore creating more jobs overall: preservation – 4,737 jobs; new construction – 4,164 jobs.[31]

In 2010, the FHFC carried out closings on 94 affordable multifamily rental developments (9,735 units) – 72 new construction developments with 7,264 units and 22 preservation developments with 2,471 units. These 94 rental developments generated a total development cost of $1.69 billion. This translates into approximately $3.86 billion in total economic activity and over 30,906 jobs.[32]

The Need for Preservation and New Construction

According to the FHFC, there is a need for affordable new construction as well as preservation of existing affordable multifamily rental housing. While there is a need for new construction in some of Florida's markets, in many counties or areas of counties in Florida (over half), existing affordable rental communities in the FHFC's portfolio are experiencing low occupancy rates (in many cases, properties with only 85-89 percent of units occupied, with some even lower) because of "saturation." Because so much single family housing stock is currently on the market for sale, many owners have chosen to rent out their homes rather than try to find buyers in this market. These additional rental units are competing with market rate and affordable apartments, leading apartment owners to respond with lower rents and special offers. With an excess of rental housing available in many places, vacancies in the FHFC's portfolio are higher than usual.[33]

The FHFC states that its objective is to carefully target any new rental construction to those areas of the state where there is a need for such housing. The goal is to help avoid cannibalizing existing state financed rental developments and in particular those developments in the Florida Affordable Housing Guarantee Program[34] portfolio.[35] Negative pressure on the affordable rental transactions financed by

---

[29] *Id.*

[30] The Florida Housing Finance Corporation (FHFC) has proposed rules (Rule 67-48, F.A.C. and Rule 67-21, F.A.C.) to establish the procedures by which the FHFC must administer the application process, determine loan amounts, make and service mortgage loans for new construction or rehabilitation of affordable rental units under the State Apartment Incentive Loan Program (s. 420.5087, F.S.); the HOME Investment Partnerships Program (s. 420.5089, F.S.); and administer the application process, determine Housing Credit amounts and implement the provisions of the Housing Credit Program (Section 42 of the Internal Revenue Code and s. 420.5099, F.S., and the Multifamily Mortgage Revenue Bond Program (Section 142 of the Internal Revenue Code and s. 420.509, F.S.). Florida Housing Finance Corporation, 2011 Universal Application, http://apps.floridahousing.org/StandAlone/FHFC_ECM/ContentPage.aspx?PAGE=0238.

[31] The FHFC evaluated the economic and job impacts of its proposed Low Income Housing Tax Credit cycle with the University of Florida's Shimberg Center for Housing Studies. IMPLAN Version 3, an econometric model along with 2009 Florida state data, was used to estimate impacts from financing both new construction and preservation developments. Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 1, *available at* http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements.

[32] Florida Housing Finance Corporation, *2010 Annual Report*, Letter from the Chairman and Executive Director, March 2011, p.4, *available at* http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC_2010AR.pdf.

[33] Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 6, *available at* http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements.

[34] The Florida Affordable Housing Guarantee Program issued guarantees on mortgages of bond-financed affordable rental housing between 1993 and 2005. This action was intended to create a security mechanism that allowed issuers of mortgage revenue bonds to sell affordable housing bonds in the primary and secondary markets. Most of the transactions in this portfolio are 50 percent guaranteed by the U.S. Department of Housing and Urban Development Risk Sharing Program. However, due to the current market conditions, the FHFC has suspended the issuance of additional guarantees. Florida Housing Finance Corporation, *2010 Annual*

the guarantee fund may lead to the replenishment of its reserves by drawing on the State Housing Trust Fund[36] to provide additional support to the guarantee fund. These resources have been utilized in recent years by the Legislature and Governor to help balance Florida's budget.[37]

With respect to preservation, there are over 400 rental properties throughout Florida that were originally financed with funding from the U.S. Housing and Urban Development and the U.S. Department of Agriculture's Rural Development programs and are now over twenty years old. Over 300 of these properties have substantial amounts of federal rental assistance as part of their overall financing package.[38] The proposed preservation resources are intended to assist the state with two objectives:[39]

- To recapitalize and rehabilitate older properties which are falling into disrepair because of age.
- To enable the preservation of the federal rental assistance that enables these rental properties to serve Floridians with very low incomes. The federal rental assistance provides support directly to these properties in exchange for serving elders, persons with disabilities and others with extremely low incomes who cannot afford to pay rents at levels that will support daily operational expenses at a property. Preservation allows the federal rental assistance to remain on the property. Without this federal rental assistance, which is rarely provided to new construction developments, it would be difficult to house these same families in newly constructed rental developments financed through today's typical Low Income Housing Tax Credit financing structures.

Temporary Limitation of New Construction

Effect of the Proposed Changes

The bill places a temporary limitation on new construction and creates the following legislative finding:

> *"Due to the current economic conditions in the housing market there is a critical need to rehabilitate or sell excess inventory of unsold homes, including foreclosed homes and newly constructed homes, as well as a critical need for the rehabilitation and preservation of older, affordable apartments. The Legislature further finds that there is a critical need to create housing-related jobs and that these conditions require the targeting of state and local housing trust fund moneys to assist in the sale or rehabilitation of existing homes and the preservation and rehabilitation of older rental apartments."*

The bill provides that notwithstanding current law,[40] funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the SAIL Program, Florida Homeownership Assistance Program (FHAP), Community Workforce Housing Innovation Pilot (CWHIP) Program, or the State Housing Initiatives Partnership (SHIP) Program may not be used to:

Report, March 2011, p.6, *available at* http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/FHFC_2010AR.pdf. *See* also s. 420.5092, F.S.

[35] In 2009, Fitch Ratings downgraded the state's affordable housing guarantee fund from "A+" to "A-" with a negative outlook. The downgrade was based on a spike in the risk-to-capital ratio, five claim payments on properties within the portfolio in nine months, and operating losses in fiscal [year] 2008. The rating considered a risk-to-capital level within the board-directed 5:1 risk-to-capital ratio. The absence of construction risk within the portfolio as well as the ongoing state support through the fund's ability to replenish the fund by drawing on a portion of future documentary stamp tax collections made to the State Housing Trust Fund. Negative rating pressure may occur if the effective risk-to-capital ratio rises above the board-directed maximum 5:1 ratio; the impact of additional claims are large; the documentary stamp tax allocations to the State Housing Trust Fund are diminished and/or the fund's operating performance remains weak. Business Wire, A Berkshire Hathaway Company, *Fitch Downgrades Florida Housing Finance Corp's Guarantee Fund's IFS to "A-"; Outlook Negative*, Aug. 18, 2009, *available at* http://www.businesswire.com/news/home/20090818006320/en/Fitch-Downgrades-Florida-Housing-Finance-Corps-Guarantee.

[36] Section 420.5092(5) and (6), F.S.

[37] Florida Housing Finance Corporation, *Financing Affordable Rental Development*, March 2011, p. 6, *available at* http://www.floridahousing.org/FH-ImageWebDocs/UniversalApps/2011/ImportantAnnouncements.

[38] *Id.*

[39] *Id.*

[40] ss. 420.507(22)(a) and (23)(a), 420.5087(6)(l), 420.5088, 420.5095, and 420.9075(1)(b) and (5)(b), F.S.

- Finance or otherwise assist the construction or purchase of housing sold to eligible individuals, unless the housing unit being sold had an initial certificate of occupancy prior to December 31, 2010; or
- Finance or otherwise assist in the construction or purchase of rental housing, unless the development being financed or assisted received its initial certificate of occupancy prior to December 31, 1996.

The bill expressly states that nothing in this section restricts the use of such funds to assist with the purchase of newly constructed homes that were completed prior to December 31, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996. It also provides that the use of such funds is subject to the restrictions of the program under which the funding is made available.

This section and the limitations imparted by it expire July 1, 2012.

FHFC Board of Directors

Current Law

The FHFC is governed by a nine-member board of directors appointed by the Governor and subject to Senate confirmation as follows:[41]

- A residential home builder.
- A commercial builder.
- A banker or mortgage banker.
- A building labor representative.
- An advocate for low-income persons.
- A former local government elected official.
- Two Florida citizens who are not principally employed in one of the above-listed industries.
- The Secretary of the Florida Department of Community Affairs (ex officio and voting).

Effect of Proposed Changes

The bill permits the Secretary of the Florida Department of Community Affairs to designate a senior-level agency employee to serve as the DCA's ex officio board member.

Agency Inspectors General

Current Law

Florida law provides for the establishment of an Office of the Inspector General (OIG) in each state agency to promote accountability, integrity, and efficiency in government.[42] Each Inspector General (IG) is appointed, supervised, and removed by their respective agency head.[43] The major responsibilities of the OIG include investigations, audits, and reviews of state agency programs and activities.[44] Currently, the IG for DCA is directed to perform for the FHFC the functions of the IG and reports to the secretary of DCA.[45]

The minimum qualifications for an agency IG are as follows:[46]

- A bachelor's degree from an accredited college or university with a major in accounting, or with a major in business which includes five courses in accounting, and 5 years of experience as an internal auditor or independent postauditor, electronic data processing auditor, accountant, or any combination thereof; or

[41] Section 420.504(3), F.S.
[42] Section 20.055(2), F.S.
[43] Section 20.055(3), F.S.
[44] Section 20.055(2), F.S.
[45] Section 420.0006, F.S.
[46] Section 20.055(5), F.S.

- A master's degree in accounting, business administration, or public administration from an accredited college or university and 4 years of experience as required above; or
- A certified public accountant license[47] or a certified internal audit certificate issued by the Institute of Internal Auditors or earned by examination, and 4 years of experience as required above.

Investigations by the IG are designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.[48] Accordingly, the following duties are performed by OIG:[49]

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.[50]
- Receive and consider the complaints which do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the IG deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the IG has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the IG or the IG's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.
- Submit in a timely fashion final reports on investigations conducted by the IG to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189, F.S.

Audits are independent appraisals designed to examine and evaluate agency programs and activities. An inherent objective when performing audits is to review and evaluate internal controls necessary to ensure fiscal accountability. Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards.[51] Final reports are submitted to the agency head and the Auditor General, whose office is directed to give official recognition to their findings and recommendations as part of its post-audit responsibilities.[52]

Each IG is required to prepare an annual report summarizing the annual activities of the OIG. The report is due September 30, following the preceding fiscal year. [53]

Effect of Proposed Changes

The bill establishes an IG position for the FHFC and provides for the appointment and removal of the IG by the director with the advice and consent of the FHFC's board of directors (Board). The FHFC's IG will perform the duties of an agency inspector general as provided in IG will be required to meet the minimal qualifications established by law[54] and the Board is authorized to establish additional qualifications to meet the unique needs of the FHFC.

The bill amends the provisions of state law relating to the agency inspectors general to add the Florida Housing Finance Corporation to the definition of "State Agency" and the Board of Directors of the Florida Housing Finance Corporation to the definition of "Agency Head" thereby conferring the duties and responsibilities described above on the newly FHFC IG position.

---

[47] Chapter 473, F.S.
[48] Section 20.055(6), F.S.
[49] Section 20.055(6), F.S.
[50] Sections 112.3187-112.31895, F.S.
[51] Section 20.055(5), F.S.
[52] Section 20.055(5)(f) and (g), F.S.
[53] Section 20.055(7), F.S.
[54] Section 20.055(4), F.S.

The bill adjusts the reporting deadline for the FHFC IG's annual report to reflect the reporting period (calendar year) of the FHFC. The bill also removes the requirement for DCA's IG to serve as the FHFC's IG and removes an obsolete cross-reference.

Local Housing Finance Authorities

Current Law

State law prescribes the guidelines for local government investment policies for public funds in excess of the amounts needed to meet current expenses.[55] The law requires investment policies to be structured to place the highest priority on the safety of principal and liquidity of funds. It emphasizes that the optimization of investment returns is secondary to the requirements for safety and liquidity. Each unit of local government is required to adopt policies that are commensurate with the nature and size of the public funds within its custody.[56]

Effect of the Proposed Changes

The bill authorizes local housing finance authorities (HFAs) to invest and reinvest surplus funds in accordance with the state's local government investment policies[57] and provides that in addition to the investments expressly authorized by law,[58] local HFAs are empowered to invest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation (FDIC) regardless of whether the bank or financial institution in which the deposit or investment is made is a "qualified public depository."[59]

State restrictions, pertaining to "qualified public depositories" do not apply to some investments, including "public deposits which are fully secured under federal regulations."[60] The bill includes explicit intent language to structure this empowerment as supplementary authority and to avoid interpretation as a limitation upon any powers of a local HFA. Legal counsel for some local housing finance authorities have opined that this waiver includes investments that are fully insured by the FDIC. However, proponents of the countervailing view have interpreted the language so that it does not include FDIC insured accounts. An auditor has suggested that a clarification would be beneficial.[61]

B. SECTION DIRECTORY:

Section 1: Amends s. 20.055 (1) and (7), F.S., relating to Agency Inspectors General.

Section 2: Creates s. 159.608(11), F.S., authorizing local housing finance authorities to invest and reinvest surplus funds.

Section 3: Amends s. 163.3177(6), F.S. providing that the housing element of certain local government comprehensive plans may include provisions that address housing for seniors; and providing for disposal of specified property.

Section 4: Amends s. 201.15 (9), (10), (13), F.S., removing the statutory limitations on the amount of documentary stamp revenue that is distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.

Section 5: Repeals section 8 of chapter 2009-131, L.O.F., retroactively to June 30, 2009.

Section 6: Amends s. 420.003(4), F.S., providing additional policy guidelines under the state housing strategy for the development of programs for housing production, rehabilitation, and finance to require persons with special needs to be included in the strategy's periodic review and report.

---

[55] Section 218.415, F.S.
[56] *Id.*
[57] Section 218.415, F.S.
[58] Sections 218.415(16)((a)-(g) and (17)(a)-(d), F.S.
[59] Section 280.02(26), F.S.
[60] Section 280.03(3)(e), F.S.
[61] Florida Association of Local Housing Finance Authorities, email and conversation with House Community & Military Affairs Subcommittee staff on February 28, 2011.

Section 7: Creates s. 420.004(7) and (13), F.S., defining the terms "disabling condition" and "person with special needs."

Section 8: Amends s. 420.0006, F.S., relating to the appointment of the Department of Community Affairs' Inspector General to act as the FHFC's Inspector General.

Section 9: Amends s. 420.504(3), F.S., relating to the DCA secretary's power to designate a senior-level agency employee to serve as the DCA's ex officio and voting member of the FHFC board.

Section 10: Amends s. 420.506, F.S., relating to the appointment and removal of the FHFC's Inspector General.

Section 11: Amends s. 420.507(22), F.S., extending low interest mortgage loans for the SAIL Program to sponsors of projects who set aside units for persons with special needs; creates s. 420.507(33), F.S., to establish the authority of the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute; amends s. 420.507(47), F.S., deleting criteria for domiciled builder preference language and replacing that criteria with criteria which favors the highest rate of Florida job creation; and amends s. 420.507(46), F.S., to correct cross-references.

Section 12: Amends s. 420.5087(3) and (6), F.S., including persons with special needs as a tenant group for specified purposes of the SAIL Program; and modifying the competitive criteria that must be considered when DCA and the FHFC staff are evaluating and ranking applications under the SAIL Program.

Section 13: Amends s. 163.31771, F.S., relating to accessory dwelling units, to conform cross-references.

Section 14: Amends s. 212.08, F.S., relating to sales and use tax, to conform cross-references.

Section 15: Amends s. 215.5586, F.S., relating to the My Safe Florida Home Program, to conform cross-references.

Section 16: Amends s. 420.503, F.S., relating to definition, to conform cross-references.

Section 17: Provides that funds from various affordable housing trust funds and programs may not be used to finance or otherwise assist new construction until July 1, 2012.

Section 18: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference consensus estimate found there would be no impact to cash in the 2011-2012 fiscal year. However, based on a four-year outlook there would be an annualized negative impact to recurring general revenue of $33.9 million and an annualized positive recurring impact to the state housing trust funds in the same amount.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill contains provisions that direct funds from various affordable housing trust funds and programs may not be used to finance or otherwise assist new construction until July 1, 2012. These provisions are aimed at reducing the surplus of available homes on the market.

D. FISCAL COMMENTS:

See comments under FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill establishes the authority of the FHFC to administer programs receiving federal funding for which no corresponding program has been previously created by statute and establish selection criteria for such funds by request for proposals or other competitive solicitation.

The bill requires the FHFC to develop rules for determining Florida job creation rate in the development and construction of affordable housing in its scoring and competitive evaluation of applications for the SAIL program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to affordable housing; amending s. 20.055, F.S.; revising the definition of "state agency" to include the Florida Housing Finance Corporation; revising the definition of "agency head" to include the board of directors of the corporation; requiring the inspector general to prepare an annual report; amending s. 159.608, F.S.; providing a housing finance authority with an additional purpose for which it may exercise its power to borrow; amending s. 163.3177, F.S.; revising provisions relating to the elements of local comprehensive plans to authorize the inclusion of an element for affordable housing for certain seniors; providing for the disposition of real property by a local government for the development of affordable housing; amending s. 201.15, F.S.; revising the allocation of certain proceeds distributed from the excise tax on documents that are paid into the State Treasury to the credit of the State Housing Trust Fund; providing for retroactive repeal of s. 8, ch. 2009-131, Laws of Florida, to eliminate a conflicting version of s. 201.15, F.S.; amending s. 420.0003, F.S.; including the needs of persons with special needs in the state housing strategy's periodic review and report; amending s. 420.0004, F.S.; defining the terms "disabling condition" and "person with special needs"; conforming cross-references; amending s. 420.0006, F.S.; removing an obsolete reference; deleting provisions requiring the inspector general of the Department of Community Affairs

to perform functions for the corporation to conform to changes made by the act; amending s. 420.504, F.S.; authorizing the Secretary of Community Affairs to designate a senior-level agency employee to serve on the board of directors of the Florida Housing Finance Corporation; amending s. 420.506, F.S.; providing for the appointment of an inspector general of the Florida Housing Finance Corporation; providing appointing authority thereof; providing duties and responsibilities of the inspector general; amending s. 420.507, F.S.; requiring certain rates of interest to be made available to sponsors of projects for persons with special needs; providing additional powers of the corporation relating to receipt of federal funds; revising powers of the corporation relating to criteria establishing a preference for eligible developers and general contractors; conforming a cross-reference; amending s. 420.5087, F.S.; limiting the reservation of funds within each notice of fund availability to the persons with special needs tenant group; including persons with special needs as a tenant group for specified purposes of the State Apartment Incentive Loan Program; revising and providing criteria to be used by a specified review committee for the competitive ranking of applications for such program; conforming a cross-reference; amending ss. 163.31771, 212.08, 215.5586, and 420.503, F.S.; conforming cross-references; providing legislative intent; prohibiting funds from the State Housing Trust Fund or the Local

Government Housing Trust Fund that are appropriated for specified programs from being used for certain purposes; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (b) of subsection (1) and subsection (7) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

(1) For the purposes of this section:

(a) "State agency" means each department created pursuant to this chapter, and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system.

(b) "Agency head" means the Governor, a Cabinet officer, a secretary as defined in s. 20.03(5), or an executive director as defined in s. 20.03(6). It also includes the chair of the Public Service Commission, the Director of the Office of Insurance Regulation of the Financial Services Commission, the Director of the Office of Financial Regulation of the Financial Services Commission, the board of directors of the Florida Housing Finance Corporation, and the Chief Justice of the State Supreme

Court.

(7)(a) Except as provided in paragraph (b), each inspector general shall, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.

(b) The inspector general of the Florida Housing Finance Corporation shall, not later than 90 days after the end of each fiscal year, prepare an annual report summarizing the activities of the office of inspector general during the immediately preceding fiscal year.

(c) The final reports prepared pursuant to paragraphs (a) and (b) ~~report~~ shall be furnished to the heads of the respective agencies ~~agency head~~. Such report shall include, but need not be limited to:

1.~~(a)~~ A description of activities relating to the development, assessment, and validation of performance measures.

2.~~(b)~~ A description of significant abuses and deficiencies relating to the administration of programs and operations of the agency disclosed by investigations, audits, reviews, or other activities during the reporting period.

3.~~(c)~~ A description of the recommendations for corrective action made by the inspector general during the reporting period with respect to significant problems, abuses, or deficiencies identified.

4.~~(d)~~ The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed.

5.~~(e)~~ A summary of each audit and investigation completed

during the reporting period.

Section 2. Subsection (11) is added to section 159.608, Florida Statutes, to read:

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

(11) To invest and reinvest surplus funds of the housing finance authority in accordance with s. 218.415. However, in addition to the investments expressly authorized in ss. 218.415(16)(a)-(g) and (17)(a)-(d), a housing finance authority may invest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation regardless of whether the bank or financial institution in which the deposit or investment is made is a qualified public depository as defined in s. 280.02. This subsection is supplementary to and may not be construed as limiting any powers of a housing finance authority or providing or implying a limiting construction of any other statutory provision.

Section 3. Paragraph (f) of subsection (6) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(f)1. A housing element consisting of standards, plans, and principles to be followed in:

a. The provision of housing for all current and anticipated future residents of the jurisdiction.

b. The elimination of substandard dwelling conditions.

c. The structural and aesthetic improvement of existing housing.

d. The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(3)(j), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this sub-subparagraph shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.

e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.

f. The formulation of housing implementation programs.

g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.

h. Energy efficiency in the design and construction of new housing.

i. Use of renewable energy resources.

j. Each county in which the gap between the buying power of a family of four and the median county home sale price exceeds $170,000, as determined by the Florida Housing Finance Corporation, and which is not designated as an area of critical state concern shall adopt a plan for ensuring affordable workforce housing. At a minimum, the plan shall identify adequate sites for such housing. For purposes of this sub-subparagraph, the term "workforce housing" means housing that is affordable to natural persons or families whose total household income does not exceed 140 percent of the area median income, adjusted for household size.

k. As a precondition to receiving any state affordable housing funding or allocation for any project or program within the jurisdiction of a county that is subject to sub-subparagraph j., a county must, by July 1 of each year, provide certification that the county has complied with the requirements of sub-subparagraph j.

The goals, objectives, and policies of the housing element must be based on the data and analysis prepared on housing needs, including the affordable housing needs assessment. State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job creation, and economic solutions to address a portion of their affordable housing concerns.

2. To assist local governments in housing data collection

and analysis and assure uniform and consistent information regarding the state's housing needs, the state land planning agency shall conduct an affordable housing needs assessment for all local jurisdictions on a schedule that coordinates the implementation of the needs assessment with the evaluation and appraisal reports required by s. 163.3191. Each local government shall utilize the data and analysis from the needs assessment as one basis for the housing element of its local comprehensive plan. The agency shall allow a local government the option to perform its own needs assessment, if it uses the methodology established by the agency by rule.

Section 4. Subsections (9), (10), and (13) of section 201.15, Florida Statutes, are amended to read:

201.15 Distribution of taxes collected.—All taxes collected under this chapter are subject to the service charge imposed in s. 215.20(1). Prior to distribution under this section, the Department of Revenue shall deduct amounts necessary to pay the costs of the collection and enforcement of the tax levied by this chapter. Such costs and the service charge may not be levied against any portion of taxes pledged to debt service on bonds to the extent that the costs and service charge are required to pay any amounts relating to the bonds. After distributions are made pursuant to subsection (1), all of the costs of the collection and enforcement of the tax levied by this chapter and the service charge shall be available and transferred to the extent necessary to pay debt service and any other amounts payable with respect to bonds authorized before January 1, 2010, secured by revenues distributed pursuant to

subsection (1). All taxes remaining after deduction of costs and the service charge shall be distributed as follows:

(9) Seven and fifty-three hundredths. ~~The lesser of 7.53~~ percent of the remaining taxes ~~or $107 million~~ in each fiscal year shall be paid into the State Treasury to the credit of the State Housing Trust Fund and used as follows:

(a) Half of that amount shall be used for the purposes for which the State Housing Trust Fund was created and exists by law.

(b) Half of that amount shall be paid into the State Treasury to the credit of the Local Government Housing Trust Fund and used for the purposes for which the Local Government Housing Trust Fund was created and exists by law.

(10) Eight and sixty-six hundredths ~~The lesser of 8.66~~ percent of the remaining taxes ~~or $136 million~~ in each fiscal year shall be paid into the State Treasury to the credit of the State Housing Trust Fund and used as follows:

(a) Twelve and one-half percent of that amount shall be deposited into the State Housing Trust Fund and be expended by the Department of Community Affairs and by the Florida Housing Finance Corporation for the purposes for which the State Housing Trust Fund was created and exists by law.

(b) Eighty-seven and one-half percent of that amount shall be distributed to the Local Government Housing Trust Fund and used for the purposes for which the Local Government Housing Trust Fund was created and exists by law. Funds from this category may also be used to provide for state and local services to assist the homeless.

(13) In each fiscal year that the remaining taxes exceed collections in the prior fiscal year, the stated maximum dollar amounts provided in subsections (2), (4), (6), and (7)~~, (9), and (10)~~ shall each be increased by an amount equal to 10 percent of the increase in the remaining taxes collected under this chapter multiplied by the applicable percentage provided in those subsections.

Section 5. Section 8 of chapter 2009-131, Laws of Florida, is repealed, retroactive to June 30, 2009.

Section 6. Paragraph (c) of subsection (4) of section 420.0003, Florida Statutes, is amended to read:

420.0003 State housing strategy.—

(4) IMPLEMENTATION.—The Department of Community Affairs and the Florida Housing Finance Corporation in carrying out the strategy articulated herein shall have the following duties:

(c) The Shimberg Center for Affordable Housing, in consultation with the Department of Community Affairs and the Florida Housing Finance Corporation, shall review and evaluate existing housing rehabilitation, production, and finance programs to determine their consistency with relevant policies in this section and identify the needs of specific populations, including, but not limited to, elderly persons, ~~and~~ handicapped persons, and persons with special needs, and shall recommend statutory modifications where appropriate. The Shimberg Center for Affordable Housing, in consultation with the Department of Community Affairs and the corporation, shall also evaluate the degree of coordination between state housing programs, and between state, federal, and local housing activities, and shall

recommend improved program linkages. The recommendations required above and a report of any programmatic modifications made as a result of these policies shall be included in the housing report required by s. 420.6075, beginning December 31, 1991, and every 5 years thereafter.

Section 7. Section 420.0004, Florida Statutes, is amended to read:

420.0004 Definitions.—As used in this part, unless the context otherwise indicates:

(1) "Adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility determined as provided in subsection (9) ~~(8)~~, subsection (11) ~~(10)~~, subsection (12) ~~(11)~~, or subsection (17) ~~(15)~~, based upon a formula as established by the United States Department of Housing and Urban Development.

(2) "Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.

(3) "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the

households as indicated in subsection (9) ~~(8)~~, subsection (11) ~~(10)~~, subsection (12) ~~(11)~~, or subsection (17) ~~(15)~~.

(4) "Corporation" means the Florida Housing Finance Corporation.

(5) "Community-based organization" or "nonprofit organization" means a private corporation organized under chapter 617 to assist in the provision of housing and related services on a not-for-profit basis and which is acceptable to federal and state agencies and financial institutions as a sponsor of low-income housing.

(6) "Department" means the Department of Community Affairs.

(7) "Disabling condition" means a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, or the co-occurrence of two or more of these conditions, and a determination that the condition is:

(a) Expected to be of long-continued and indefinite duration; and

(b) Not expected to impair the ability of the person with special needs to live independently with appropriate supports.

(8) ~~(7)~~ "Elderly" describes persons 62 years of age or older.

(9) ~~(8)~~ "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to

provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income.

(10) ~~(9)~~ "Local public body" means any county, municipality, or other political subdivision, or any housing authority as provided by chapter 421, which is eligible to sponsor or develop housing for farmworkers and very-low-income and low-income persons within its jurisdiction.

(11) ~~(10)~~ "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(12) ~~(11)~~ "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(13) "Person with special needs" means an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a

disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5); a survivor of domestic violence as defined in s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

(14) ~~(12)~~ "Student" means any person not living with his or her parent or guardian who is eligible to be claimed by his or her parent or guardian as a dependent under the federal income tax code and who is enrolled on at least a half-time basis in a secondary school, career center, community college, college, or university.

(15) ~~(13)~~ "Substandard" means:

(a) Any unit lacking complete plumbing or sanitary facilities for the exclusive use of the occupants;

(b) A unit which is in violation of one or more major sections of an applicable housing code and where such violation poses a serious threat to the health of the occupant; or

(c) A unit that has been declared unfit for human habitation but that could be rehabilitated for less than 50 percent of the property value.

(16) ~~(14)~~ "Substantial rehabilitation" means repair or restoration of a dwelling unit where the value of such repair or restoration exceeds 40 percent of the value of the dwelling.

(17) ~~(15)~~ "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for

households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 8. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The secretary of the department shall contract, notwithstanding the provisions of part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and must be consistent with the provisions of the corporation's strategic plan prepared in accordance with s. 420.511 ~~and compatible with s. 216.0166~~. The contract must provide that, in the event the corporation fails to comply with any of the performance measures required by s. 420.511, the secretary shall notify the Governor and shall refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review by the department's inspector general. If such failure is due to outside forces, it shall not be deemed a violation of the contract. If such failure is due to inadequate management, the

department's inspector general shall provide recommendations regarding solutions. The Governor is authorized to resolve any differences of opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer shall approve the request absent a finding by the Chief Financial Officer that continuing such advances would adversely impact the state; however, in any event the Chief Financial Officer shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State Housing Trust Fund so long as such contracts are in accordance with the laws of this state. ~~The department inspector general shall perform for the corporation the functions set forth in s. 20.055 and report to the secretary of the department. The corporation shall be deemed an agency for the purposes of s. 20.055.~~

Section 9. Subsection (3) of section 420.504, Florida Statutes, is amended to read:

420.504 Public corporation; creation, membership, terms, expenses.—

(3) The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Community Affairs in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters. The corporation shall consist of a board of directors composed of the Secretary of Community Affairs as an ex officio and voting member, or a

senior-level agency employee designated by the secretary, and eight members appointed by the Governor subject to confirmation by the Senate from the following:

(a) One citizen actively engaged in the residential home building industry.

(b) One citizen actively engaged in the banking or mortgage banking industry.

(c) One citizen who is a representative of those areas of labor engaged in home building.

(d) One citizen with experience in housing development who is an advocate for low-income persons.

(e) One citizen actively engaged in the commercial building industry.

(f) One citizen who is a former local government elected official.

(g) Two citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a)-(f).

Section 10. Section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(1) The appointment and removal of an executive director shall be by the Secretary of Community Affairs, with the advice and consent of the corporation's board of directors. The executive director shall employ legal and technical experts and such other agents and employees, permanent and temporary, as the corporation may require, and shall communicate with and provide

information to the Legislature with respect to the corporation's activities. The board is authorized, notwithstanding the provisions of s. 216.262, to develop and implement rules regarding the employment of employees of the corporation and service providers, including legal counsel. The board of directors of the corporation is entitled to establish travel procedures and guidelines for employees of the corporation. The executive director's office and the corporation's files and records must be located in Leon County.

(2) The appointment and removal of an inspector general shall be by the executive director, with the advice and consent of the corporation's board of directors. The corporation's inspector general shall perform for the corporation the functions set forth in s. 20.055. The inspector general shall administratively report to the executive director. The inspector general shall meet the minimum qualifications as set forth s. 20.055(4). The corporation may establish additional qualifications deemed necessary by the board of directors to meet the unique needs of the corporation. The inspector general shall be responsible for coordinating the responsibilities set forth in s. 420.0006.

Section 11. Paragraph (a) of subsection (22) and subsections (33), (46), and (47) of section 420.507, Florida Statutes, are amended to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including

the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(a) Make first, second, and other subordinated mortgage loans including variable or fixed rate loans subject to contingent interest for all State Apartment Incentive Loans provided in this chapter based upon available cash flow of the projects. The corporation shall make loans exceeding 25 percent of project cost only to nonprofit organizations and public bodies that are able to secure grants, donations of land, or contributions from other sources and to projects meeting the criteria of subparagraph 1. Mortgage loans shall be made available at the following rates of interest:

1. Zero to 3 percent interest for sponsors of projects that set aside at least 80 percent of their total units for residents qualifying as farmworkers, commercial fishing workers, ~~or~~ the homeless as defined in s. 420.621, or persons with special needs as defined in s. 420.0004(13) over the life of the loan.

2. Zero to 3 percent interest based on the pro rata share of units set aside for homeless residents or persons with special needs if the total of such units is less than 80 percent of the units in the borrower's project.

3. One to 9 percent interest for sponsors of projects targeted at populations other than farmworkers, commercial fishing workers, ~~or~~ the homeless, or persons with special needs.

(33) To receive federal funding in connection with the corporation's programs directly from the Federal Government and to receive federal funds for which no corresponding program has been created in statute and establish selection criteria for such funds by request for proposals or other competitive solicitation.

(46) To require, as a condition of financing a multifamily rental project, that an agreement be recorded in the official records of the county where the real property is located, which requires that the project be used for housing defined as affordable in s. 420.0004(3) by persons defined in s. 420.0004(9) ~~(8)~~, (11) ~~(10)~~, (12) ~~(11)~~, and (17) ~~(15)~~. Such an agreement is a state land use regulation that limits the highest and best use of the property within the meaning of s. 193.011(2).

(47) To provide by rule, in connection with any corporation competitive program, criteria establishing, where all other competitive elements are equal, a preference for developers and general contractors who demonstrate the highest rate of Florida job creation in the development and construction of affordable housing ~~domiciled in this state and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs~~.

~~(a) In evaluating whether a developer or general contractor is domiciled in this state, the corporation shall consider whether the developer's or general contractor's principal office is located in this state and whether a majority~~

~~of the developer's or general contractor's principals and financial beneficiaries reside in Florida.~~

~~(b) In evaluating whether a developer or general contractor has substantial experience, the corporation shall consider whether the developer or general contractor has completed at least five developments using funds either provided by or administered by the corporation.~~

Section 12. Subsection (3) and paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, are amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(3) During the first 6 months of loan or loan guarantee availability, program funds shall be reserved for use by sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The reservation of funds to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The reservation of funds within each notice of fund availability to the tenant groups in paragraphs (a), (b), and <u>(e)</u> ~~(d)~~ may not be less than 10 percent of the funds available at that time. Any increase in funding required to reach the 10-percent minimum must be taken from the tenant group

that has the largest reservation. The reservation of funds within each notice of fund availability to the tenant group in paragraph (c) may not be less than 5 percent of the funds available at that time. The reservation of funds within each notice of fund availability to the tenant group in paragraph (d) may not be more than 10 percent of the funds available at that time. The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless;

(d) Persons with special needs; and

(e) ~~(d)~~ Elderly persons. Ten percent of the amount reserved for the elderly shall be reserved to provide loans to sponsors of housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 percent of the loan amount to pay the cost of such repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation's encumbrance is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be based on a credit analysis of the applicant. The

corporation may forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income elderly by nonprofit organizations, as defined in s. 420.0004(5), where the project has provided affordable housing to the elderly for 15 years or more. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee composed of the department and corporation staff and shall establish by rule a scoring system for evaluation and competitive ranking of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period to exceed the minimum required by federal law or the provisions of this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost except that the share of the loan attributable to units serving extremely-low-income persons shall be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience~~, including whether the developer and general contractor have substantial experience, as provided in s. 420.507(47)~~.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate ~~Domicile~~ of the developer and general contractor, as provided in s. 420.507(47).

Section 13. Paragraphs (d), (e), (f), and (g) of subsection (2) of section 163.31771, Florida Statutes, are amended to read:

163.31771 Accessory dwelling units.—

(2) As used in this section, the term:

(d) "Low-income persons" has the same meaning as in s. 420.0004(11)~~(10)~~.

(e) "Moderate-income persons" has the same meaning as in s. 420.0004(12)~~(11)~~.

(f) "Very-low-income persons" has the same meaning as in s. 420.0004(17)~~(15)~~.

(g) "Extremely-low-income persons" has the same meaning as in s. 420.0004(9)~~(8)~~.

Section 14. Paragraph (o) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(o) Building materials in redevelopment projects.—

1. As used in this paragraph, the term:

a. "Building materials" means tangible personal property that becomes a component part of a housing project or a mixed-use project.

b. "Housing project" means the conversion of an existing manufacturing or industrial building to housing units in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area and in which the developer agrees to set aside at least 20 percent of the housing units in the project for low-income and moderate-income persons or the construction in a designated brownfield area of affordable housing for persons described in s. 420.0004(9) ~~(8)~~, (11) ~~(10)~~, (12) ~~(11)~~, or (17) ~~(15)~~ or in s. 159.603(7).

c. "Mixed-use project" means the conversion of an existing manufacturing or industrial building to mixed-use units that include artists' studios, art and entertainment services, or other compatible uses. A mixed-use project must be located in an

urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area, and the developer must agree to set aside at least 20 percent of the square footage of the project for low-income and moderate-income housing.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

2. Building materials used in the construction of a housing project or mixed-use project are exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the requirements of this paragraph have been met. This exemption inures to the owner through a refund of previously paid taxes. To receive this refund, the owner must file an application under oath with the department which includes:

a. The name and address of the owner.

b. The address and assessment roll parcel number of the project for which a refund is sought.

c. A copy of the building permit issued for the project.

d. A certification by the local building code inspector that the project is substantially completed.

e. A sworn statement, under penalty of perjury, from the general contractor licensed in this state with whom the owner contracted to construct the project, which statement lists the building materials used in the construction of the project and the actual cost thereof, and the amount of sales tax paid on these materials. If a general contractor was not used, the owner shall provide this information in a sworn statement, under

penalty of perjury. Copies of invoices evidencing payment of sales tax must be attached to the sworn statement.

3. An application for a refund under this paragraph must be submitted to the department within 6 months after the date the project is deemed to be substantially completed by the local building code inspector. Within 30 working days after receipt of the application, the department shall determine if it meets the requirements of this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval of the application by the department.

4. The department shall establish by rule an application form and criteria for establishing eligibility for exemption under this paragraph.

5. The exemption shall apply to purchases of materials on or after July 1, 2000.

Section 15. Paragraphs (a) and (g) of subsection (2) of section 215.5586, Florida Statutes, are amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide trained and certified inspectors to perform

inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(2) MITIGATION GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) For a homeowner to be eligible for a grant, the following criteria must be met:

1. The homeowner must have been granted a homestead exemption on the home under chapter 196.

2. The home must be a dwelling with an insured value of $300,000 or less. Homeowners who are low-income persons, as defined in s. 420.0004(11) ~~(10)~~, are exempt from this requirement.

3. The home must have undergone an acceptable hurricane mitigation inspection after May 1, 2007.

4. The home must be located in the "wind-borne debris region" as that term is defined in s. 1609.2, International Building Code (2006), or as subsequently amended.

5. The building permit application for initial construction of the home must have been made before March 1, 2002.

An application for a grant must contain a signed or electronically verified statement made under penalty of perjury

that the applicant has submitted only a single application and must have attached documents demonstrating the applicant meets the requirements of this paragraph.

(g) Low-income homeowners, as defined in s. 420.0004(11) ~~(10)~~, who otherwise meet the requirements of paragraphs (a), (c), (e), and (f) are eligible for a grant of up to $5,000 and are not required to provide a matching amount to receive the grant. Additionally, for low-income homeowners, grant funding may be used for repair to existing structures leading to any of the mitigation improvements provided in paragraph (e), limited to 20 percent of the grant value. The program may accept a certification directly from a low-income homeowner that the homeowner meets the requirements of s. 420.0004(11) ~~(10)~~ if the homeowner provides such certification in a signed or electronically verified statement made under penalty of perjury.

Section 16. Subsection (19) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.—As used in this part, the term:

(19) "Housing for the elderly" means, for purposes of s. 420.5087(3)(e) ~~(d)~~, any nonprofit housing community that is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), or s. 236 of the National Housing Act, as amended, and that is subject to income limitations established by the United States Department of Housing and Urban Development, or any program funded by the Rural Development Agency of the United States Department of

Agriculture and subject to income limitations established by the United States Department of Agriculture. A project which qualifies for an exemption under the Fair Housing Act as housing for older persons as defined by s. 760.29(4) shall qualify as housing for the elderly for purposes of s. 420.5087(3)(e)~~(d)~~ and for purposes of any loans made pursuant to s. 420.508. In addition, if the corporation adopts a qualified allocation plan pursuant to s. 42(m)(1)(B) of the Internal Revenue Code or any other rules that prioritize projects targeting the elderly for purposes of allocating tax credits pursuant to s. 420.5099 or for purposes of the HOME program under s. 420.5089, a project which qualifies for an exemption under the Fair Housing Act as housing for older persons as defined by s. 760.29(4) shall qualify as a project targeted for the elderly, if the project satisfies the other requirements set forth in this part.

Section 17. (1) The Legislature finds that due to the current economic conditions in the housing market there is a critical need to rehabilitate or sell excess inventory of unsold homes, including foreclosed homes and newly constructed homes, as well as a critical need for the rehabilitation and preservation of older, affordable apartments. The Legislature further finds that there is a critical need to create housing-related jobs and that these conditions require the targeting of state and local housing trust fund moneys to assist in the sale or rehabilitation of existing homes and the preservation and rehabilitation of older rental apartments.

(2) Notwithstanding ss. 420.507(22)(a) and (23)(a), 420.5087(6)(l), 420.5088, 420.5095, and 420.9075(1)(b) and

(5)(b), Florida Statutes, funds from the State Housing Trust Fund or the Local Government Housing Trust Fund that are appropriated for use in the State Apartment Incentive Loan Program, Florida Homeownership Assistance Program, Community Workforce Housing Innovation Pilot Program, or the State Housing Initiatives Partnership Program may not be used to:

(a) Finance or otherwise assist the construction or purchase of housing sold to eligible individuals, unless the housing unit being sold had an initial certificate of occupancy prior to December 31, 2010; or

(b) Finance or otherwise assist in the construction or purchase of rental housing, unless the development being financed or assisted received its initial certificate of occupancy prior to December 31, 1996.

Nothing in this section restricts the use of such funds to assist with the purchase of newly constructed homes that were completed prior to December 31, 2010, or the acquisition and rehabilitation of apartments that received their initial certificate of occupancy prior to December 31, 1996. The use of such funds is subject to the restrictions of the program under which the funding is made available.

(3) This section expires July 1, 2012.

Section 18. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1321 Miami-Dade County Home Rule Charter
SPONSOR(S): Lopez-Cantera
TIED BILLS: **IDEN./SIM. BILLS:** SJR 1954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee		Rojas	Tinker
2) State Affairs Committee			

SUMMARY ANALYSIS

HJR 1321 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of electors of Miami-Dade County. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. HJR 1321 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

HJR 1321 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the publication costs for advertising the joint resolution will be $67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION:

In 1956, an amendment to the 1885 Florida Constitution provided that Dade County has the authority to adopt, revise, and amend from time to time a home rule charter government for Dade County.[1] The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status.

Section 6 (e), Art. VIII, s. 6(e) of the State Constitution provides that the Metropolitan Dade County Home Rule Charter provisions shall be valid if authorized under s. 11, Art. VIII, s. 11 of the State Constitution of 1885, as amended. However, s. 11 (5), Art. VIII of the 1885 State Constitution prohibits any charter provisions in conflict with the Constitution or with general law relating to Miami-Dade County.[2]

Section 11 (5), Art VIII of the State Constitution further provides that this charter and any subsequent ordinances enacted pursuant to this charter may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Metropolitan Dade County Home Rule Charter may implicitly, as well as expressly, amend or repeal a special act, when it conflicts with a Miami-Dade County ordinance.

In *Chase v. Cowart*, the Florida Supreme Court concluded that:

> When the Legislature enacted Chapter 31420, Laws of 1956, creating the metropolitan charter and providing the method of presenting the home rule charter to the voters of Dade County, and more specifically when the electors of Dade County adopted the home rule charter on May 21, 1957, the authority of the Legislature in affairs of local government in Dade County ceased to exist. Thereafter, the Legislature may lawfully exercise this power only through passage of general acts applicable to Dade County and any other one or more counties, or a municipality in Dade County and any other one or more municipalities in the State.[3]

In a 1989 opinion, the Attorney General cited *Dade County v. Dade County League of Municipalities,*[4] for the proposition that, following adoption of the Dade County Home Rule Charter, the Legislature is limited to enacting only general laws relating to Miami-Dade County and may not amend a special act relating to a municipality within Miami-Dade County that was enacted prior to the adoption of the Dade County Home Rule Charter[5].

Constitutional Provision for Amending the Constitution

Section 1, Art. XI, of the State Constitution, provides for amendment to the state constitution by the Legislature. The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office; alternatively, the amendment may be voted on at a special election held for that purpose.

---

[1] Section 11, Art. VIII, of the State Constitution of 1885, as amended
[2] See also, *Dade County v. Wilson*, 386 So. 2d 556 (Fla. 1980).

[3] 102 So. 2d 147 (Fla.1958),
[4] 104 So. 2d 512, 517 (Fla. 1958)
[5] AGO 1989-9, See also, *Dickenson v. Board of Public Instruction of Dade County*, 217 So.2d 553, 555 (Fla. 1969).

EFFECT OF THE JOINT RESOLUTION:

HJR 1321 proposes to amend the State Constitution to create the constitutional authority for Miami-Dade County's Home Rule Charter to be amended by a special law of the Legislature, provided that the special law is then approved by the vote of electors of Miami-Dade County. The resolution also proposes to change references to "Metropolitan Dade County" to reflect the county's present name, "Miami-Dade County."

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The House Joint Resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

In addition to methods available locally, changes to the Miami-Dade County Charter could also now be enacted with the following process;

1. A bill proposing a special law that would serve as a charter amendment would be approved at a meeting of the local legislative delegation.
2. The bill would be filed by a member of that delegation with the Florida House of Representatives.
3. The bill would require passage by the Legislature.
4. The special law would be placed on the ballot and require approval by the electors of Miami-Dade County.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend s. 6 of Art. VIII of the State Constitution, to authorize the amendment of Miami-Dade County's Home Rule Charter by special law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not have a fiscal impact on state revenues.

2. Expenditures:

Section 5(d), Art. XI of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $106.14 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be $67,611.18. This sum will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from $10,000 to $150,000, depending on a number of variables.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The joint resolution will have an indeterminate negative fiscal impact on Miami-Dade County. To the extent that special laws relating to Miami-Dade County are enacted, the county will have to expend funds to put those charter amendments on the ballot.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

See, Fiscal Impact on State Government, above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

Section 1, Art. of the State Constitution provides for proposed changes to the Constitution by the Legislature:

> SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Section 5(e), Art. XI, of the State Constitution requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The resolution title mistakenly references s. 6 of Art. III of the State Constitution and should be corrected to reflect that the body of the resolution makes changes to Article VIII.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article III of the State Constitution to authorize amendments or revisions to the home rule charter of Miami-Dade County by special law approved by a vote of the electors; providing requirements for a bill proposing such a special law.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 6 of Article III of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 6. Schedule to Article VIII.—

(a) This article shall replace all of Article VIII of the Constitution of 1885, as amended, except those sections expressly retained and made a part of this article by reference.

(b) COUNTIES; COUNTY SEATS; MUNICIPALITIES; DISTRICTS. The status of the following items as they exist on the date this article becomes effective is recognized and shall be continued until changed in accordance with law: the counties of the state; their status with respect to the legality of the sale of intoxicating liquors, wines and beers; the method of selection of county officers; the performance of municipal functions by

county officers; the county seats; and the municipalities and special districts of the state, their powers, jurisdiction and government.

(c) OFFICERS TO CONTINUE IN OFFICE. Every person holding office when this article becomes effective shall continue in office for the remainder of the term if that office is not abolished. If the office is abolished the incumbent shall be paid adequate compensation, to be fixed by law, for the loss of emoluments for the remainder of the term.

(d) ORDINANCES. Local laws relating only to unincorporated areas of a county on the effective date of this article may be amended or repealed by county ordinance.

(e) CONSOLIDATION AND HOME RULE. Article VIII, Sections 9, 10, 11 and 24, of the Constitution of 1885, as amended, shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article. All provisions of the Miami-Dade ~~Metropolitan Dade~~ County Home Rule Charter, heretofore or hereafter adopted by the electors of Miami-Dade ~~Dade~~ County pursuant to Article VIII, Section 11, of the Constitution of 1885, as amended, shall be valid, and any amendments to such charter shall be valid; provided that the said provisions of such charter and the said amendments thereto are authorized under said Article VIII, Section 11, of the Constitution of 1885, as amended. However, notwithstanding any provision of Article VIII, Section 11, of the Constitution of 1885, as amended, or any limitations under this subsection, the Miami-Dade County Home Rule Charter may be

amended or revised by special law approved by the electors of Miami-Dade County and, if approved, shall be deemed an amendment or revision of the charter by the electors of Miami-Dade County. A bill proposing such a special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation.

(f) DADE COUNTY; POWERS CONFERRED UPON MUNICIPALITIES. To the extent not inconsistent with the powers of existing municipalities or general law, the Metropolitan Government of Miami-Dade ~~Dade~~ County may exercise all the powers conferred now or hereafter by general law upon municipalities.

(g) DELETION OF OBSOLETE SCHEDULE ITEMS. The legislature shall have power, by joint resolution, to delete from this article any subsection of this Section 6, including this subsection, when all events to which the subsection to be deleted is or could become applicable have occurred. A legislative determination of fact made as a basis for application of this subsection shall be subject to judicial review.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 6

AUTHORIZING AMENDMENTS TO MIAMI-DADE COUNTY HOME RULE CHARTER BY SPECIAL LAW APPROVED BY REFERENDUM.—Authorizes amendments or revisions to the Miami-Dade County Home Rule Charter by a special law when the law is approved by a vote of the electors of Miami-Dade County. A bill proposing such a

special law must be approved at a meeting of the local legislative delegation and filed by a member of that delegation. It also conforms references in the State Constitution to the reflect the county's current name.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4011 Dance Studios
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N	Livingston	Creamer
2) Economic Affairs Committee		Livingston	Tinker TBT

SUMMARY ANALYSIS

The bill repeals regulatory provisions relating to the operation of ballroom dance studios. Section 501.143, F.S., is repealed and s. 205.1969, F.S., is amended to remove a reference to payment of the local business tax. These changes remove the statutory requirements relating to the operation of dance studios and the requirements for registration by the Department of Agriculture and Consumer Services (DACS).

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with registration. The DACS estimates this reduction to be $59,100 per fiscal year based on the $300 fee paid to the DACS for each studio.

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing registration applications. The DACS reports that this reduction would approach $34,339 per year.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

Currently, s. 501.143, F.S., is cited as the "Dance Studio Act."

This section defines "ballroom dance studio" to mean:

> any person that engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services or secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

It is common to use the reference to dance studio or ballroom dance studio interchangeably.

The owner or operator of a dance studio must register with the DACS annually. The registration procedure requires:

- the legal business or trade name, mailing address, and business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- copies of contracts to be offered to the public;
- payment of the registration fee of $300;
- the DACS may refuse registration if the applicant or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract of a ballroom dance studio must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Ballroom Dance Studio Registration No ....."

Statutory contract requirements specify that:

- the contract is in writing and all provisions, requirements, and prohibitions which are mandated by this statutory section must be contained in the written contract before it is signed by the customer;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for ballroom dance studio services or lessons include the customer's total payment obligation for services or lessons and contain a written statement of the hourly or lesson rate charged for which the customer has contracted.

A contract for the sale of future dance studio services or lessons which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the ballroom dance studio (a refund must be issued within 20 days after receipt of the notice of cancellation made within the 3-day period);
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the lessons or services or if the lessons or services cease to be offered as

stated in the contract (the studio must refund the balance in three equal monthly installments, to be completed within not more than 90 days); and
- studio management must keep a copy of each contract on file for as long as the contract is in effect and for a period of 2 years thereafter.

Each studio that has been in business under the same ownership for less than 3 years and receives an advance payment in excess of $250 or enters into retail installment contract for payment is required to establish a mechanism for ensuring customer refunds.

Financial security is required by statute and must be maintained in the form of a bond, an irrevocable letter of credit, or a guaranty agreement that is secured by a certificate of deposit as follows:

- if the studio has been in business under the same ownership for less than 1 year - $5,000;
- if the studio has been in business under the same ownership for at least 1 year, but less than 2 years - $10,000; and
- if the studio has been in business under the same ownership for at least 2 years, but less than 3 years - $15,000.

The DACS indicates that "the statute only addresses businesses under 3 years and the Department has interpreted that to mean NO bond is required"[1] if a studio has been under the same ownership for more than three years.

Enforcement authority is vested with the DACS and the Department of Legal Affairs for administrative, civil, and criminal penalties. Subsection 501.143(9), F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund if the action was brought by the DACS or the Legal Affairs Revolving Trust Fund if the action was brought by the Department of Legal Affairs.

Additionally, a customer injured by a fraudulent act in violation of this section may bring an action for the recovery of damages. Judgment may be entered for three times the amount, at which the actual damages are assessed plus costs and reasonable attorney's fees.

Effect of proposed changes

The bill repeals regulatory provisions relating to the operation of ballroom dance studios. Section 501.143, F.S., is repealed and s. 205.1969, F.S., is amended to remove a reference to registration by the state. These changes remove the statutory requirements concerning the operation of dance studios and the requirements for registration by the DACS.

B. SECTION DIRECTORY:

Section 1. Repeals s. 501.143, F.S., relating to the regulation of dance studios.

Section 2. Amends s. 205.1969, F.S., to delete a reference to the regulation of dance studios and, therefore, conform to the repeal of the regulation of this activity.

Section 3. Effective date – July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[1] E-mail response to committee staff from Grace Lovett, Director of the Office of legislative Affairs, Department of Agriculture and Consumer Services, February 8, 2011

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with registration. The DACS estimates this reduction to be $59,100 per fiscal year based on the $300 fee paid to the DACS for each studio.

2. Expenditures:

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing registration applications. The DACS reports that this reduction would approach $34,339 per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant. Business overhead costs could be anticipated to be reduced, primarily, in association with the payment of registration fees. Other savings could be associated with the practice of posting security collateral and contract content requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to dance studios; repealing s. 501.143, F.S., relating to the Dance Studio Act; amending s. 205.1969, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.143, Florida Statutes, is repealed.

Section 2. Section 205.1969, Florida Statutes, is amended to read:

205.1969 Health studios; consumer protection.—A county or municipality may not issue or renew a business tax receipt for the operation of a health studio pursuant to ss. 501.012-501.019 ~~or ballroom dance studio pursuant to s. 501.143,~~ unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4165 Community-Based Development Organizations
SPONSOR(S): Rouson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Duncan	Hoagland
2) Economic Affairs Committee		Duncan pdd	Tinker TBT

SUMMARY ANALYSIS

In 2000, the Legislature established the Community-Based Development Organization Assistance Act for the purpose of providing community-based development organizations (CBDOs) with administrative and operating funds to retain project staff to plan, implement, and manage job-generating and community revitalization developments in distressed neighborhoods.

The law authorizes the Department of Community Affairs (DCA) to award core administrative and operating grants used for staff salaries and administrative expenses for eligible CBDOs selected using a competitive three-tiered process for housing and economic development projects. DCA is required to adopt by rule a set of criteria for three-tiered funding that ensures equitable statewide geographic distribution of the funding. The plan must include emerging, intermediate, and mature CBDOs recognizing the varying needs of the three tiers. Each eligible CBDO may apply for a grant of up to $50,000 per year for a period of 5 years. When the act was created, the Legislature appropriated $1 million to be distributed as grants to CBDOs. Subsequently, the appropriation was vetoed by the Governor and as a result no grants were awarded.

This bill repeals ss. 163.455, 163.456, 163.457, 163.458, 163.459, 163.460, 163.461, and 163.462, F.S., eliminating the Community-Based Development Organization Assistance Act which has not been funded or implemented since it was created by the Legislature in 2000.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2000,[1] the Legislature established the Community-Based Development Organization Assistance Act for the purpose of providing community-based development organizations (CBDOs) with administrative and operating funds to retain project staff to plan, implement, and manage job-generating and community revitalization developments in distressed neighborhoods.[2]

The law authorizes the Department of Community Affairs (DCA) to award core administrative and operating grants used for staff salaries and administrative expenses for eligible CBDOs selected using a competitive three-tiered process for housing and economic development projects. DCA is required to adopt by rule[3] a set of criteria for three-tiered funding that ensures equitable statewide geographic distribution of the funding. The plan must include emerging, intermediate, and mature CBDOs recognizing the varying needs of the three tiers. Each eligible CBDO may apply for a grant of up to $50,000 per year for a period of 5 years.[4] When the act was created, the Legislature appropriated $1 million to be distributed as grants to CBDOs. Subsequently, the appropriation[5] was vetoed by the Governor and as a result no grants were awarded.

Eligible activities include, but are not limited to:[6]

- Preparing grant and loan applications, proposals, fundraising letters, and other documents essential to securing additional administrative or project funds.
- Developing local programs and home ownership housing projects to encourage the participation of financial institutions, insurance companies, attorneys, architects, planners, developers and other professional firms and individuals providing services beneficial to redevelopment efforts.
- Coordinating with state, federal, and local governments and nonprofit organizations to ensure that activities meet local plans and ordinances to avoid duplication of tasks.
- Assisting service area residents in identifying and determining eligibility for state, federal, and local housing programs, including rehabilitation, weatherization, home ownership, rental assistance, or public housing programs.

In order to be eligible for assistance, a CBDO must be a nonprofit corporation under state law and s. 501(c)(3) of the Internal Revenue Code; maintain a service area in which economic and housing development projects are located; and meet other specific criteria as provided by law. In addition, a majority of the CBDO's board members must be elected by those members of the nonprofit corporation who are stakeholders, comprising a mix of service area residents, area business property owners, area employees, and low-income residents.[7]

A CBDO applying for a core administrative and operating grant must also submit a proposal to DCA.[8] Those CBDOs receiving funds must submit an annual report providing information specified by law and other information as may be required by DCA.[9]

---

[1] Chapter 2000-351, L.O.F. codified at s. 163.455, F.S.
[2] Section 163.456, F.S.
[3] The Department of Community Affairs was granted rulemaking authority for the purposes of administering the Community-Based Development Organization Assistance Act pursuant to s. 163.462, F.S.
[4] Section 163.458, F.S.
[5] Section 9, ch. 2000-351, L.O.F.
[6] Section 163.459, F.S.
[7] Section 163.457, F.S.
[8] Section 163.460, F.S.
[9] Section 163.461, F.S.

Effect of the Proposed Changes

By repealing ss. 163.455, 163.456, 163.457, 163.458, 163.459, 163.460, 163.461, and 163.462, F.S., this bill eliminates the Community-Based Development Organization Assistance Act which has not been funded or implemented since it was created by the Legislature in 2000.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 163.455, 163.456, 163.457, 163.458, 163.459, 163.460, 163.461, and 163.462, F.S., relating to the Community-Based Development Organization Assistance Act and other provisions related to the act.

Section 2: Provides an effective date of July 1. 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to community-based development organizations; repealing ss. 163.455, 163.456, 163.457, 163.458, 163.459, 163.460, 163.461, and 163.462, F.S., relating to the Community-Based Development Organization Assistance Act, the eligibility of community-based development organizations and eligible activities for certain grant funding, the award of grants by the Department of Community Affairs, the reporting of certain information by grant recipients to the department, and rulemaking authority of the department; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 163.455, 163.456, 163.457, 163.458, 163.459, 163.460, 163.461, and 163.462, Florida Statutes, are repealed.

Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4183 Brevard County Expressway Authority Law
SPONSOR(S): Nelson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Johnson	Brown
2) Economic Affairs Committee		Johnson SRJ	Tinker TBT

SUMMARY ANALYSIS

This bill repeals the Brevard County Expressway Authority, which was created in 1972, but has never met.

Florida expressway authorities are formed either under the Florida Expressway Authority Act or by special act of the Legislature.

The purpose of Florida's expressway authorities is to construct, maintain, and operate tolled transportation facilities complementing the State Highway System and the Florida Turnpike Enterprise. The expressway authorities have boards of directors that typically include a combination of local-government officials and Governor appointees who decide on projects and expenditure of funds.

Part II of ch. 348, F.S., creates the Brevard County Expressway Authority, which was originally created in 1972.

The bill repeals the statutory sections of part II of ch. 348, F.S.; thereby repealing the Brevard County Expressway Authority Law.

This bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida expressway authorities are formed either under the Florida Expressway Authority Act[1] or by special act of the Legislature. Most existing expressway authorities were created prior to the Florida Expressway Authority Act being enacted in 1990 and, therefore, are not subject to most of its provisions. The Miami-Dade Expressway Authority is the only authority currently created and governed by the Florida Expressway Authority Act.

The purpose of Florida's expressway authorities is to construct, maintain, and operate tolled transportation facilities complementing the State Highway System and the Florida Turnpike Enterprise. The expressway authorities have boards of directors that typically include a combination of local-government officials and Governor appointees who decide on projects and expenditure of funds.

Part II of ch. 348, F.S., creates the Brevard County Expressway Authority, which was originally created in 1972.[2] This Authority has never met. It is registered as a dependent special district with the Department of Community Affairs.

Proposed Changes

The bill repeals the statutory sections of part II of ch. 348, F.S.; thereby repealing the Brevard County Expressway Authority Law.

The bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 Repeals ss. 348.216, 348.217, 348.218, 348.219, 348.22, 348.221, 348.223, 348.224, 345.225, 348.226, 348.227, 348.228, 348.229, and 348.23, F.S., relating to the Broward County Expressway Authority.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

[1] Part I of Ch. 348, F.S.
[2] Ch. 72-408, L.O.F.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

According to the Department of Community Affairs, there is a $175 annual registration fee for special districts. However, the Brevard County Expressway Authority meets the conditions to have the fee waived, and has received a fee waiver. Therefore, it is not currently paying this fee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Brevard County Expressway Authority Law; repealing ss. 348.216-348.23, F.S.; removing provisions that created and govern the Brevard County Expressway Authority; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 348.216, 348.217, 348.218, 348.219, 348.22, 348.221, 348.222, 348.223, 348.224, 348.225, 348.226, 348.227, 348.228, 348.229, 348.23, Florida Statutes, are repealed.

Section 2. This act shall take effect July 1, 2011.

PCS FOR HB 5005

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 5005 Relating to deregulation of professions and occupations
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee		Morton Livingston Whittington	Tinker TBT
1) Appropriations Committee			

SUMMARY ANALYSIS

The bill repeals the regulation of the following professions, businesses and occupations:

- Athlete Agents
- Auctioneers and Auctioneer Apprentices
- Sellers of Business Opportunities
- Charitable Organizations
- Hair Braiders, Hair Wrappers, and Body Wrappers
- Dance Studios
- Health Studios
- Interior Designers
- Intrastate Movers
- Motor Vehicle Repair Shops
- Sellers of Travel
- Talent Agents
- Telemarketing
- Yacht and Ship Brokers

It also repeals regulations relating to:

- Transportation access to outdoor theaters
- Roominghouses
- Sales representative contracts involving commissions
- Television tube labeling
- Water vending machines

The bill also eliminates the Board of Auctioneers.

The bill has a negative fiscal impact on state trust funds, with a corresponding reduction in expenditures. The bill has a positive fiscal impact on the private sector. See fiscal comments.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulatory Boards and Divisions

Current Situation

The Department of Business and Professional Regulation (DBPR) is made up of the following divisions, which house the following boards and programs:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
    - Board of Accountancy
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
    - Board of Architecture and Interior Design.
    - Florida Board of Auctioneers.
    - Barbers' Board.
    - Florida Building Code Administrators and Inspectors Board.
    - Construction Industry Licensing Board.
    - Board of Cosmetology.
    - Electrical Contractors' Licensing Board.
    - Board of Employee Leasing Companies.
    - Board of Landscape Architecture.
    - Board of Pilot Commissioners.
    - Board of Professional Engineers.
    - Board of Professional Geologists.
    - Board of Veterinary Medicine.
    - Home inspection services licensing program.
    - Mold-related services licensing program.
- Division of Real Estate.
    - Florida Real Estate Appraisal Board.
    - Florida Real Estate Commission.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Proposed Changes

Section 1 of the bill repeals Board of Auctioneers and renames the Board of Architecture and Interior Design to the "Board of Architecture."

Athlete Agents

Current Situation

Chapter 468, Part IX, F.S., establishes licensure requirements for athlete agents working with student athletes. The Part is substantially the same as the Uniform Athlete Agents Act (UAAA). Athlete agents are licensed by the Division of Regulation within the DBPR. Currently, there are 163 licensed athlete agents.

Uniform Athlete Agents Act

The National Collegiate Athletic Association (NCAA) is a private association of four-year post-high-school educational institutions, deriving authority from the member institutions that created it.[1] NCAA members must follow rules and policies collectively adopted; bylaws have direct impact only on them; and only members can change, repeal, or request waivers from them. An obligation of NCAA membership is that member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations. In this way, staff members and student-athletes can be affected by NCAA bylaws. But the effect of the bylaws on them is achieved indirectly through institutional enforcement.[2]

In 2000, at the urging of the NCAA and various universities, the National Conference of Commissioners on Uniform State Laws drafted the UAAA to regulate the relationship between student athletes and athlete agents. The UAAA has been passed in 40 states, including Florida. Three states regulate athlete agents, but have not adopted the UAAA. Seven states do not regulate athlete agents.[3]

Florida requirements for athlete agents

Athlete agents represent and promote athletes to prospective employers. They may also handle contract negotiation and other business matters for clients. The Part defines "athlete agent" as:

> a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation.

'Student Athlete' is defined as any student who:

> Resides in Florida, has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so; or
>
> Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

Under section 468.453, F.S., an applicant for licensure as an athlete agent must:

- Be at least 18 years of age.
- Be of good moral character.
- Have completed an application and paid an applicable fee.
- Have submitted fingerprints for a criminal history records check and within the preceding 5 years, not have been convicted or found guilty of or entered a plea of nolo contendere for a crime which relates to the applicant's practice or ability to practice as an athlete agent.

Out-of-state athlete agents may submit their out-of-state application, license or certification in lieu of an application. The statute also provides for temporary licensure. Licenses are renewed biennially and there are no continuing education requirements.

Athlete agents must pay the following fees:

For initial licensure:

- Application Fee - $500

---

[1] Josephine R. Potuto, The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws that Regulate them and the Nature of Court Review, 12 Vand. J. Ent. & Tech. L. 257, 259 (Winter 2010).

[2] *Id.* at 267.

[3] *See* Uniform Athlete Agents Act History and Status, National Collegiate Athletic Association, *available at* http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/

- Active Licensure Fee - $750
- Background Check Fee - $39
- Unlicensed Activity Fee - $5

For biennial license renewal:

- Athlete Agent - $445
- Unlicensed Activity Fee - $5

Chapter 468, Part IX, F.S., also includes contractual requirements for athlete agents. The contract must contain specified information about the agency relationship and a warning to the student-athlete that if the contract is signed, eligibility to compete in a sport is lost. If the contract does not conform to this section, it is voidable by the student-athlete.

Chapter 468, Part IX, F.S., makes certain prohibited acts criminal and punishable either as a misdemeanor or felony and revocation of the athlete agent's license. "Generally, the prohibition is geared toward acts intended to induce a student-athlete to enter into an agency contract and failing to register or willfully providing materially false information in a registration application."[4]

Section 468.4562, F.S., creates a cause of action for damages against the athlete agent, a student athlete or both for damages caused to an educational institution by a violation of the Part. "The purpose of this section is to give a cause of action to an educational institution that is sanctioned [by the NCAA] as a result of activities of an athlete agent, student-athlete or both."[5]

Proposed Changes

Section 14 of the bill repeals all regulations and licensure requirements related to athlete agents.

Auctioneers and Auctioneer Apprentices

Present situation

Part VI of chapter 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers (board) within DBPR. According to DBPR there are currently 1,760 licensed auctioneers and auctioneer apprentices.

Section 468.385(2), F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act.

Section 468.383, F.S., exempts the following activities from the licensure requirement:

(1) Owner-conducted auctions, unless the owner acquired the goods to resell;
(2) Auctions required under a judicial or administrative order, or by law;
(3) Auctions by or for a charitable, civic, or religious organization;
(4) Livestock auctions under certain circumstances;
(5) Trustee-conducted auctions pursuant to a power of sale in a deed of trust on real property;
(6) Certain auctions conducted by the owner or agent of the lien on or interest in goods;
(7) Auctions conducted as a part of the sale of real property by a real estate broker;
(8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
(9) Certain auctions conducted for training purposes.

Section 468.382(1), F.S., defines an 'auction business' as a "sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions."

---

[4] Robert N. Davis, Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act, 8 Vill. Sports & Ent. L.J. 1, 15 (2001).
[5] *Id.*

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- pass the required examination; and
- be approved by the board.

Special regulations apply to apprentices and require supervision by licensed auctioneers. An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required to be maintained, to determine if such records are accurate and current.

"Auctioneer Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer.

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- pass the required examination; and
- be approved by the board.

Proposed Changes

Sections 5 and 6 of the bill repeal all licensure and regulatory requirements for auctioneers and auctioneer apprentices and make conforming changes to cross references.

Sellers of Business Opportunities

Current Situation

A business opportunity is an offer to assist a person in starting his or her own business by providing (either through sales or lease) products, equipment, supplies or services needed to carry on the business. Examples of such business opportunities include addressing envelopes, assembling toys at home at a cost of a few dollars, establishing vending machine routes, or installing pay telephones.

The Sale of Business Opportunities Act, ss. 559.80-559.815, F.S., establishes registration requirements for the sale of business opportunities. Sellers of business opportunities must register with the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS). Currently, there are 2,550 registered sellers of business opportunities.

The Act defines a "business opportunity" as a transaction exceeding $500, where the seller represents to the buyer that the seller will provide equipment, inventory, marketing locations or assistance, or that the buyer is guaranteed to derive a specified return over the initial investment in the opportunity. The definition specifically excludes the following transactions:

- The sale of an ongoing business, as long as the seller does not sell more than five of the opportunities or businesses;

- The not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of $500 or less; or
- The sale or lease of laundry and drycleaning equipment.

Annual registration awards applicants with an advertisement identification number and requires the filing of specified disclosures and a $300 fee.

Sellers must post a bond of no less than $50,000, if the seller guarantees either: that the purchaser will derive income from the business opportunity exceeding the price paid or rent charged or the seller will refund all or a part of the price paid, or that the seller will repurchase any of the products supplied if the purchaser is unsatisfied.

Franchise sales are exempt if the franchise is governed by the federal Disclosure Requirements and Prohibitions Concerning Business Opportunities Act, 16 C.F.R. ss. 437.1-437.3. The federal law requires certain sellers of business opportunities to give a prospective buyer a packet of disclosures 10 days before any agreements are made or payments made.

Although exempt, such franchisors must pay an annual fee of $100 and disclose the following to the DACS: The names of the applicant, franchise and that under which the applicant transacts business, the applicant's principal business address, and the applicant's federal employer identification number.

Failure to provide or deliver the supplies or services is prohibited and subjects the seller to civil, criminal (3rd degree felony), and administrative penalties. The Act also prohibits the seller from committing the following:

- Failing to disclose the known required total investment;
- Failing to disclose efforts to establish additional franchises or distributorships in the same market and market area as the business opportunity is established;
- Misrepresenting the quality or quantity of the products to be sold or distributed;
- Misrepresenting the training and management assistance available;
- Misrepresenting the amount of profits from the operation of the business opportunity;
- Failing to disclose the termination, transfer, or renewal provision of the business opportunity agreement;
- Falsely claiming that a primary marketer or trademark sponsors or participates directly or indirectly in the business opportunity agreement;
- Assigning an "exclusive-territory" encompassing the same area to more than one purchaser;
- Providing vending locations for which written authorizations have not been granted by the property owners or lessees;
- Providing machines or displays substantially different from and inferior to those promised;
- Failing to provide the purchaser a written business opportunity contract;
- Misrepresenting the ability to provide locations or assist in finding locations expected to have a positive impact on the success of the business opportunity;
- Misrepresenting a material fact or creating a false or misleading impression in the sale of a business opportunity; or
- Failing to provide or deliver the products, equipment, supplies, or services as specified in the written contract.

Section 559.813, F.S., provides for remedies and the enforcement of violations of sellers of business opportunities. Within one year of the execution of the contract and upon written notice to the seller, the purchaser is allowed to rescind the business opportunity contract and is entitled to receive from the seller all funds paid for the business opportunity, if the seller commits the following violations:

- Uses untrue or misleading statements in the sale;
- Fails to give proper disclosures required; or
- Fails to deliver the equipment supplies, or products necessary for the business to begin operation within 45 days of the delivery date in the contract.

DACS has enforcement authority to impose penalties, including administrative fines up to $5,000 and revocation of the seller's advertisement identification number.

The act's disclosure requirements can be waived by contract.[6]

Proposed Changes

Section 68 of the bill repeals all registration requirements and regulations relating to the sale of business opportunities.

Charitable Organizations

Current Situation

Chapter 496, F.S., establishes registration requirements and sets out regulations for charitable solicitation. Charitable solicitations are overseen by the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS). Currently, there are 16,588 charitable organizations, professional fundraising consultants and professional solicitors registered with the DACS.

Registration Requirements

"Charitable Organization or sponsor" means a person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

"Professional Fundraising Consultant" means a person retained by a charitable organization or sponsor for a fixed fee under a written agreement to work on a fundraiser who does not solicit contributions or have control of contributions.

"Professional Solicitor" means a person who, for compensation, solicits contributions for a charitable organization or sponsor or a person employed to work on a fundraiser who does not qualify as a professional fundraising consultant.

Each registrant is required to file initial registration statements and annual renewal statements. Applicants must disclose information about who their organization, finances, tax-exempt status, and history. Professional solicitors must also file a bond of $50,000.

Solicitors must file a solicitation notice with the DACS before beginning any solicitation campaign or event. Such notice includes a variety of required information about the campaign or event. After the event, the solicitor must file a financial report of the campaign.

The following organizations are exempt from registration requirements:

- Religious institutions, educational institutions, state agencies or other government entities, and political fundraising are exempt.
- Persons soliciting contributions for named individual, if all contributions turned over to beneficiary.
- Solicitations limited to members of the fundraising organization.
- Veterans' service organizations.

Charitable Organizations and sponsors must pay annual fees based on their previous year's total collected contributions:

- $10, if less than $5,000

[6] S.J. Business Enterprises, Inc. v. Colorall Technologies, Inc., 755 So.2d 769 (Fla.App. 4 Dist., 2000).

- $10, if less than $25,000 and fundraisers are not compensated
- $75, if between $5,000 and $100,000
- $125, if between $100,000 and $200,000
- $200, if between $200,000 and $500,000
- $300, if between $500,000 and $1 million
- $350, if between $1 million and $10 million
- $400, if $10 million or more

Professional fundraising consultant and professional solicitors must pay $300 annually.

Other Regulations

The chapter also contains contractual and recordkeeping requirements governing the relationship between charitable organizations and their hired solicitors. Likewise, the chapter governs the practice of solicitation, including what disclosures must be made to the public and how collected funds may be used.

The chapter prohibits:
- Unregistered solicitations,
- Filing false or misleading information with state authorities,
- Misrepresenting involvement or endorsement by a person or organization,
- Falsely identify oneself as a representative of a charitable organization, law enforcement agency or the U.S. military,
- Misrepresent the use or distribution of contributions,
- Misrepresent governmental approval,
- Misrepresent that contribution will bestow special treatment by emergency services or law enforcement,
- Using any device, scheme, or artifice to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise,
- Notifying anyone that they have won a prize, if the person must pay some consideration to take part,
- Failing to pay a charitable organization the proceeds of a solicitation campaign,
- Failing to use contributions as solicited, and
- Failing to identify a professional relationship to the person for whom the solicitation is being made.

To enforce the chapter's requirements, the DACS is given the authority to investigate and seek civil and administrative penalties for complaints of fraudulent practices. The chapter also provides criminal penalties.

Under s. 496.425, F.S., airports and other public transportation authorities may permit solicitations at their facilities.

Proposed Changes

Sections 38 through 50 of the bill repeal all regulation relevant to charitable organizations, professional solicitors and professional fundraising consultants and make conforming changes to cross references.

Cosmetology Specialists

Current Situation

Chapter 477, F.S., establishes licensure requirements for cosmetologists and cosmetology specialists. It is implemented by chapter 61G-5, F.A.C. Cosmetologists and cosmetology specialists are licensed

by the Board of Cosmetology within DBPR. Currently, there are 4,447 body wrappers; 2,909 hair braiders; and 750 hair wrappers.

"Cosmetology" is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services. Cosmetology services shall be performed only by licensed cosmetologists in licensed salons."

There are several categories of specialty cosmetologists:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.
- "Hair braiding" or the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.
- "Hair wrapping" or the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.
- "Body wrapping" or a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include:
    - The application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or
    - Manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials.
- "Skin care services" or the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon, and such services may not involve massage, as defined in s. 480.033(3), through manipulation of the superficial tissue.

Specialists must hold a certificate of completion from a board-approved school, with the following course work:

	Required Instruction
Hair Braiding Registration	Two-day 16 hour course
Hair Wrapping Registration	One-day, six hour course
Body Wrapping Registration	Two-day, 12 hour course

Each course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

Every two years body wrappers, hair braiders, and hair wrappers must complete a board-approved, two hour HIV/AIDS continuing education course.

A cosmetologist licensed in another state may be licensed by endorsement, if he or she makes application and pays to the fee, and demonstrates that he or she has met education requirements at least as stringent as the state's.

Cosmetology or Specialty Salons may be licensed by submitting an application, paying the required fee and meeting the safety and sanitary requirements established by the board.

Body wrapping, hair wrapping and hair braiding services are not required to be practiced in a salon. However, when body wrapping is practiced outside a salon, implements must be either disposable or sanitized in a disinfectant approved for hospital use or by the federal Environmental Protection Agency.

Applicants for Hair Braider, Hair Wrapper or Body Wrapper Registration must pay $25. Each registration or license is renewed biennially with the payment of the registration fee.

There are additional fees are for delinquent renewals, inactive changes of status, inactive renewals, and reactivations.

Proposed Changes

Sections 15 through 19 of the bill repeal all registration requirements for Hair Braiders, Hair Wrappers and Body Wrappers and make conforming changes to cross references.

Dance Studios

Present Situation

Currently, s. 501.143, F.S., is cited as the "Dance Studio Act." Currently, there are 223 registered dance studios.

This section defines "ballroom dance studio" to mean:

> any person that engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services or secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

It is common to use the reference to dance studio or ballroom dance studio interchangeably.

The owner or operator of a dance studio must register with DACS annually. The registration procedure requires:

- the legal business or trade name, mailing address, and business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- copies of contracts to be offered to the public;
- payment of the registration fee of $300;
- the DACS may refuse registration if the applicant or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract of a ballroom dance studio must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Ballroom Dance Studio Registration No ....."

Statutory contract requirements specify that:

- the contract is in writing and all provisions, requirements, and prohibitions which are mandated by this statutory section must be contained in the written contract before it is signed by the customer;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and

- the contract for ballroom dance studio services or lessons include the customer's total payment obligation for services or lessons and contain a written statement of the hourly or lesson rate charged for which the customer has contracted.

A contract for the sale of future dance studio services or lessons which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the ballroom dance studio (a refund must be issued within 20 days after receipt of the notice of cancellation made within the 3-day period);
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the lessons or services or if the lessons or services cease to be offered as stated in the contract (the studio must refund the balance in three equal monthly installments, to be completed within not more than 90 days); and
- studio management must keep a copy of each contract on file for as long as the contract is in effect and for a period of 2 years thereafter.

Each studio that has been in business under the same ownership for less than 3 years and receives an advance payment in excess of $250 or enters into retail installment contract for payment is required to establish a mechanism for ensuring customer refunds.

Financial security is required by statute and must be maintained in the form of a bond, an irrevocable letter of credit, or a guaranty agreement that is secured by a certificate of deposit as follows:

- if the studio has been in business under the same ownership for less than 1 year - $5,000;
- if the studio has been in business under the same ownership for at least 1 year, but less than 2 years - $10,000; and
- if the studio has been in business under the same ownership for at least 2 years, but less than 3 years - $15,000.

The DACS indicates that "the statute only addresses businesses under 3 years and the Department has interpreted that to mean NO bond is required" if a studio has been under the same ownership for more than three years.

Enforcement authority is vested with the DACS and the Department of Legal Affairs for administrative, civil, and criminal penalties. Subsection 501.143(9), F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund if the action was brought by the DACS or the Legal Affairs Revolving Trust Fund if the action was brought by the Department of Legal Affairs.

Additionally, a customer injured by a fraudulent act in violation of this section may bring an action for the recovery of damages. Judgment may be entered for three times the amount, at which the actual damages are assessed plus costs and reasonable attorney's fees.

Proposed Changes

Sections 55 and 56 of the bill repeals all licensure and regulatory requirements for dance studios.

Health Studios

Present Situation

Currently, s. 501.012–501.019, F.S., provides for the regulation of health studios." Currently, there are 2,134 registered health studios.

Section 501.0125, F.S. defines "health studio" to mean:

any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise.

The owner or operator of a health studio must register with DACS annually. Exemptions from registration include:

- tax-exempt non-profit organizations;
- gymnastics schools;
- golf, tennis or racquetball clubs;
- dance, aerobic exercise, or martial arts facilities; and
- country clubs for which a physical exercise program is incidental to membership.

The registration procedure requires:

- the identification of business locations;
- payment of the registration fee of $300; and
- file security in the form of a bond or other approved instrument at the time of registration.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract must include the registration number.

Each health studio is required to maintain for each separate business location a bond in the amount of $50,000. In lieu of maintaining the bond, the health studio may furnish an irrevocable letter of credit in the amount of $50,000 or a guaranty agreement which is secured by a certificate of deposit in the amount of $50,000.

Statutory contract requirements specify that:

- the contract be in writing and all provisions, requirements, and prohibitions which are mandated by statute be contained in the written contract;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for health studio services include the customer's total payment obligation for services.

A contract for the sale of future health studio services which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the health studio (a refund must be issued within 30 days after receipt of the notice of cancellation made within the 3-day period), and
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the services.

Enforcement authority is vested with the DACS. Subsection 501.019, F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund.

Proposed Changes

Sections 53 and 54 of the bill repeal all licensure and regulatory requirements for health studios and make conforming changes to cross references.

Interior Designers

Present Situation

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Currently, there are 4,203 individuals and businesses hold interior design licenses.

Interior design means: "designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to *nonstructural* interior elements of a building or structure."

"Nonstructural element" means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building.

Florida law differentiates between interior design and interior decorating, which includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

Licensure

To practice interior design, an applicant must:

- Pay applicable fees,
- Have a combination of 6 years of relevant education and experience, and
- Pass an examination.

Interior Designers pay an application fee of $30, and a biennial licensure fee of $125.

The education requirement entails at least a 2-year board-approved interior design program. The experience requirement entails at least one year of work under the supervision of a licensed interior designer. Applicants can structure their education and experience in any of the following ways:

- 5-year program + 1 year experience
- 4-year program + 2 years experience
- 3-year program + 3 years experience
- 2-year program + 4 years experience

The examination is a national 3-part exam administered by the National Council for Interior Design Qualification (NCIDQ) exam, at a cost of $1,065, including the application fee. Other fees for late filing, updates to an application, and cancellation apply. Eligibility requirements, including education and experience requirements, to sit for the exam mirror Florida's licensure requirements.[7]

Business entities, or persons operating under fictitious names, offering interior design services must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity's behalf in the state must be registered interior designers.

Like architects, interior designers must complete 20 hours of continuing education, in subjects or courses approved by the Board, each biennium to renew their license.

Exemptions

The law exempts the practice of *residential* interior design from licensure requirements.[8] Although the law prohibits an unlicensed actor from using the title "interior designer" or words to that effect, this provision was recently found to be an unconstitutional restriction on free speech.[9]

---

[7] *See* http://www.ncidq.org
[8] Section 481.229(6)(a), F.S.
[9] Locke v. Shore, 682 F.Supp.2d 1283, 1295 (N.D.Fla., 2010).

The law also exempts employees of retail establishments providing interior decorator services and a manufacturer of commercial food service equipment who prepares designs, specifications, or layouts for the sale or installation of such equipment.

Grandfathering Provisions

The current law was originally enacted as a title act, authorizing interior designers who met certain criteria to use the title "registered interior designer," but not prohibiting any person from performing interior design services.[10] When the title act was first enacted in 1988, it included a grandfathering provision, providing three alternative routes to licensure:

- Applicants before October 1, 1989, who had municipal or county licenses and a year's experience could obtain licensure upon completing the NCIDQ exam,
- Applicants before October 1, 1989, who had 6 year's experience as a principal in a design firm could obtain licensure upon completing the NCIDQ exam, and
- Applicants before October 1, 1990, who had been graduated from an existing 2-year interior design program at a public community college in Florida did not have to take the interior design licensure examination or otherwise meeting qualifications.

When the law was converted to a practice act in 1994, prohibiting unlicensed designers from performing interior design services, another grandfathering provision was included to allow designers who had qualified to use the title 'registered interior designer' to be licensed upon taking a board-approved examination, including the NCIDQ and others, if they applied by July 31, 1997.[11] This deadline was later extended to April 30, 1998.

In 1995, this grandfathering provision was extended to allow those qualified to use the title 'registered interior designer' to show completion of 10 hours of board-approved continuing education classes relating to building and barrier free code regulation if they had not passed an exam within 3 years of application.[12]

Of the current 2,561 licensed individual interior designers, a minimum of 986 met full license requirements (either by exam or endorsement). The DBPR cannot distinguish the route to licensure taken by the remaining 1,575.

Constitutional Challenges

The licensure requirements have withstood constitutional challenges as limitations on 1st amendment free speech[13] and interstate commerce[14] and as violations of due process and equal protection.[15]

Professional Organizations

The American Society of Interior Designers is a voluntary professional organization promoting the profession of interior design through education and advocacy.[16] Professional membership in the American Society of Interior Designers mirrors Florida's licensure requirements for education,

---

[10] Chapter 88-383, s. 21, L.O.F.
[11] Chapter 94-119, s. 309, L.O.F.
[12] Chapter 95-389, s. 10, L.O.F.
[13] Locke v. Shore, 2011 WL 692238, 3 (11th Cir. (Fla.) 2011)("Because the license requirement governs "occupational conduct, and not a substantial amount of protected speech," it does not implicate constitutionally protected activity under the First Amendment.").
[14] *Id.* at 5("Out-of-state unlicensed interior designers may practice in commercial settings in Florida 'under the instruction, control or supervision' of a licensed architect or while 'acting as a contractor in the execution of work designed by an architect.").
[15] *Id.* at 8("We reject Appellants' argument that the legislature's safety concern does not provide a rational basis for the license requirement because it was unfounded. A law 'may be based on rational speculation unsupported by evidence or empirical data.' A statute survives rational basis review even if it 'seems unwise ... or if the rationale for it seems tenuous.' Thus, the fact that, after Florida passed its license requirement, other states have considered and rejected the notion that the unlicensed practice of interior design poses safety concerns, is of no consequence.").
[16] *See* http://www.asid.org

experience and examination. Membership also requires the completion of 6 continuing education hours every two years. Members pay annual dues of $430 and an annual legislative assessment of $15.

Other States

Florida is one of five U.S. states or territories requiring interior designers be licensed.[17] About 20 other states offer title acts, allowing only candidates meeting statutory requirements to hold themselves out as 'registered interior designers.'[18]

Proposed Changes

Sections 20 through 37 of the bill repeal all licensure and regulatory requirements for interior designers and make conforming changes to cross references.

Intrastate Movers

Current Situation

Chapter 507, F.S., establishes the registration requirements for intrastate movers in Florida. Currently, there are 998 registered intrastate movers in Florida.

"Mover" means a person who, for compensation, loads, transports or ships, or unloads household goods as part of a household move. "Moving Broker" means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover.

Intrastate movers and moving brokers must register with the DACS annually. In order to register as an intrastate mover or moving broker, the department requires disclosure of contact information and copies of contracts offered to the public. The department then issues a certificate of registration for registrants to display. The department may refuse registration if the mover or moving broker has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices. In addition, movers must maintain liability insurance or post a $25,000 security. They must also maintain motor vehicle insurance, including combined bodily injury and property damage liability coverage in varying amounts. Moving brokers must post a $25,000 security.

Section 507.13, F.S., allows for local regulation and cooperative agreements between the DACS and local governments for enforcement:

(1) This chapter does not preempt local ordinances or regulations of a county or municipality which regulate transactions relating to movers of household goods or moving brokers. As provided in s. 507.03(4), counties and municipalities may require, levy, or collect any registration fee or tax or require the registration or bonding in any manner of any mover or moving broker.
(2) The department may enter into a cooperative agreement with any county or municipality which provides for the referral, investigation, and prosecution of consumer complaints alleging violations of this chapter.

Currently, Miami-Dade, Broward, Palm Beach, Pinellas and Broward counties have relevant local ordinances pursuant to this section.[19]

[17] Licensure is also required in Louisiana, Nevada, Puerto Rico, and Washington, D.C.
[18] For a list, see http://www.asid.org/legislation/state/.
[19] Miami-Dade County, Sec. 8A-325; Palm Beach County Ordinance NO. 2005-007; Pinellas County, Sec. 42-357; Broward County Moving Ordinance sec. 20-176.90 et seq.

Under s. 507.10, F.S., the department is authorized to institute a civil action in a court of competent jurisdiction to recover any penalties or damages authorized by chapter 507, F.S., and for injunctive relief to enforce compliance with the chapter. The department may seek a civil penalty of up to $5,000 for each violation of this chapter, and may seek restitution for and on behalf of any shipper aggrieved or injured by a violation of this chapter. The remedies provided for in s. 507.10, F.S., are in addition available to those for the same conduct, including those provided in local ordinances.

Section 507.11, F.S., provides for criminal penalties. Subsection (1) provides:

> The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, or after the officer determines that the mover did not produce a signed estimate or contract upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Subsection (2) states that a violation of chapter 507, F.S., by any person or business, besides as provided in subsection (1) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In addition to the department, Florida consumers may also contact the attorney general if they experience a problem with an intrastate mover. While claims for damaged goods must be filed through the carrier, consumers may contact the Attorney General's No Fraud Hotline at 1-866-9-NO-SCAM (1-866-966-7226) to report improper conduct by movers, such as holding cargo "hostage" until higher fees are paid.[20]

Intrastate movers and moving brokers pay an annual registration fee of $300.

Proposed Changes

Sections 63 and 64 repeal all registration and regulatory requirements for intrastate movers and moving brokers and make conforming changes to cross references.

Motor Vehicle Repair Shops

Current Situation

Chapter 599, Part IX, F.S., establishes registration requirements for motor vehicle repair shops. Motor vehicle repair shops are registered by the Division of Consumer Services within DACS. Currently, there are 24,484 registered motor vehicle repair shops.

The Motor Vehicle Repair Advisory Council, consisting of 11 members appointed by the Commissioner of Agriculture, advises and assists the DACS. Council members are uncompensated, but may receive per diem and travel expenses. The DACS provides administrative and staff support services.

"Motor vehicle repair shops" includes any person who, for compensation engages in the repair of motor vehicles owned by other persons. It includes mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.

Registration Requirements

[20] Office of the Attorney General of Florida, Frequently Asked Questions, *available at* http://myfloridalegal.com/pages.nsf/Main/20AFA53C4EC9E3EA85256CCB00522BE1#question21 (last visited March 2, 2011).

Motor vehicle repair shops must register with the DACS biennially. Such registration requires disclosure of contact information and copies of estimates and contracts offered to the public. The DACS issues a certificate of registration for registrants to display.

The DACS may refuse registration if the repair shop, or any of its directors, has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

The following are not required to register with the DACS:
- Governmental entities
- Repair shops servicing only vehicles kept for rental, auction and agricultural use
- Repair shops located in schools
- Individual repairmen with no employees or established place of business

Local licensure can also substitute for registration. Miami-Dade and Broward counties have relevant local ordinances.

The following are not required to pay annual registration fees:
- A repair shop with a local license, which the DACS determines requires the same or stronger standards as the statute; and
- Any motor vehicle dealer licensed pursuant to ch. 320, F.S.

Motor vehicle repair shops must pay a biennial registration fee based on the shop's number of employees and is calculated on a per-year basis as follows:
- $50 per year for 1-5 employees (i.e. biennial fee of $100)
- $150 per year for 6-10 employees
- $300 per year for 11 or more employees

Other Regulations

In addition to registration, motor vehicle repair shops must comply with the following requirements:
- For repairs costing more than $100, the shop must provide a written estimate
- The shop must get approval for repairs exceeding the estimate by 10 percent or $10 (whichever greater)
- Customers must be allowed to inspect parts removed from their vehicle
- The shop must provide written invoices that contain specified information
- Shops must maintain records for one year

Motor vehicle repair shops are also prohibited from the following:
- Requiring waiver of rights as precondition to repair work,
- Refusing to return vehicle for failure to pay for unauthorized work,
- Making or charging for unauthorized repairs,
- Misrepresenting the repairs made,
- Misrepresenting necessary parts and repairs,
- Misrepresenting that the vehicle is in a dangerous condition,
- Fraudulently altering any customer contract, estimate, invoice, or other document,
- Fraudulently misusing any customer's credit card,
- Making untrue, deceptive or misleading statements,
- Making false promises to persuade a customer to authorize repairs,
- Substituting used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to customer and insurance company,
- Having a customer sign any work order not stating the repairs requested or the odometer reading at the time of repair,
- Failing to provide a copy of any document requiring the customer's signature,

- Willfully departing from or disregarding accepted practices and professional standards,
- Having repair work subcontracted without the knowledge or consent of the customer,
- Rebuilding or restoring a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year, and
- Performing any other act that is a violation of this part or that constitutes fraud or misrepresentation.

The DACS, the state attorney and customers each have the ability to seek civil remedies. The DACS also has authority to seek administrative remedies. Certain violations subject shops to criminal penalties.

The DACS is authorized to use up to 10 percent of the annual proceeds from the registration of motor vehicle repair shops to provide financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair.

The statute also provides a process by which a customer may recover a vehicle against which a repair shop or motor vehicle dealer has a possessory lien:

- The customer files a bond, in the amount of the unpaid invoice and any storage costs, with the clerk of court.
- The clerk issues a certificate notifying the lienor of the bond and directing release of the vehicle.
- The lienor has 60 days to file suit to recover the bond; prevailing party may be entitled to damages plus court costs and reasonable attorney's fees.
- If the lienor fails to file suit within 60 days, the bond is discharged.

Proposed Changes

Sections 69 through 72 of the bill repeals all registration requirements and regulations relating to motor vehicle repair shops, including the Motor Vehicle Repair Advisory Council and the dispute resolution procedure for repair shops and dealers, and make conforming changes to cross references.

Sellers of Travel

Current Situation

Chapter 559, Part XI, F.S., establishes registration requirements for sellers of travel. Sellers of travel are registered by the Division of Consumer Services within the Department of Agriculture and Consumer Services. Currently, there are 6,855 registered sellers of travel.

"Seller of travel" includes any person who offers for sale prearranged travel, tourist-related services, or tour-guide services, including, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment.

Sellers of travel are further classified by their scope of business activities:

- 559.9285(1)(a) sellers do not offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida;
- 559.9285(1)(b) sellers offer for sale only prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, but engage in no other business dealings or commerce with any terrorist state; or
- 559.9285(1)(c) sellers offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, and also engage in any other business dealings or commerce with any terrorist state.

An "independent agent" is a person who represents a seller of travel by soliciting persons on its behalf, who has a written contract with a seller of travel that is operating in compliance with this part and any

rules promulgated thereunder, who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the sale of travel, who does not at any time have any unissued ticket stock or travel documents in his or her possession, and who does not have the ability to issue tickets, vacation certificates, or any other travel documents.

Registration Requirements

Annual registration requires disclosure of contact information, copies of vacation certificates offered for sale and corporate structure. The DACS issues a certificate of registration for registrants to display.

Independent agents also file an affidavit annually with the DACS, disclosing contact information. The DACS issues a proof of filing for agents to display.

The DACS may refuse registration if the seller of travel, or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

Additionally, sellers of travel must certify their business activities by filing an annual disclosure statement with the DACS. Certain sellers of travel must also post a bond of $25,000 to $250,000, depending on their scope of business activities.

Sellers of travel must pay an annual registration fee of $300. Independent agents pay $50. There is also an annual fee of $100 to sell vacation certificates.

The following are not required to register with the DACS:

- Employees of a registered seller of travel
- Governmental entities and employees
- Intrastate common carriers
- Public accommodations
- Sellers of diving services

Other Regulations

In addition to registration, sellers of travel offering vacation certificates are subject to recordkeeping, disclosure and contractual requirements.

Sellers of travel are prohibited from the following:

- Making false statements.
- Selling vacation certificates with an expiration date more than 18 months from the date of issuance.
- Requiring, requesting, encouraging or suggesting payment for the right to obtain a travel contract, certificate, or vacation package must be by credit card authorization or to otherwise announce a preference for that method of payment over any other when no correct and true explanation for such preference is likewise stated.
- Representing that the travel contract, certificate, or vacation package offered cannot be purchased later when no such restrictions or limitations in fact exist.
- Misrepresenting the purchaser's right to cancel.
- Selling any vacation certificate the duration of which exceeds the duration of any agreement between the seller and any business entity obligated thereby to provide accommodations or facilities pursuant to the vacation certificate.
- Misrepresenting the
    - amount or period of time accommodations will be available
    - location of accommodations offered
    - price, size, nature, extent, qualities, or characteristics of accommodations offered
    - nature or extent of other goods, services, or amenities offered
    - purchaser's rights, privileges, or benefits

    - conditions to obtain a reservation for use of offered accommodations.
- Failing to inform a purchaser of a nonrefundable cancellation policy.
- Failing to include in any advertisement the following: "This is an offer to sell travel."
- Failing to honor and comply with all provisions of the vacation certificate.
- Including in any vacation certificate or contract any provision purporting to waive or limit any right or benefit provided to purchasers under this part, or seeking such waiver.
- Offering vacation certificates for any accommodation or facility for which there is no contract with the owner securing the purchaser's right to occupancy and use, unless the seller is the owner.
- Using a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of vacation certificates, unless the seller's fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.
- Using any registered trademark, trade name, or trade logo in any promotional, advertising, or solicitation materials without written authorization from the holder of such.
- Representing any affiliation with, or endorsement by, any governmental, charitable, educational, medical, religious, fraternal, or civic organization or body, or any individual, in the promotion, advertisement, solicitation, or sale of vacation certificates without express written authorization.
- Selling a vacation certificate to any purchaser who is ineligible for its use.
- During the period of a vacation certificate's validity, in the event, for any reason whatsoever, of lapse or breach of an agreement for the provision of accommodations or facilities to purchasers, failing to procure similar agreement for the provision of comparable alternate accommodations.
- Violating any state or federal law restricting or prohibiting commerce with terrorist states.
- Doing any other act which constitutes fraud, misrepresentation, or failure to disclose a material fact.
- Failing to produce any document or record or disclose any information required to be produced or disclosed.
- Knowingly making a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.

The DACS has authority to seek administrative and civil remedies. Certain violations subject sellers to criminal penalties. Violations are also considered unfair and deceptive trade practices.

All regulation and taxation of sellers of travel is preempted to the state.

Proposed Changes

Sections 73 through 78 of the bill repeal all regulations and registration requirements relating to sellers of travel and make conforming changes to cross references.

Talent Agents

Current Situation

Chapter 468, Part VII, F.S., establishes regulations and licensure requirements of talent agencies. Talent agencies are licensed by the Division of Regulation within DBPR. Talent agents represent and promote talent and performers to prospective employers. They may also handle contract negotiation and other business matters for clients. Currently, there are 201 licensed talent agencies.

"Talent Agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements or any employment or placement of an artist, where the artist performs in his or her artistic capacity."

"Artist" is defined as "a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Under 468.405, F.S., an application for licensure must contain:

- The name and address of the owner of the talent agency.
- Proof of at least 1 year of direct experience in the talent agency business or as a subagent, casting director, producer, director, advertising agency, talent coordinator, or musical booking agent.
- The street and number of the building or place where the talent agency is to be located. If the applicant is other than a corporation, the application shall also include the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interest.
- The application must be accompanied by affidavits of at least five reputable persons, other than artists, who have known or have been associated with the applicant for at least 3 years, stating that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

Additionally, an applicant for licensure must meet the following qualifications:

- Each person designated in an application as an owner or operator shall be of good moral character.
- Each application shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature and, if so, shall specify such interest or interests.
- Each licensed talent agency must post a $5,000 bond.

Licenses are renewed biennially and there are no continuing education requirements.

Talent agencies must pay the following fees:

For initial licensure:

- Application Fee - $300
- Initial License - $400
- Unlicensed Activity Fee - $5

For biennial license renewal:

- Talent Agency - $400
- Unlicensed Activity Fee - $5

Part VII of Chapter 468, F.S., also includes requirements for recordkeeping, prohibitions on registration fees, and contractual requirements. It also makes certain prohibited acts criminal and punishable as either a misdemeanor or felony and revocation of the talent agency's license.

Proposed Changes

Section 7 of the bill repeals all regulations and licensure requirements of talent agents.

Telemarketers

Current Situation

Chapter 501, Part IV, F.S., establishes licensure requirements for telemarketers. Telemarketers are licensed by the Division of Consumer Services within DACS. Currently, there are 18,205 licensed telemarketers, including commercial telephone sellers and salespersons.

"Commercial telephone seller" means any person engaged in commercial telephone solicitation on his or her own behalf or through salespersons, including owners and others engaged in the management activities of a business entity pursuant to this part.

"Salesperson" means any individual employed by a commercial telephone seller to solicit sales on behalf of the commercial telephone seller.

"Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(7) for the purpose of inducing the person to purchase or invest in consumer goods or services;

(b) Other communication with a person where:
   1. A gift, award, or prize is offered; or
   2. A telephone call response is invited; and
   3. The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or

(c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

Licensure Requirements

The annual registration requires disclosure of contact and background information and copies of scripts or other materials used in solicitations. The DACS issues a certificate of registration for registrants to display. Commercial telephone sellers must also post a security of at least $50,000.

Commercial telephone sellers must pay an annual registration fee of $1,500. Salespersons pay $50.

The following are exempt from registration requirements:

- Isolated commercial telephone solicitation
- Solicitations for nonprofit 501(c)(3) or 501(c)(6) organizations
- Solicitations from licensed investment brokers or advisors
- Solicitations from licensed insurance brokers or agents
- Solicitations from federal- or state-supervised financial institutions
- Solicitations from licensed real estate professionals
- Solicitations from those licensed to sell vacation and timeshares plans
- Solicitations from those licensed to sell funeral services
- Solicitations from those licensed to sell pest control services
- Solicitations from those licensed to sell food or produce
- Solicitations for newspaper sales
- Solicitations for book, video or record clubs regulated by the Federal Trade Commission
- Solicitations for cable television services
- Solicitations for telephone services
- Business-to-business solicitations
- Solicitations for maintenance or repair of goods previously purchased
- Licensed commercial telephone seller

Other Regulations

In addition to registration, telemarketers are subject to disclosure and contractual requirements.

The DACS may take administrative action against a telemarketer, if the telemarketer:

- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude;
- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, any felony;
- Has had entered against him or her or any business for which he or she has worked or been affiliated, an injunction, a temporary restraining order, or a final judgment or order, including a

stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice;

- Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;
- Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;
- Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position;
- Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction;
- Falsifies or willfully omits any material information asked for in any application, document, or record required to be submitted or retained under this part;
- Makes a material false statement in response to any request or investigation by the department or the state attorney;
- Refuses or fails, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;
- Is not of good moral character; or
- Otherwise violates or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder.

Telemarketers are also prohibited from the following:

- Requiring, or announcing a preference for, payment by credit card authorization.
- Making a commercial telephone solicitation phone call before 8:00 a.m. or after 9:00 p.m. local time at the called person's location.
- Taking any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

The DACS has authority to seek administrative and civil remedies. Certain violations subject telemarketers to criminal penalties. Violations are also considered unfair and deceptive trade practices. Injured parties may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.

Federal regulation

The federal Telemarketing Sales Rule, 16 C.F.R. Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

Proposed Changes

Sections 57 through 62 of the bill repeal all regulations and registration requirements relating to telemarketers and make conforming changes to cross references.

Yacht and Ship Brokers

Present Situation

Currently, s. 326.001, F.S., is cited as the "Yacht and Ship Brokers' Act."(Act) The Act governs the licensing and regulation of yacht and ship brokers and salespersons in Florida. Specifically, a license is required to conduct business as a broker or salesperson in transactions involving vessels over 32' in length, and less than 300 gross tons. Chapter 326, F.S., does not regulate transactions involving the sale of a new yacht. DBPR reports that, currently, there are 2,536 licensees in the state.

Definitions of the Act specify:

- "Yacht" means "any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons."
- "Broker" means "a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons."
- "Salesperson" means "a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker."

When the application has been determined to be in acceptable form, the application is evaluated by the division to determine the applicant's moral character. This process includes the determination that there are no convictions of a felony. The applicant must demonstrate they have a principal place of business in Florida, and remit the required application fee. A license is for 2 years and automatically expires if not renewed.

Before a license may be issued to a broker, he or she must deliver to the division a surety bond or irrevocable letter of credit in the sum of $25,000. An applicant for a salesperson's license must deposit with the division a bond or equivalent securities in the sum of $10,000.

The division has authority to impose civil penalties up to $10,000 per violation, and suspend or revoke licenses. Investigations may be resolved by a consent order or other administrative action, and the division may bring action in circuit court. Anyone harmed as a result of a violation by a licensee may file a claim against the licensee's surety bond or letter of credit.

Section 212.06, F.S., grants an exemption from sales and use taxes for vessels imported into the state for sale by yacht brokers or dealers.

Proposed Changes

Sections 2 through 4 of the bill repeal all licensure and regulatory requirements for yacht and ship brokers and salespersons and make conforming changes to cross references. The sales exemption for the sale of vessels by yacht brokers or dealers in preserved.

Outdoor Theaters

Current Situation

Chapter 555, F.S., was created in 1953, to provide for the safe ingress and egress to and from public roads by preventing hazardous conditions and locations in constructing outdoor theaters such as drive-ins.[21] The DOT reports the language is obsolete. Currently, about six drive-in theaters operate in Florida.[22]

---

[21] Chapter 28085, L.O.F.

[22] *See* database at http://www.drive-ins.com. Operating outdoor theaters include Joy-Lan Drive-In (Dade City), Swap Shop Drive-In (Fort Lauderdale), Lake Worth Drive-In (Lake Worth), Silver Moon Drive-In (Lakeland), Ruskin Family Drive-In (Ruskin) and Fun-Lan Drive-In (Tampa).

The law applies to outdoor theaters, including any place for outdoor assembly used for the showing of plays, operas, and motion pictures to an audience viewing from parked vehicles, constructed after June 2, 1953. A theater owner must prove compliance with the law before being issued an occupational license. The last time any section of this chapter was amended was in 1979.

The law provides that all entrances and exits to the theater must comply with the rules of the Department of Transportation (DOT) and the following:

- Not more than one entrance may be provided for each access road.
- The portion of the entrance or exit lying within a public road right-of-way must comply with the regulations applicable to that road.
- Not more than two exits may be provided for each access highway.
- No entrance or exit on a state road may be located within 500 feet of its intersection with another state road.
- Enclosures surrounding the theater may not begin less than 200 feet from the centerline of the nearest state road.

The law also provides requirements for storage space for vehicles, placement of movie screens, and lighting.

Other Applicable Regulations

Under the State Highway System Access Management Act, vehicular access and connections to or from the state highway system are regulated by the Department of Transportation (DOT).[23] Under the Act, a connection to a state road may not be constructed or substantially altered without first obtaining an access permit from the DOT.

Local land development regulations also apply to outdoor theaters.

Proposed Changes

Section 67 of the bill repeals ch. 555, F.S., relating to outdoor theaters. This removes the statutory requirements concerning access to and from public roads and other requirements that specifically apply to outdoor theaters.

Roominghouses

Current Situation

Public lodging establishments are regulated by the Division of Hotels & Restaurants within DBPR. Chapter 509, F.S., establishes licensure and inspection requirements for public lodging establishments.

"Public lodging establishment" includes transient public lodging establishments and nontransient public lodging establishments:

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

[23] Sections 335.18-335.188, F.S. Visit http://www.dot.state.fl.us/planning/systems/sm/accman/ for information about the Department of Transportation's access management program.

Roominghouses are classified as "Any public lodging establishment not classified as a hotel, motel, resort condominium, nontransient apartment, bed and breakfast inn, or transient apartment."

Applicants seeking to open a roominghouse must submit disclosures of contact information and information about the roominghouse they are seeking to open, including location, type, target date for opening, and a certificate of balcony inspection.

Once an applicant is prepared to open the roominghouse, he or she must pass an inspection with the department before opening to the public. Roominghouse must meet sanitation and safety standards.

Annual fees for roominghouses vary, depending on where the roominghouse is located:
- Nontransient: $170 - $340
- Transient: $190 - $370

Applicants must also pay an application fee of $50 and a Hospitality Education Program Fee of $10. This fee goes toward the School-to-Career grant program to prepare students for employment in the hospitality industry.

Roominghouses are also subject to local requirements such as licensing, zoning, building requirements, etc., and compliance with local requirements is a pre-requisite to state licensure.

Proposed Changes

Sections 65 and 66 of the bill removes roominghouses as a classification of public lodging establishments, thereby removing any applicable regulations.

Sales Commission Contracts

Current Situation

A sales representative contract is an agreement between a principal and a sales representative for the sales representative to solicit orders for the principal's product or service.

Sales representatives include persons or companies soliciting orders for a principal who are compensated, in whole or in part, by commission. Employees of the sales representative and resellers are not sales representatives.

Florida statute places the following restrictions on certain sales representative contracts involving commissions:
- Contracts must be in writing;
- Contracts must set forth the method by which commissions are computed and paid; and
- Sales representatives must be given a signed copy of the contract.

If a sales representative contract is not in writing, all commissions due must be paid within 30 days of the contract's termination. If the commissions are not paid, the sales representative has a cause of action for damages equal to three times the unpaid commissions. Attorney fees and court costs are awarded to the prevailing party.

Real estate professionals regulated under chapter 475, F.S., are exempt from regulation under this statute.

The statute was enacted in 1984. "It appears that the Florida legislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer."[24] Originally, the statute applied only to out-of-state principals, a classification ultimately

[24] Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).

found to be an unconstitutional burden on interstate commerce.[25] A federal court explained the premise for the statute as follows:

> Upon termination of the employment relationship, sales representatives apparently encountered difficulties in recovering the commissions they had earned from out-of-state companies. According to [the State], the out-of-state principals were aware of the fact that the expense of litigation would deter sales representatives from filing a law suit. As a result, out-of-state corporations would allegedly withhold commissions, thereby forcing sales representatives to negotiate a distress settlement. Based on [the State's evidence], it appears that the purpose of the double damages provision of the bill was to neutralize the alleged unfair advantage of the principal and place the principal and sales representative on a parity for settlement.[26]

In 2004, the Legislature applied the statute to both in-state and out-of-state principals, curing the constitutionality problem.

Proposed Changes

Section 79 of the bill repeals the regulations on sales representative contracts involving commissions.

Water Vending Machines

Present Situation

Currently, Chapter 381, F.S., specifies legislative intent relating to public health generally to include:

- Subsection 381.001(1), F.S., the Legislature recognizes that the state's public health system must be founded on an active partnership between federal, state, and local government and between the public and private sectors, and, therefore, assessment, policy development, and service provision must be shared by all of these entities to achieve its mission.

Currently, food safety is the responsibility of various federal, state, and local agencies. At the state level, DACS regulates establishments selling primarily pre-packaged foods or beverages. DBPR regulates establishments selling primarily prepared foods, such as restaurants and mobile vendors. The Department of Health oversees food service in facilities such as schools and similar institutions. Each agency attempts to coordinate activities in an effort to avoid overlapping oversight of particular establishments.

Within the DACS, the water and ice program is located in the Division of Food Safety, Bureau of Food and Meat Inspection, Section on Sanitation & Safety. This section administers the permitting requirements for water vending machines and monitors the purity of water sold through these devices. It also monitors the processing and labeling of bottled water and packaged ice sold in Florida. The section is responsible for the oversight of inspections of water vending machines, as well as, bottled water plants and packaged ice plants, and coordination of required product sample collection.

Unchanged since its enactment in 1984 and currently codified as section 500.459(1), F.S., the statement of legislative intent relating to water vending machines currently specifies:

> It is the intent of the Legislature to protect the public health through licensing and establishing standards for water vending machines to ensure that consumers obtaining water through such means are given appropriate information as to the nature of such water and that such consumers are assured that the water meets acceptable standards for human consumption.

---

[25] *Id.*

[26] *Id.* at 1139. The original statute contained a cause of action for double the unpaid commissions. This was amended to provide for triple the unpaid commissions in 2004.

"Water vending machine" is defined to mean a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.

A water vending machine operator must annually obtain a permit from the DACS prior to operating a water vending machine. The operator must:

- Make application.
- Submit payment of a fee not to exceed $200 (current rules of the DACS sets the fee at $35).
- The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

Operating standards specified in statute include:

- The placement of water vending machine indoors or otherwise protected against tampering and vandalism and located on flooring that is of cleanable construction.
- Surfaces of the machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments. Section 500.459, F.S., defines "sanitized" to mean treated in conformity with 21 C.F.R. s. 110.3(o).
- Each water vending machine must have a backflow prevention device that conforms to the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.
- The source of water supply must be an approved public water system and must receive treatment and post disinfection according to approved methods established by rule of the DACS.
- Disclose on each water vending machine, in a position clearly visible to customers: the name and address of the operator; the operating permit number; the fact that the water is obtained from a public water supply; the method of treatment used; the method of post disinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Duties and responsibilities of the DACS relating to regulation of water vending machines include:

- Approve applications for a permit and deny operations if the DACS finds that the vended water will not meet drinking water quality standards (if denied, specific technical reasons for the denial must be given by the DACS).
- Adopt rules to implement the provisions of this section.
- Establish frequencies and standards for sampling water quality.
- Order an operator to discontinue the operation of a water vending machine which represents a threat to the life or health of any person, or when the vended water does not meet standards.

Penalties are specified for violations.

Regulation of this program is currently preempted to the state.

Proposed Changes

Sections 51 and 52 of the bill repeal regulatory provisions relating to water vending machines. Section 500.459, F.S., is repealed outright and s. 500.511, F.S., is amended to remove reference to these machines. These changes remove the statutory requirements concerning regulation of the operation of water vending machines.

Television Tube Labeling

Present Situation

Currently, s. 817.559 establishes labeling standards for television picture tubes. "Picture tube" is defined to mean:

"a cathode ray tube, commonly known as a television picture tube, designed primarily for use in a home-type television receiver alone or in combination with any electronic device or appliance."

This section prohibits a manufacturer, processor, or distributor of television picture tubes from selling picture tubes unless the product and its container, if any, is labeled to indicate the new and used components and materials of each unit. The label must conform to the statutory schedule of new and used components and materials to be disclosed on the label based on the particular grade which applies to each tube.

When a picture tube is a "second," the tube must be designated by label as a "second" to the exclusion of any other grade designation or component description. The following additional notation must appear verbatim on the label:

"This picture tube is a manufacturer's reject or second line quality tube, but it is capable of giving satisfactory performance."

A violation of the labeling requirements constitutes a misdemeanor of the second degree, punishable as provided on s. 775.082 or s. 775.083, F.S.

Proposed Changes

Section 80 of the bill repeals s. 817.559, F.S., relating to standards applicable to labeling of television picture tubes by a manufacturer, processor, or distributor. These products would no longer be required to be labeled to indicate the new and used components and materials of each unit.

B. SECTION DIRECTORY:

Section 1 amends s. 20.165, F.S.; deleting provisions establishing the Florida Board of Auctioneers.

Sections 2 through 4 repeal chapter 326, F.S., relating to the licensure of yacht and ship brokers and salespersons and conforming provisions in ss. 212.06 and 213.053, F.S.

Sections 5 and 6 repeal part VI of chapter 468, F.S., relating to the licensure of auctioneers, apprentices, and auction businesses, the Florida Board of Auctioneers, the Auctioneer Recovery Fund, and the conduct of auctions; and conforming provisions in s. 538.03, F.S.

Section 7 repeals part VII of chapter 468, F.S., relating to the licensure and regulation of talent agencies.

Section 8 repeals part IX of chapter 468, F.S., relating to the licensure and regulation of athlete agents.

Sections 9 through 13 amend s. 477.0201, 477.013, 477.0132, F.S., repealing the registration of specialists of hair braiding, hair wrapping, body wrapping, and nail specialists and the registration and inspection of specialty salons; and conforming provisions in ss. 477.019, 477.025, 477.026, 477.0265, 477.028, and 477.029, F.S.

Sections 14 through 16 repeal ss. 481.2131 and 481.2251, F.S., repealing the registration of interior designers; and conforming provisions in ss. 481.201, and 481.203, F.S.

Section 17 amends s. 481.205, F.S.; changing the name of the Board of Architecture and Interior Design, to conform; revising membership of the board; conforming provisions.

Sections 18 through 31 amend ss. 481.207, 481.209, 481.211, 481.213, 481.215, 481.217, and 481.219, 481.221, 481.222, 481.223, 481.229, 481.231, 553.79, and 558.002, F.S.; conforming provisions to the repeal of the regulation of interior designers.

Sections 32 through 44 repeal chapter 496, F.S., relating to the registration of professional fundraising consultants and professional solicitors and the regulation of solicitation of charitable contributions and charitable sales promotions; and conforming provisions in ss. 110.181, 316.2045, 320.023, 322.081, 413.033, 550.0351, 550.1647, 741.0305, 775.0861, 790.166, 843.16, and 849.0935, F.S.

Section 45 repeals s. 500.459, F.S., relating to the regulation of water vending machines and the permitting of water vending machine operators.

Section 46 amends s. 500.511, F.S.; deleting provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform.

Sections 47 and 48 repeal ss. 501.012-501.019, F.S., relating to the registration of health studios and the regulation of health studio services; and conforming provisions in s. 501.165, F.S.

Sections 49 and 50 repeal s. 501.143, F.S., relating to the Dance Studio Act, the registration of ballroom dance studios, and the regulation of dance studio lessons and services; and conforming provisions in s. 205.1969, F.S.

Sections 51 through 56 repeal part IV of chapter 501, F.S., relating to the Florida Telemarketing Act, the licensure of commercial telephone sellers and salespersons and the regulation of commercial telephone solicitation; and conforming provisions in ss. 205.1973, 501.165, 648.44, 772.102, and 895.02, F.S.

Sections 57 and 58 repeal chapter 507, F.S., relating to the registration of movers and moving brokers and the regulation of household moving services; and conforming provisions in ss. 205.1975, F.S.

Sections 59 and 60 amend s. 509.242, F.S.; removing the license classifications of 'roominghouse' from public lodging establishments for purposes of provisions regulating such establishments; and conforming provisions in s. 509.221, F.S.

Section 61 repeals chapter 555, F.S., relating to the regulation of outdoor theaters in which audiences view performances from parked vehicles.

Section 62 repeals part VIII of chapter 559, F.S., relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities.

Sections 63 through 66 repeal part IX of chapter 559, F.S., relating to the registration of motor vehicle repair shops, the Motor Vehicle Repair Advisory Council, and the regulation of motor vehicle repair; and conforming provisions in ss. 320.27, 445.025, and 713.585, F.S.

Sections 67 through 72 repeal part XI of chapter 559, F.S., relating to the Florida Sellers of Travel Act, the registration of sellers of travel, certification of certain business activities, and the regulation of prearranged travel, tourist-related services, tour-guide services, and vacation certificates; and conforming provisions in ss. 205.1971, 501.604, 501.608, 636.044, and 721.11, F.S.

Section 73 repeals s. 686.201, F.S., relating to contracts with sales representatives involving commissions;.

Section 74 repeals s. 817.559, F.S., relating to the labeling of television picture tubes.

Section 75 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues and Expenditures:

Department of Agriculture and Consumer Services

There is an anticipated negative fiscal impact to state trust fund revenues associated with the fees collected for registrations, fines, and penalties estimated at $7,744,381. There is also a positive fiscal impact to state trust funds associated with the costs to administer the regulatory functions of $2,925,278. The net negative fiscal impact to state trust funds is $4,819,103. There are 115 full time equivalent employees (FTE) currently performing the registration, investigation, enforcement, and call center functions within the agency. See chart below.

Department of Agriculture and Consumer Services Fiscal Year 2011/12 Estimates			
Fiscal Year 2011/12 Estimates	**Revenues**	**Expenditures**	**Net**
Business Opportunities	$ (223,250)	$ (160,452)	$ (62,798)
Charitable Organizations	$ (2,526,190)	$ (865,388)	$ (1,660,802)
Dance Studios	$ (61,700)	$ (26,236)	$ (35,464)
Health Studios	$ (612,600)	$ (294,601)	$ (317,999)
Motor Vehicle Repair Shops	$ (1,421,162)	$ (559,645)	$ (861,517)
Intrastate Movers	$ (316,695)	$ (266,829)	$ (49,866)
Sellers of Travel	$ (775,838)	$ (456,413)	$ (319,425)
Telemarketing	$ (1,711,946)	$ (265,414)	$ (1,446,532)
Surveyors and Mappers	$ (695,632)	$ (659,792)	$ (35,840)
Water Vending Machines	$ (95,000)	$ (30,300)	$ (64,700)
Impact to State Trust Funds	**$ (8,440,013)**	**$ (3,585,070)**	**$ (4,854,943)**
Impact to General Revenue-8% Service Charge	**$ (675,201)**		**$ (675,201)**
Total Impact to State Funds	**$ (9,115,214)**	**$ (3,585,070)**	**$ (5,530,144)**
Estimated FTE Reduction		**FTEs**	
Division of Consumer Services		(40.0)	
Division of Food Safety		-	
FTE in Call Center Funded from Revenues		(75.0)	
Total Impact to FTE		**(115.0)**	

Department of Business and Professional Regulation

There is an anticipated negative fiscal impact to state trust fund revenues associated with the fees collected for license, fines, and penalties estimated at $4,238,547. There is also a positive fiscal impact to state trust funds associated with the costs to administer the regulatory functions of $621,181. The net negative fiscal impact to state trust funds is $3,617,366. There are 37 full time equivalent employees (FTE) currently performing the licensing, education and testing, investigation, and enforcement functions within the agency. See chart below.

Department of Business and Professional Regulation Fiscal Year 2011/12 Estimates			
Regulation Repealed	**Revenues**	**Expenditures**	**Net**
Yacht and Ships	$ (661,900)	$ (255,871)	$ (406,029)
Rooming Houses	$ (70,255)	*	$ (70,255)
Architecture and Interior Design (Inter Designers only)	$ (32,815)	*	$ (32,815)
Athletic Agents	$ (124,143)	$ (44,860)	$ (79,283)
Auctioneers and Auctioneer Apprentices	$ (492,333)	$ (223,869)	$ (268,464)
Cosmetology (Hair Braiders, Hair Wrappers, and Body Wrappers)	$ (2,718,485)	*	$ (2,718,485)
Talent Agents	$ (138,616)	$ (96,581)	$ (42,035)
Impact to State Trust Funds	**$ (4,238,547)**	**$ (621,181)**	**$ (3,617,366)**
NOTE: * - Unable to break out expenditures			
Impact to General Revenue-8% Service Charge	**$ (339,084)**		**$ (339,084)**
Total Impact to State Funds	**$ (4,577,631)**	**$ (621,181)**	**$ (3,956,450)**
Estimated FTE Reduction		**FTEs**	
Divion of Professions		(2.0)	
Division of Regulation		(1.0)	
Service Operations		(3.0)	
Total Impact to FTE		**(6.0)**	

In addition, the bill has a negative fiscal impact to General Revenue (GR) of $958,634 due to the reduction in the 8 percent service charge transferred GR based on revenues collected by these agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce overhead costs for 89,133 currently licensed or registered private sector occupations and businesses by $12,796,656 associated with opening certain businesses or entering certain professions. This is the direct result of removing requirements for various professionals and businesses to pay various fees and to submit applications and disclosures. There may be additional savings to the private sector in the futures as emerging practitioners and businesses are not required to pay these fees.

The following chart illustrates what these businesses and professionals are currently required to pay for initial licensing and examinations and periodical licensing and registration.

Current Fiscal Impact of Regulation on the Private Sector			
Regulation	**Initial Fees**	**Biennial Fees**	**Practitioners**
Athlete Agents	$1,255	$550	163
Auctioneers	$446	$155	1,760
Auctioneer Apprentices	$205	n/a	
Body Wrappers	$25	$25	4,447
Charitable Organizations	Varies from $10 - $400 annually based on contributions		16,588
Solicitors & Consultants	$300	$600	
Dance Studios	$300	$600	223
Hair Braiders	$25	$25	2,909
Hair Wrappers	$25	$25	750
Health Studios	$300	$600	2,134
Interior Designers	$661	$125	4,203
Intrastate Movers	$300	$600	998
Motor Vehicle Repair Shops	Biennial fees based on number of employees ranging from $100 to $600		24,484
Sellers of Business Opportunities	$300	$600	2,550
Sellers of Travel	$300	$600	6,855
Independent Agent	$50	$100	
Talent Agents	$705	$405	201
Telemarketing	$1,500	$3,000	18,205
Salesperson	$50	$100	
Yacht and Ship Brokers	$600	$500	2,663
Total Practitioners			**89,133**

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the deregulation of professions and occupations; amending s. 20.165, F.S.; deleting provisions establishing the Florida Board of Auctioneers, repealing chapter 326, F.S., relating to the Yacht and Ship Brokers' Act and the licensure of yacht and ship brokers and salespersons; amending ss. 212.06 and 213.053, F.S., to conform; repealing part VI of chapter 468, F.S., relating to the licensure of auctioneers, apprentices, and auction businesses, the Florida Board of Auctioneers, the Auctioneer Recovery Fund, and the conduct of auctions; amending s. 538.03, F.S., to conform; repealing part VII of chapter 468, F.S., relating to the licensure and regulation of talent agencies; repealing part IX of chapter 468, F.S., relating to the licensure and regulation of athlete agents; amending s. 477.0132, F.S.; deleting provisions requiring the registration of persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; providing that the Florida Cosmetology Act does not apply to such persons; amending ss. 477.019, 477.026, 477.0265, and 477.029, F.S., to conform; repealing ss. 481.2131 and 481.2251, F.S., relating to the practice of interior design by registered interior designers and disciplinary proceedings against registered interior designers; deleting provisions relating to the registration of interior designers and the regulation of interior design; amending s. 481.201, F.S.; deleting legislative findings

relating to the practice of interior design, to conform; amending s. 481.203, F.S.; revising definitions relating to the practice of architecture and deleting definitions relating to the practice of interior design; specifying that the practice of architecture includes interior design; amending s. 481.205, F.S.; changing the name of the Board of Architecture and Interior Design, to conform; revising membership of the board; conforming provisions; amending ss. 481.207, 481.209, 481.211, 481.213, 481.215, and 481.217, F.S., to conform; amending s. 481.219, F.S.; deleting provisions permitting the practice of or offer to practice interior design through certain business organizations; deleting provisions requiring certificates of authorization for certain business organizations offering interior design services to the public; conforming provisions; amending ss. 481.221, 481.222, 481.223, 481.229, 481.231, and 553.79, F.S., to conform; amending s. 558.002, F.S.; revising definition of "design professional" for purposes of provisions relating to alternative dispute resolution of construction defects, to conform; amending 849.0935, F.S., to conform; repealing chapter 496, F.S., relating to the registration of professional fundraising consultants and professional solicitors and the regulation of solicitation of charitable contributions and charitable sales promotions; amending ss. 110.181, 316.2045, 320.023, 322.081, 413.033, 550.0351, 550.1647, 741.0305, 775.0861, 790.166, 843.16, and 849.0935, F.S., to conform; repealing s. 500.459,

F.S., relating to the regulation of water vending machines and the permitting of water vending machine operators; amending s. 500.511, F.S.; deleting provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform; repealing ss. 501.012-501.019, F.S., relating to the registration of health studios and the regulation of health studio services; amending s. 501.165, F.S., to conform; repealing s. 501.143, F.S., relating to the Dance Studio Act, the registration of ballroom dance studios, and the regulation of dance studio lessons and services; repealing s. 205.1969, F.S., relating to the issuance by counties and municipalities of business tax receipts to health studios and ballroom dance studios, to conform; repealing part IV of chapter 501, F.S., relating to the Florida Telemarketing Act, the licensure of commercial telephone sellers and salespersons and the regulation of commercial telephone solicitation; repealing s. 205.1973, F.S., relating to the issuance by counties and municipalities of business tax receipts to telemarketing businesses, to conform; amending ss. 501.165, 648.44, 772.102, and 895.02, F.S., to conform; repealing chapter 507, F.S., relating to the registration of movers and moving brokers and the regulation of household moving services; repealing s. 205.1975, F.S., relating to the issuance by counties and municipalities of business tax receipts to movers and

moving brokers, to conform; amending s. 509.242, F.S.; revising the license classifications of public lodging establishments for purposes of provisions regulating such establishments; amending s. 509.221, F.S.; conforming a cross-reference; repealing chapter 555, F.S., relating to the regulation of outdoor theaters in which audiences view performances from parked vehicles; repealing part VIII of chapter 559, F.S., relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities; repealing part IX of chapter 559, F.S., relating to the registration of motor vehicle repair shops, the Motor Vehicle Repair Advisory Council, and the regulation of motor vehicle repair; amending ss. 320.27, 445.025, and 713.585, F.S., to conform; repealing part XI of chapter 559, F.S., relating to the Florida Sellers of Travel Act, the registration of sellers of travel, certification of certain business activities, and the regulation of prearranged travel, tourist-related services, tour-guide services, and vacation certificates; repealing s. 205.1971, F.S., relating to the issuance by counties and municipalities of business tax receipts to sellers of travel, to conform; amending ss. 501.604, 501.608, 636.044, and 721.11, F.S., to conform; repealing s. 686.201, F.S., relating to contracts with sales representatives involving commissions; repealing s. 817.559, F.S., relating to the labeling of television picture tubes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 20.165, Florida Statutes, are amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards and programs are established within the Division of Professions:

1. Board of Architecture ~~and Interior Design~~, created under part I of chapter 481.

~~2. Florida Board of Auctioneers, created under part VI of chapter 468.~~

2.~~3.~~ Barbers' Board, created under chapter 476.

3.~~4.~~ Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.

4.~~5.~~ Construction Industry Licensing Board, created under part I of chapter 489.

5.~~6.~~ Board of Cosmetology, created under chapter 477.

6.~~7.~~ Electrical Contractors' Licensing Board, created under part II of chapter 489.

7.~~8.~~ Board of Employee Leasing Companies, created under part XI of chapter 468.

8.~~9.~~ Board of Landscape Architecture, created under part II of chapter 481.

9.~~10.~~ Board of Pilot Commissioners, created under chapter 310.

10.~~11.~~ Board of Professional Engineers, created under

chapter 471.

11.~~12.~~ Board of Professional Geologists, created under chapter 492.

12.~~13.~~ Board of Veterinary Medicine, created under chapter 474.

13.~~14.~~ Home inspection services licensing program, created under part XV of chapter 468.

14. Mold-related services licensing program, created under part XVI of chapter 468.

(b) The following board and commission are established within the Division of Real Estate:

1. Florida Real Estate Appraisal Board, created under part II of chapter 475.

2. Florida Real Estate Commission, created under part I of chapter 475.

(c) The following board is established within the Division of Certified Public Accounting: Board of Accountancy, created under chapter 473.

Section 2. Chapter 326, Florida Statutes, consisting of sections 326.001, 326.002, 326.003, 326.004, 326.005, and 326.006, is repealed.

Section 3. Paragraph (e) of subsection (1) of section 212.06, Florida Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(1)

(e)1. Notwithstanding any other provision of this chapter,

tax shall not be imposed on any vessel registered under s. 328.52 by a vessel dealer or vessel manufacturer with respect to a vessel used solely for demonstration, sales promotional, or testing purposes. The term "promotional purposes" shall include, but not be limited to, participation in fishing tournaments. For the purposes of this paragraph, "promotional purposes" means the entry of the vessel in a marine-related event where prospective purchasers would be in attendance, where the vessel is entered in the name of the dealer or manufacturer, and where the vessel is clearly marked as for sale, on which vessel the name of the dealer or manufacturer is clearly displayed, and which vessel has never been transferred into the dealer's or manufacturer's accounting books from an inventory item to a capital asset for depreciation purposes.

2. The provisions of this paragraph do not apply to any vessel when used for transporting persons or goods for compensation; when offered, let, or rented to another for consideration; when offered for rent or hire as a means of transportation for compensation; or when offered or used to provide transportation for persons solicited through personal contact or through advertisement on a "share expense" basis.

3. Notwithstanding any other provision of this chapter, tax may not be imposed on any vessel imported into this state for the sole purpose of being offered for sale at retail by a yacht broker or yacht dealer ~~registered in this state~~ if the vessel remains under the care, custody, and control of the ~~registered~~ broker or dealer and the owner of the vessel does not make personal use of the vessel during that time. The provisions

of this chapter govern the taxability of any sale or use of the vessel subsequent to its importation under this provision.

Section 4. Paragraph (i) of subsection (8) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(8) Notwithstanding any other provision of this section, the department may provide:

(i) Information relative to chapter ~~chapters~~ 212 and former chapter 326 to the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation in the conduct of its official duties.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 5. Part VI of chapter 468, Florida Statutes, consisting of sections 468.381, 468.382, 468.383, 468.384, 468.385, 468.3851, 468.3852, 468.3855, 468.386, 468.387, 468.388, 468.389, 468.391, 468.392, 468.393, 468.394, 468.395, 468.396, 468.397, 468.398, and 468.399, is repealed.

Section 6. Paragraphs (m) through (q) of subsection (2) of section 538.03, Florida Statutes, are redesignated as paragraphs (l) through (p), respectively, and present paragraph (l) of that subsection is amended to read:

538.03 Definitions; applicability.—

(2) This chapter does not apply to:

~~(1) Any auction business as defined in s. 468.382(1).~~

Section 7. Part VII of chapter 468, Florida Statutes, consisting of sections 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, and 468.415, is repealed.

Section 8. Part IX of chapter 468, Florida Statutes, consisting of sections 468.451, 468.452, 468.453, 468.4535, 468.4536, 468.454, 468.456, 468.4561, 468.45615, 468.4562, 468.4565, and 468.457, is repealed.

Section 9. Section 477.0132, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 477.0132, F.S., for present text.)

477.0132 Hair braiding, hair wrapping, and body wrapping registration; application of chapter.—This chapter does not apply to a person whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping.

Section 10. Subsection (7) of section 477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(7)(a) The board shall prescribe by rule continuing education requirements intended to ensure protection of the public through updated training of licensees and registered specialists, not to exceed 16 hours biennially, as a condition

for renewal of a license or registration as a specialist under this chapter. Continuing education courses shall include, but not be limited to, the following subjects as they relate to the practice of cosmetology: human immunodeficiency virus and acquired immune deficiency syndrome; Occupational Safety and Health Administration regulations; workers' compensation issues; state and federal laws and rules as they pertain to cosmetologists, cosmetology, salons, specialists, specialty salons, and booth renters; chemical makeup as it pertains to hair, skin, and nails; and environmental issues. Courses given at cosmetology conferences may be counted toward the number of continuing education hours required if approved by the board.

~~(b) Any person whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping is exempt from the continuing education requirements of this subsection.~~

(b) ~~(c)~~ The board may, by rule, require any licensee in violation of a continuing education requirement to take a refresher course or refresher course and examination in addition to any other penalty. The number of hours for the refresher course may not exceed 48 hours.

Section 11. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers, fees for registration shall not exceed $25.~~

Section 12. Paragraph (g) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(g) Advertise or imply that skin care services ~~or body wrapping~~, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033(3), except those practices or activities defined in s. 477.013.

Section 13. Paragraphs (a) of subsection (1) of section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist or~~,~~ specialist, ~~hair wrapper, hair braider, or body wrapper~~ unless duly licensed, ~~or~~ registered, or otherwise authorized~~,~~ as provided in this chapter.

Section 14. Sections 481.2131 and 481.2251, Florida Statutes, are repealed.

Section 15. Section 481.201, Florida Statutes, is amended to read:

481.201 Purpose.—The primary legislative purpose for enacting this part is to ensure that every architect practicing in this state meets minimum requirements for safe practice. It is the legislative intent that architects who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state. ~~The Legislature further finds that it is in the interest of the public to limit the practice of interior design to interior designers or~~

~~architects who have the design education and training required by this part or to persons who are exempted from the provisions of this part.~~

Section 16. Section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part, the term:

(1) ~~(3)~~ "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.

(2) ~~(6)~~ "Architecture" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, ~~and~~ the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

(3) ~~(1)~~ "Board" means the Board of Architecture ~~and Interior Design~~.

(4) ~~(5)~~ "Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture ~~or interior design~~.

(5) ~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of architecture ~~or interior design~~.

(6) ~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(7) ~~(15)~~ "Interior decorator services" includes the

selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

~~(8) "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.~~

~~(9) "Registered interior designer" or "interior designer" means a natural person who is licensed under this part.~~

~~(10) "Nonstructural element" means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building.~~

~~(11) "Reflected ceiling plan" means a ceiling design plan which is laid out as if it were projected downward and which may include lighting and other elements.~~

~~(12) "Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts and final planning.~~

~~(13) "Common area" means an area that is held out for use by all tenants or owners in a multiple-unit dwelling, including, but not limited to, a lobby, elevator, hallway, laundry room, clubhouse, or swimming pool.~~

~~(14) "Diversified interior design experience" means experience which substantially encompasses the various elements of interior design services set forth under the definition of "interior design" in subsection (8).~~

(8) ~~(16)~~ "Responsible supervising control" means the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee under this part.

(9) ~~(12)~~ "Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts and final planning.

(10) ~~(7)~~ "Townhouse" is a single-family dwelling unit not

exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units. Each townhouse shall be considered a separate building and shall be separated from adjoining townhouses by the use of separate exterior walls meeting the requirements for zero clearance from property lines as required by the type of construction and fire protection requirements; or shall be separated by a party wall; or may be separated by a single wall meeting the following requirements:

(a) Such wall shall provide not less than 2 hours of fire resistance. Plumbing, piping, ducts, or electrical or other building services shall not be installed within or through the 2-hour wall unless such materials and methods of penetration have been tested in accordance with the Standard Building Code.

(b) Such wall shall extend from the foundation to the underside of the roof sheathing, and the underside of the roof shall have at least 1 hour of fire resistance for a width not less than 4 feet on each side of the wall.

(c) Each dwelling unit sharing such wall shall be designed and constructed to maintain its structural integrity independent of the unit on the opposite side of the wall.

Section 17. Subsection (1) and paragraph (a) of subsection (3) of section 481.205, Florida Statutes, are amended to read:

481.205 Board of Architecture ~~and Interior Design~~.—

(1) The Board of Architecture ~~and Interior Design~~ is created within the Department of Business and Professional Regulation. The board shall consist of seven ~~11~~ members. Five members must be registered architects who have been engaged in

the practice of architecture for at least 5 years~~; three members must be registered interior designers who have been offering interior design services for at least 5 years and who are not also registered architects;~~ and two ~~three~~ members must be laypersons who are not, and have never been, architects~~, interior designers,~~ or members of any closely related profession or occupation. At least one member of the board must be 60 years of age or older.

(3)(a) Notwithstanding the provisions of ss. 455.225, 455.228, and 455.32, the duties and authority of the department to receive complaints and investigate and discipline persons licensed under this part, including the ability to determine legal sufficiency and probable cause; to initiate proceedings and issue final orders for summary suspension or restriction of a license pursuant to s. 120.60(6); to issue notices of noncompliance, notices to cease and desist, subpoenas, and citations; to retain legal counsel, investigators, or prosecutorial staff in connection with the licensed practice of architecture ~~and interior design~~; and to investigate and deter the unlicensed practice of architecture ~~and interior design~~ as provided in s. 455.228 are delegated to the board. All complaints and any information obtained pursuant to an investigation authorized by the board are confidential and exempt from s. 119.07(1) as provided in s. 455.225(2) and (10).

Section 18. Section 481.207, Florida Statutes, is amended to read:

481.207 Fees.—The board, by rule, may establish separate fees for architects ~~and interior designers~~, to be paid for

applications, examination, reexamination, licensing and renewal, delinquency, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for architects ~~and interior designers~~ may not exceed $775 plus the actual per applicant cost to the department for purchase of the examination from the National Council of Architectural Registration Boards ~~or the National Council of Interior Design Qualifications, respectively,~~ or similar national organizations. The biennial renewal fee for architects may not exceed $200. ~~The biennial renewal fee for interior designers may not exceed $500.~~ The delinquency fee may not exceed the biennial renewal fee established by the board for an active license. The board shall establish fees that are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of architects ~~and interior designers~~. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of architects ~~and interior designers~~.

Section 19. Section 481.209, Florida Statutes, is amended to read:

481.209 Examinations.—

~~(1)~~ A person desiring to be licensed as a registered architect shall apply to the department to take the licensure

examination. The department shall administer the licensure examination for architects to each applicant who the board certifies:

(1) ~~(a)~~ Has completed the application form and remitted a nonrefundable application fee and an examination fee which is refundable if the applicant is found to be ineligible to take the examination;

(2)(a) ~~(b)1.~~ Is a graduate of a school or college of architecture accredited by the National Architectural Accreditation Board; or

(b) ~~2.~~ Is a graduate of an approved architectural curriculum, evidenced by a degree from an unaccredited school or college of architecture approved by the board. The board shall 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; and

(3) ~~(c)~~ Has completed, prior to examination, 1 year of the internship experience required by s. 481.211(1).

~~(2) A person desiring to be licensed as a registered interior designer shall apply to the department for licensure. The department shall administer the licensure examination for interior designers to each applicant who has completed the application form and remitted the application and examination fees specified in s. 481.207 and who the board certifies:~~

~~(a) Is a graduate from an interior design program of 5 years or more and has completed 1 year of diversified interior~~

~~design experience;~~

~~(b) Is a graduate from an interior design program of 4 years or more and has completed 2 years of diversified interior design experience;~~

~~(c) Has completed at least 3 years in an interior design curriculum and has completed 3 years of diversified interior design experience; or~~

~~(d) Is a graduate from an interior design program of at least 2 years and has completed 4 years of diversified interior design experience.~~

~~Subsequent to October 1, 2000, for the purpose of having the educational qualification required under this subsection accepted by the board, the applicant must complete his or her education at a program, school, or college of interior design whose curriculum has been approved by the board as of the time of completion. Subsequent to October 1, 2003, all of the required amount of educational credits shall have been obtained in a program, school, or college of interior design whose curriculum has been approved by the board, as of the time each educational credit is gained. The board shall adopt rules providing for the review and approval of programs, schools, and colleges of interior design and courses of interior design study based on a review and inspection by the board of the curriculum of programs, schools, and colleges of interior design in the United States, including those programs, schools, and colleges accredited by the Foundation for Interior Design Education Research. The board shall adopt rules providing for the review~~

~~and approval of diversified interior design experience required by this subsection.~~

Section 20. Subsection (2) of section 481.211, Florida Statutes, is amended to read:

481.211 Architecture internship required.—

(2) Each applicant for licensure shall complete 1 year of the internship experience required by this section subsequent to graduation from a school or college of architecture as defined in s. 481.209~~(1)~~.

Section 21. Subsections (1) through (4) of section 481.213, Florida Statutes, are amended to read:

481.213 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified for licensure and who has paid the initial licensure fee. ~~Licensure as an architect under this section shall be deemed to include all the rights and privileges of licensure as an interior designer under this section.~~

(2) The board shall certify for licensure by examination any applicant who passes the prescribed licensure examination and satisfies the requirements of ss. 481.209 and 481.211, for architects~~, or the requirements of s. 481.209, for interior designers~~.

(3) The board shall certify as qualified for a license by endorsement as an architect ~~or as an interior designer~~ an applicant who:

(a) Qualifies to take the prescribed licensure examination, and has passed the prescribed licensure examination or a substantially equivalent examination in another

jurisdiction, as set forth in s. 481.209 for architects ~~or interior designers, as applicable~~, and has satisfied the internship requirements set forth in s. 481.211 for architects;

(b) Holds a valid license to practice architecture ~~or interior design~~ issued by another jurisdiction of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued~~; provided, however, that an applicant who has been licensed for use of the title "interior design" rather than licensed to practice interior design shall not qualify hereunder~~; or

(c) Has passed the prescribed licensure examination and holds a valid certificate issued by the National Council of Architectural Registration Boards, and holds a valid license to practice architecture issued by another state or jurisdiction of the United States. For the purposes of this paragraph, any applicant licensed in another state or jurisdiction after June 30, 1984, must also hold a degree in architecture and such degree must be equivalent to that required in s. 481.209(2)~~(1)(b)~~. Also for the purposes of this paragraph, any applicant licensed in another state or jurisdiction after June 30, 1985, must have completed an internship equivalent to that required by s. 481.211 and any rules adopted with respect thereto.

(4) The board may refuse to certify any applicant who has violated any of the provisions of s. 481.223, or s. 481.225, ~~or s. 481.2251,~~ as applicable.

Section 22. Subsections (3) and (5) of section 481.215,

Florida Statutes, are amended to read:

481.215 Renewal of license.—

(3) A ~~No~~ license renewal may not ~~shall~~ be issued to an architect ~~or an interior designer~~ by the department until the licensee submits proof satisfactory to the department that, during the 2 years before ~~prior to~~ application for renewal, the licensee participated per biennium in not less than 20 hours of at least 50 minutes each per biennium of continuing education approved by the board. The board shall approve only continuing education that builds upon the basic knowledge of architecture ~~or interior design~~. The board may make exception from the requirements of continuing education in emergency or hardship cases.

(5) The board shall require, by rule adopted pursuant to ss. 120.536(1) and 120.54, a specified number of hours in specialized or advanced courses, approved by the Florida Building Commission, on any portion of the Florida Building Code, adopted pursuant to part IV of chapter 553, relating to the licensee's ~~respective~~ area of practice.

Section 23. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license for a registered architect may not exceed 12 contact hours for each year the license was inactive. ~~The minimum continuing education requirement for reactivating a license for a registered interior~~

~~designer shall be those of the most recent biennium plus one-half of the requirements in s. 481.215 for each year or part thereof during which the license was inactive. The board shall only approve continuing education that builds upon the basic knowledge of interior design.~~

Section 24. Section 481.219, Florida Statutes, is amended to read:

481.219 Certification of partnerships, limited liability companies, and corporations.—

(1) The practice of or the offer to practice architecture ~~or interior design~~ by licensees through a corporation, limited liability company, or partnership offering architectural ~~or interior design~~ services to the public, or by a corporation, limited liability company, or partnership offering architectural ~~or interior design~~ services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to ~~the provisions of~~ this section.

(2) For the purposes of this section, a certificate of authorization is ~~shall be~~ required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he is ~~shall~~ not ~~be~~ required to be certified under this section. ~~Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services.~~

~~(3) For the purposes of this section, a certificate of~~

~~authorization shall be required for a corporation, limited liability company, partnership, or person operating under a fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section.~~

(3) ~~(4)~~ All final construction documents and instruments of service which include drawings, specifications, plans, reports, or other papers or documents involving the practice of architecture which are prepared or approved for the use of the corporation, limited liability company, or partnership and filed for public record within the state shall bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

~~(5) All drawings, specifications, plans, reports, or other papers or documents prepared or approved for the use of the corporation, limited liability company, or partnership by an interior designer in her or his professional capacity and filed for public record within the state shall bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.~~

(4) ~~(6)~~ The department shall issue a certificate of authorization to any applicant who the board certifies as qualified for a certificate of authorization and who has paid the fee set in s. 481.207.

(5) ~~(7)~~ The board shall certify an applicant as qualified for a certificate of authorization to offer architectural ~~or interior design~~ services, provided that~~:~~

~~(a)~~ one or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part~~; or~~

~~(b) One or more of the principal officers of the corporation or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as interior designers, are registered as provided by this part~~.

(6) ~~(8)~~ The department shall adopt rules establishing a procedure for the biennial renewal of certificates of authorization.

(7) ~~(9)~~ The department shall renew a certificate of authorization upon receipt of the renewal application and biennial renewal fee.

(8) ~~(10)~~ Each partnership, limited liability company, and corporation certified under this section shall notify the department within 30 days of any change in the information contained in the application upon which the certification is based. Any registered architect ~~or interior designer~~ who qualifies the corporation, limited liability company, or partnership as provided in subsection (6) ~~(7)~~ shall be responsible for ensuring responsible supervising control of projects of the entity and upon termination of her or his employment with a partnership, limited liability company, or corporation certified under this section shall notify the

department of the termination within 30 days.

(9) ~~(11)~~ A ~~No~~ corporation, limited liability company, or partnership may not ~~shall~~ be relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, the architect who signs and seals the construction documents and instruments of service is ~~shall be~~ liable for the professional services performed~~, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed~~.

(10) ~~(12)~~ Disciplinary action against a corporation, limited liability company, or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered architect ~~or interior designer, respectively~~.

(11) ~~(13)~~ ~~Nothing in~~ This section does not ~~shall be construed to~~ mean that a certificate of registration to practice architecture ~~or interior design~~ shall be held by a corporation, limited liability company, or partnership. ~~Nothing in~~ This section does not prohibit ~~prohibits~~ corporations, limited liability companies, and partnerships from joining together to offer architectural, engineering, ~~interior design,~~ surveying and mapping, and landscape architectural services, or any combination of such services, to the public, provided that each corporation, limited liability company, or partnership otherwise meets the requirements of law.

~~(14) Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to~~

~~practice architecture shall be permitted to use in their title the term "interior designer" or "registered interior designer."~~

Section 25. Section 481.221, Florida Statutes, is amended to read:

481.221 Seals; display of certificate number.—

(1) The board shall prescribe, by rule, one or more forms of seals to be used by registered architects holding valid certificates of registration.

(2) Each registered architect shall obtain one seal in a form approved by rule of the board and may, in addition, register her or his seal electronically in accordance with ss. 668.001-668.006. All final construction documents and instruments of service which include drawings, plans, specifications, or reports prepared or issued by the registered architect and being filed for public record shall bear the signature and seal of the registered architect who prepared or approved the document and the date on which they were sealed. The signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Final plans, specifications, or reports prepared or issued by a registered architect may be transmitted electronically and may be signed by the registered architect, dated, and sealed electronically with the seal in accordance with ss. 668.001-668.006.

~~(3) The board shall adopt a rule prescribing the distinctly different seals to be used by registered interior designers holding valid certificates of registration. Each registered interior designer shall obtain a seal as prescribed by the board, and all drawings, plans, specifications, or~~

~~reports prepared or issued by the registered interior designer and being filed for public record shall bear the signature and seal of the registered interior designer who prepared or approved the document and the date on which they were sealed. The signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Final plans, specifications, or reports prepared or issued by a registered interior designer may be transmitted electronically and may be signed by the registered interior designer, dated, and sealed electronically with the seal in accordance with ss. 668.001-668.006.~~

(3) ~~(4)~~ No registered architect shall affix, or permit to be affixed, her or his seal or signature to any final construction document or instrument of service which includes any plan, specification, drawing, or other document which depicts work which she or he is not competent to perform.

~~(5) No registered interior designer shall affix, or permit to be affixed, her or his seal or signature to any plan, specification, drawing, or other document which depicts work which she or he is not competent or licensed to perform.~~

~~(7) No registered interior designer shall affix her or his signature or seal to any plans, specifications, or other documents which were not prepared by her or him or under her or his responsible supervising control or by another registered interior designer and reviewed, approved, or modified and adopted by her or him as her or his own work according to rules adopted by the board.~~

~~(9) Studies, drawings, specifications, and other related~~

~~documents prepared by a registered interior designer in providing interior design services shall be of a sufficiently high standard to clearly and accurately indicate all essential parts of the work to which they refer.~~

(4) ~~(10)~~ Each registered architect and each ~~or interior designer~~, ~~and each~~ corporation, limited liability company, or partnership holding a certificate of authorization, shall include its certificate number in any newspaper, telephone directory, or other advertising medium used by the registered architect, ~~interior designer,~~ corporation, limited liability company, or partnership. A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects ~~or interior designers~~ employed by or working within the corporation, limited liability company, or partnership.

(5) ~~(11)~~ When the certificate of registration of a registered architect ~~or interior designer~~ has been revoked or suspended by the board, the registered architect ~~or interior designer~~ shall surrender her or his seal to the secretary of the board within a period of 30 days after the revocation or suspension has become effective. If the certificate of the registered architect ~~or interior designer~~ has been suspended for a period of time, her or his seal shall be returned to her or him upon expiration of the suspension period.

(6) ~~(12)~~ A person may not sign and seal by any means any final plan, specification, or report after her or his certificate of registration has expired or is suspended or revoked. A registered architect ~~or interior designer~~ whose

certificate of registration is suspended or revoked shall, within 30 days after the effective date of the suspension or revocation, surrender her or his seal to the executive director of the board and confirm in writing to the executive director the cancellation of the registered architect's ~~or interior designer's~~ electronic signature in accordance with ss. 668.001-668.006. When a registered architect's ~~or interior designer's~~ certificate of registration is suspended for a period of time, her or his seal shall be returned upon expiration of the period of suspension.

Section 26. Section 481.222, Florida Statutes, is amended to read:

481.222 Architects performing building code inspection services.—Notwithstanding any other provision of law, a person who is currently licensed to practice as an architect under this part may provide building code inspection services described in s. 468.603(6) and (7) to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. With respect to the performance of such building code inspection services, the architect is subject to the disciplinary guidelines of this part and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of an architect's performance of building code inspection services shall be conducted by the Board of Architecture ~~and Interior Design~~ rather than the Florida Building Code Administrators and Inspectors Board. An architect may not perform plans review as an employee of a local

government upon any job that the architect or the architect's company designed.

Section 27. Section 481.223, Florida Statutes, are amended to read:

481.223 Prohibitions; penalties; injunctive relief.—

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, a licensed architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services.

~~(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services.~~

(b) ~~(c)~~ Use 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 issued pursuant to this part.

(c) ~~(d)~~ Present as his or her own the license of another.

(d) ~~(e)~~ Give false or forged evidence to the board or a member thereof.

(e) ~~(f)~~ Use or attempt to use an architect ~~or interior designer~~ license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) ~~(g)~~ Employ unlicensed persons to practice architecture ~~or interior design~~.

(g) ~~(h)~~ Conceal information relative to violations of this part.

(2) Any person who violates any provision of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) Notwithstanding chapter 455 or any other law to the contrary, an affected person may maintain an action for injunctive relief to restrain or prevent a person from violating paragraph (1)(a) ~~, paragraph (1)(b),~~ or paragraph (1)(b) ~~(c)~~. The prevailing party is entitled to actual costs and attorney's fees.

(b) For purposes of this subsection, the term "affected person" means a person directly affected by the actions of a person suspected of violating paragraph (1)(a) ~~, paragraph (1)(b),~~ or paragraph (1)(b) ~~(c)~~ and includes, but is not limited to, the department, any person who received services from the alleged violator, or any private association composed primarily of members of the profession the alleged violator is practicing or offering to practice or holding himself or herself out as qualified to practice.

Section 28. Subsections (5) through (8) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

~~(5)(a) Nothing contained in this part shall prevent a registered architect or a partnership, limited liability company, or corporation holding a valid certificate of~~

~~authorization to provide architectural services from performing any interior design service or from using the title "interior designer" or "registered interior designer."~~

~~(b) Notwithstanding any other provision of this part, all persons licensed as architects under this part shall be qualified for interior design licensure upon submission of a completed application for such license and a fee not to exceed $30. Such persons shall be exempt from the requirements of s. 481.209(2). For architects licensed as interior designers, satisfaction of the requirements for renewal of licensure as an architect under s. 481.215 shall be deemed to satisfy the requirements for renewal of licensure as an interior designer under that section. Complaint processing, investigation, or other discipline-related legal costs related to persons licensed as interior designers under this paragraph shall be assessed against the architects' account of the Regulatory Trust Fund.~~

~~(c) Notwithstanding any other provision of this part, any corporation, partnership, or person operating under a fictitious name which holds a certificate of authorization to provide architectural services shall be qualified, without fee, for a certificate of authorization to provide interior design services upon submission of a completed application therefor. For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of~~

~~authorization to provide interior design services under that section.~~

~~(6) This part shall not apply to:~~

~~(a) A person who performs interior design services or interior decorator services for any residential application, provided that such person does not advertise as, or represent himself or herself as, an interior designer. For purposes of this paragraph, "residential applications" includes all types of residences, including, but not limited to, residence buildings, single-family homes, multifamily homes, townhouses, apartments, condominiums, and domestic outbuildings appurtenant to one-family or two-family residences. However, "residential applications" does not include common areas associated with instances of multiple-unit dwelling applications.~~

~~(b) An employee of a retail establishment providing "interior decorator services" on the premises of the retail establishment or in the furtherance of a retail sale or prospective retail sale, provided that such employee does not advertise as, or represent himself or herself as, an interior designer.~~

~~(7) Nothing in this part shall be construed as authorizing or permitting an interior designer to engage in the business of, or to act as, a contractor within the meaning of chapter 489, unless registered or certified as a contractor pursuant to chapter 489.~~

(5) ~~(8)~~ A manufacturer of commercial food service equipment or the manufacturer's representative, distributor, or dealer or an employee thereof, who prepares designs, specifications, or

layouts for the sale or installation of such equipment is exempt from licensure as an architect ~~or interior designer~~, if:

(a) The designs, specifications, or layouts are not used for construction or installation that may affect structural, mechanical, plumbing, heating, air conditioning, ventilating, electrical, or vertical transportation systems.

(b) The designs, specifications, or layouts do not materially affect lifesafety systems pertaining to firesafety protection, smoke evacuation and compartmentalization, and emergency ingress or egress systems.

(c) Each design, specification, or layout document prepared by a person or entity exempt under this subsection contains a statement on each page of the document that the designs, specifications, or layouts are not architectural~~,~~ ~~interior design,~~ or engineering designs, specifications, or layouts and not used for construction unless reviewed and approved by a licensed architect or engineer.

Section 29. Subsection (1) of section 481.231, Florida Statutes, is amended to read:

481.231 Effect of part locally.—

(1) ~~Nothing in~~ This part does not ~~shall be construed to~~ repeal, amend, limit, or otherwise affect any specific provision of any local building code or zoning law or ordinance that has been duly adopted, now or hereafter enacted, which is more restrictive, with respect to the services of registered architects ~~or registered interior designers,~~ than ~~the provisions of~~ this part~~; provided, however, that a licensed architect shall be deemed licensed as an interior designer for purposes of~~

~~offering or rendering interior design services to a county, municipality, or other local government or political subdivision~~.

Section 30. Paragraph (c) of subsection (5) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(5)

(c) The architect or engineer of record may act as the special inspector provided she or he is on the Board of Professional Engineers' or the Board of Architecture's ~~Architecture and Interior Design's~~ list of persons qualified to be special inspectors. School boards may utilize employees as special inspectors provided such employees are on one of the professional licensing board's list of persons qualified to be special inspectors.

Section 31. Subsection (7) of section 558.002, Florida Statutes, is amended to read:

558.002 Definitions.—As used in this chapter, the term:

(7) "Design professional" means a person, as defined in s. 1.01, who is ~~licensed in this state as~~ an architect, interior designer, landscape architect, engineer, or surveyor.

Section 32. Subsection (2) of section 849.0935, Florida Statutes, is amended to read:

849.0935 Charitable, nonprofit organizations; drawings by chance; required disclosures; unlawful acts and practices; penalties.—

(2) Section ~~The provisions of s.~~ 849.09 does ~~shall~~ not ~~be construed to~~ prohibit an organization qualified under 26 U.S.C.

s. 501(c)(3), (4), (7), (8), (10), or (19) from conducting drawings by chance pursuant to the authority granted by this section~~, provided the organization has complied with all applicable provisions of chapter 496~~.

Section 33. Chapter 496, Florida Statutes, consisting of sections 496.401, 496.402, 496.403, 496.404, 496.405, 496.406, 496.407, 496.409, 496.410, 496.411, 496.412, 496.413, 496.414, 496.415, 496.416, 496.417, 496.418, 496.419, 496.420, 496.421, 496.422, 496.423, 496.424, 496.425, 496.4255, and 496.426, is repealed.

Section 34. Paragraph (b) of subsection (3) of section 110.181, Florida Statutes, is amended to read:

110.181 Florida State Employees' Charitable Campaign.—

(3) RULEMAKING AUTHORITY; ADMINISTRATIVE REVIEW.—

(b) Department action which adversely affects the substantial interests of a party may be subject to a hearing. The proceeding shall be conducted in accordance with chapter 120~~, except that the time limits set forth in s. 496.405(7) shall prevail to the extent of any conflict~~.

Section 35. Subsections (2) and (3) of section 316.2045, Florida Statutes, are amended to read:

316.2045 Obstruction of public streets, highways, and roads.—

(2) It is unlawful, without proper authorization or a lawful permit, for any person or persons willfully to obstruct the free, convenient, and normal use of any public street, highway, or road by any of the means specified in subsection (1) in order to solicit. Any person who violates the provisions of

this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Organizations qualified under s. 501(c)(3) of the Internal Revenue Code ~~and registered pursuant to chapter 496~~, or persons or organizations acting on their behalf are exempted from the provisions of this subsection for activities on streets or roads not maintained by the state. Permits for the use of any portion of a state-maintained road or right-of-way shall be required only for those purposes and in the manner set out in s. 337.406.

(3) Permits for the use of any street, road, or right-of-way not maintained by the state may be issued by the appropriate local government. An organization that is qualified under s. 501(c)(3) of the Internal Revenue Code ~~and registered under chapter 496~~, or a person or organization acting on behalf of that organization, is exempt from local requirements for a permit issued under this subsection for charitable solicitation activities on or along streets or roads that are not maintained by the state under the following conditions:

(a) The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:

1. No fewer than 14 calendar days prior to the proposed solicitation, the name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation.

2. For review and comment, a plan for the safety of all persons participating in the solicitation, as well as the motoring public, at the locations where the solicitation will

take place.

3. Specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

4. Proof of commercial general liability insurance against claims for bodily injury and property damage occurring on streets, roads, or rights-of-way or arising from the solicitor's activities or use of the streets, roads, or rights-of-way by the solicitor or the solicitor's agents, contractors, or employees. The insurance shall have a limit of not less than $1 million per occurrence for the general aggregate. The certificate of insurance shall name the local government as an additional insured and shall be filed with the local government no later than 72 hours before the date of the solicitation.

~~5. Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.~~

(b) Organizations or persons meeting the requirements of subparagraphs (a)1.-5. may solicit for a period not to exceed 10 cumulative days within 1 calendar year.

(c) All solicitation shall occur during daylight hours only.

(d) Solicitation activities shall not interfere with the safe and efficient movement of traffic and shall not cause danger to the participants or the public.

(e) No person engaging in solicitation activities shall persist after solicitation has been denied, act in a demanding

or harassing manner, or use any sound or voice-amplifying apparatus or device.

(f) All persons participating in the solicitation shall be at least 18 years of age and shall possess picture identification.

(g) Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

(h) The local government may stop solicitation activities if any conditions or requirements of this subsection are not met.

Section 36. Subsection (8) of section 320.023, Florida Statutes, is amended to read:

320.023 Requests to establish voluntary checkoff on motor vehicle registration application.—

~~(8) All organizations seeking to establish a voluntary contribution on a motor vehicle registration application that are required to operate under the Solicitation of Contributions Act, as provided in chapter 496, must do so before funds may be distributed.~~

Section 37. Subsection (8) of section 322.081, Florida Statutes, is amended to read:

322.081 Requests to establish voluntary checkoff on driver's license application.—

~~(8) All organizations seeking to establish a voluntary contribution on a driver's license application that are required to operate under the Solicitation of Contributions Act, as provided in chapter 496, must do so before funds may be distributed.~~

Section 38. Paragraph (d) of subsection (3) and paragraph (d) of subsection (4) of section 413.033, Florida Statutes, are amended to read:

413.033 Definitions.—As used in ss. 413.032-413.037:

(3) "Qualified nonprofit agency for the blind" means an agency:

(d) Which meets the criteria for determining nonprofit status under the provisions of s. 196.195 ~~and is registered and in good standing as a charitable organization with the Department of Agriculture and Consumer Services under the provisions of chapter 496~~.

(4) "Qualified nonprofit agency for other severely handicapped" means an agency:

(d) Which meets the criteria for determining nonprofit status under the provisions of s. 196.195 ~~and is registered and in good standing as a charitable organization with the Department of Agriculture and Consumer Services under the provisions of chapter 496~~.

Section 39. Subsection (2) of section 550.0351, Florida Statutes, is amended to read:

550.0351 Charity racing days.—

(2) The proceeds of charity performances shall be paid to qualified beneficiaries selected by the permitholders from an authorized list of charities on file with the division. Eligible charities include any charity that provides ~~evidence of compliance with the provisions of chapter 496 and~~ evidence of possession of a valid exemption from federal taxation issued by the Internal Revenue Service. In addition, the authorized list

must include the Racing Scholarship Trust Fund, the Historical Resources Operating Trust Fund, major state and private institutions of higher learning, and Florida community colleges.

Section 40. Section 550.1647, Florida Statutes, is amended to read:

550.1647 Greyhound permitholders; unclaimed tickets; breaks.—All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any permitholder authorized to conduct greyhound racing pari-mutuel pools in this state for a period of 1 year after the date the pari-mutuel ticket was issued, if the rightful owner or owners thereof have made no claim or demand for such money or other property within that period of time, shall, with respect to live races conducted by the permitholder, be remitted to the state pursuant to s. 550.1645; however, such permitholder shall be entitled to a credit in each state fiscal year in an amount equal to the actual amount remitted in the prior state fiscal year which may be applied against any taxes imposed pursuant to this chapter. In addition, each permitholder shall pay, from any source, including the proceeds from performances conducted pursuant to s. 550.0351, an amount not less than 10 percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of greyhounds. As used in this chapter, the term "bona fide organization that promotes or encourages the adoption of greyhounds" means any organization that ~~provides evidence of compliance with chapter 496 and~~ possesses a valid exemption from

federal taxation issued by the Internal Revenue Service. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.

Section 41. Paragraph (a) of subsection (3) of section 741.0305, Florida Statutes, is amended to read:

741.0305 Marriage fee reduction for completion of premarital preparation course.—

(3)(a) All individuals electing to participate in a premarital preparation course shall choose from the following list of qualified instructors:

1. A psychologist licensed under chapter 490.

2. A clinical social worker licensed under chapter 491.

3. A marriage and family therapist licensed under chapter 491.

4. A mental health counselor licensed under chapter 491.

5. An official representative of a religious institution ~~which is recognized under s. 496.404(19)~~, if the representative has relevant training.

6. Any other provider designated by a judicial circuit, including, but not limited to, school counselors who are certified to offer such courses. Each judicial circuit may establish a roster of area course providers, including those who offer the course on a sliding fee scale or for free.

Section 42. Paragraph (a) of subsection (1) of section 775.0861, Florida Statutes, is amended to read:

775.0861 Offenses against persons on the grounds of

religious institutions; reclassification.—

(1) For purposes of this section, the term:

(a) "Religious institution" means any church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and includes those bona fide religious groups which do not maintain specific places of worship. The term includes any separate group or corporation which forms an integral part of a religious institution which is exempt from federal income tax under the provisions of s. 501(c)(3) of the Internal Revenue Code, and which is not primarily supported by funds solicited outside its own membership or congregation ~~is as defined in s. 496.404~~.

Section 43. Paragraph (a) of subsection (8) of section 790.166, Florida Statutes, is amended to read:

790.166 Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited; definitions; penalties.—

(8) For purposes of this section, the term "weapon of mass destruction" does not include:

(a) A device or instrument that emits or discharges smoke or an offensive, noxious, or irritant liquid, powder, gas, or chemical for the purpose of immobilizing, incapacitating, or thwarting an attack by a person or animal and that is lawfully possessed or used by a person for the purpose of self-protection or, as provided in subsection (7), is lawfully possessed or used

by any member or employee of the Armed Forces of the United States, a federal or state governmental agency, or a private entity. A member or employee of a federal or state governmental agency includes, but is not limited to, a law enforcement officer, as defined in s. 784.07; a federal law enforcement officer, as defined in s. 901.1505; a firefighter, as defined in s. 633.30; and an ambulance driver, emergency medical technician, or paramedic, as defined in s. 401.23 ~~emergency service employee, as defined in s. 496.404~~.

Section 44. Paragraph (d) of subsection (3) of section 843.16, Florida Statutes, is amended to read:

843.16 Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

(3) This section does not apply to the following:

(d) Any sworn law enforcement officer as defined in s. 943.10; a firefighter, as defined in s. 633.30; or an ambulance driver, emergency medical technician, or paramedic, as defined in s. 401.23 ~~or emergency service employee as defined in s. 496.404~~ while using personal transportation to and from work.

Section 45. Section 500.459, Florida Statutes, is repealed.

Section 46. Section 500.511, Florida Statutes, is amended to read:

500.511 Bottled water plants; packed ice plants; ~~Fees; enforcement;~~ preemption.—

~~(1) FEES.—All fees collected under s. 500.459 shall be deposited into the General Inspection Trust Fund and shall be~~

~~accounted for separately and used for the sole purpose of administering the provisions of such section.~~

~~(2) ENFORCEMENT AND PENALTIES.—In addition to the provisions contained in s. 500.459, the department may enforce s. 500.459 in the manner provided in s. 500.121. Any person who violates a provision of s. 500.459 or any rule adopted under such section shall be punished as provided in such section. However, criminal penalties may not be imposed against any person who violates a rule.~~

~~(3) PREEMPTION OF AUTHORITY TO REGULATE.—~~Regulation of bottled water plants~~, water vending machines, water vending machine operators,~~ and packaged ice plants is preempted by the state. No county or municipality may adopt or enforce any ordinance that regulates the licensure or operation of bottled water plants~~, water vending machines,~~ or packaged ice plants, unless it is determined that unique conditions exist within the county which require the county to regulate such entities in order to protect the public health. This subsection does not prohibit a county or municipality from requiring a business tax pursuant to chapter 205.

Section 47. Sections 501.012, 501.0125, 501.013, 501.014, 501.015, 501.016, 501.017, 501.018, and 501.019, Florida Statutes, are repealed.

Section 48. Paragraph (d) of subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(d) This subsection does not apply to:

1. A financial institution as defined in s. 655.005(1)(h) or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

~~4. A health studio as defined in s. 501.0125(1).~~

4.~~5.~~ Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

5.~~6.~~ Any electric utility as defined in s. 366.02(2).

6.~~7.~~ Any private company as defined in s. 180.05 providing services described in chapter 180 that is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

Section 49. Section 501.143, Florida Statutes, is repealed.

Section 50. Section 205.1969, Florida Statutes, is repealed.

Section 51. Part IV of chapter 501, Florida Statutes, consisting of sections 501.601, 501.602, 501.603, 501.604, 501.605, 501.606, 501.607, 501.608, 501.609, 501.611, 501.612, 501.613, 501.614, 501.615, 501.616, 501.617, 501.618, 501.619, 501.621, 501.622, 501.623, 501.624, 501.625, and 501.626, is repealed.

Section 52. Section 205.1973, Florida Statutes, is repealed.

Section 53. Paragraph (b) of subsection (1) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(1) DEFINITIONS.—As used in this section:

(b) "Consumer" means a natural person ~~an individual, as defined in s. 501.603,~~ receiving service, maintenance, or repair under a service contract. The term does not include an individual engaged in business or employed by or otherwise acting on behalf of a governmental entity if the individual enters into the service contract as part of or ancillary to the individual's business activities or on behalf of the business or governmental entity.

Section 54. Paragraph (c) of subsection (1) of section 648.44, Florida Statutes, is amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or temporary bail bond agent may not:

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family. Any solicitation not prohibited by this chapter must comply with the telephone solicitation requirements in s. ~~ss.~~ 501.059(2) and (4)~~, 501.613, and 501.616(6)~~.

Section 55. Paragraph (a) of subsection (1) of section 772.102, Florida Statutes, is amended to read:

772.102 Definitions.—As used in this chapter, the term:

(1) "Criminal activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or

intimidate another person to commit:

(a) Any crime that is chargeable by indictment or information under the following provisions:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 414.39, relating to public assistance fraud.

3. Section 440.105 or s. 440.106, relating to workers' compensation.

~~4. Part IV of chapter 501, relating to telemarketing.~~

4.~~5.~~ Chapter 517, relating to securities transactions.

5.~~6.~~ Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

6.7. Chapter 550, relating to jai alai frontons.

7.~~8.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

8.~~9.~~ Chapter 562, relating to beverage law enforcement.

9.~~10.~~ Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

10.~~11.~~ Chapter 687, relating to interest and usurious practices.

11.~~12.~~ Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

12.~~13.~~ Chapter 782, relating to homicide.

13.~~14.~~ Chapter 784, relating to assault and battery.

14.~~15.~~ Chapter 787, relating to kidnapping or human

trafficking.

15.~~16.~~ Chapter 790, relating to weapons and firearms.

16.~~17.~~ Section 796.03, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution.

17.~~18.~~ Chapter 806, relating to arson.

18.~~19.~~ Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

19.~~20.~~ Chapter 812, relating to theft, robbery, and related crimes.

20.~~21.~~ Chapter 815, relating to computer-related crimes.

21.~~22.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

22.~~23.~~ Section 827.071, relating to commercial sexual exploitation of children.

23.~~24.~~ Chapter 831, relating to forgery and counterfeiting.

24.~~25.~~ Chapter 832, relating to issuance of worthless checks and drafts.

25.~~26.~~ Section 836.05, relating to extortion.

26.~~27.~~ Chapter 837, relating to perjury.

27.~~28.~~ Chapter 838, relating to bribery and misuse of public office.

28.~~29.~~ Chapter 843, relating to obstruction of justice.

29.~~30.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

30.~~31.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

31.~~32.~~ Chapter 893, relating to drug abuse prevention and

control.

32.~~33.~~ Section 914.22 or s. 914.23, relating to witnesses, victims, or informants.

33.~~34.~~ Section 918.12 or s. 918.13, relating to tampering with jurors and evidence.

Section 56. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a

fictitious employer scheme to commit unemployment compensation fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

~~10. Part IV of chapter 501, relating to telemarketing.~~

10.~~11.~~ Chapter 517, relating to sale of securities and investor protection.

11.~~12.~~ Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

12.~~13.~~ Chapter 550, relating to jai alai frontons.

13.~~14.~~ Section 551.109, relating to slot machine gaming.

14.~~15.~~ Chapter 552, relating to the manufacture, distribution, and use of explosives.

15.~~16.~~ Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

16.~~17.~~ Chapter 562, relating to beverage law enforcement.

17.~~18.~~ Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

18.~~19.~~ Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

19.~~20.~~ Chapter 687, relating to interest and usurious practices.

20.~~21.~~ Section 721.08, s. 721.09, or s. 721.13, relating

to real estate timeshare plans.

21.~~22.~~ Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

22.~~23.~~ Section 777.03, relating to commission of crimes by accessories after the fact.

23.~~24.~~ Chapter 782, relating to homicide.

24.~~25.~~ Chapter 784, relating to assault and battery.

25.~~26.~~ Chapter 787, relating to kidnapping or human trafficking.

26.~~27.~~ Chapter 790, relating to weapons and firearms.

27.~~28.~~ Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.

28.~~29.~~ Section 796.03, s. 796.035, s. 796.04, s. 796.045, s. 796.05, or s. 796.07, relating to prostitution and sex trafficking.

29.~~30.~~ Chapter 806, relating to arson and criminal mischief.

30.~~31.~~ Chapter 810, relating to burglary and trespass.

31.~~32.~~ Chapter 812, relating to theft, robbery, and related crimes.

32.~~33.~~ Chapter 815, relating to computer-related crimes.

33.~~34.~~ Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

34.~~35.~~ Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

35.~~36.~~ Section 827.071, relating to commercial sexual exploitation of children.

36.~~37.~~ Chapter 831, relating to forgery and counterfeiting.

37.~~38.~~ Chapter 832, relating to issuance of worthless checks and drafts.

38.~~39.~~ Section 836.05, relating to extortion.

39.~~40.~~ Chapter 837, relating to perjury.

40.~~41.~~ Chapter 838, relating to bribery and misuse of public office.

41.~~42.~~ Chapter 843, relating to obstruction of justice.

42.~~43.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06, or s. 847.07, relating to obscene literature and profanity.

43.~~44.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s. 849.25, relating to gambling.

44.~~45.~~ Chapter 874, relating to criminal gangs.

45.~~46.~~ Chapter 893, relating to drug abuse prevention and control.

46.~~47.~~ Chapter 896, relating to offenses related to financial transactions.

47.~~48.~~ Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

48.~~49.~~ Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 57. Chapter 507, Florida Statutes, consisting of

sections 507.01, 507.02, 507.03, 507.04, 507.05, 507.06, 507.07, 507.08, 507.09, 507.10, 507.11, 507.12, and 507.13, is repealed.

Section 58. Section 205.1975, Florida Statutes, is repealed.

Section 59. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, resort condominium, nontransient apartment, transient apartment, ~~roominghouse,~~ bed and breakfast inn, or resort dwelling if the establishment satisfies the following criteria:

(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) Resort condominium.—A resort condominium is any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year

for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

(d) Nontransient apartment ~~or roominghouse~~.—A nontransient apartment ~~or roominghouse~~ is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) Transient apartment ~~or roominghouse~~.—A transient apartment ~~or roominghouse~~ is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

~~(f) Roominghouse.—A roominghouse is any public lodging establishment that may not be classified as a hotel, motel, resort condominium, nontransient apartment, bed and breakfast inn, or transient apartment under this section. A roominghouse includes, but is not limited to, a boardinghouse.~~

(f) ~~(g)~~ Resort dwelling.—A resort dwelling is any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

(g) ~~(h)~~ Bed and breakfast inn.—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging

establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

Section 60. Subsection (9) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a resort condominium, nontransient apartment, or resort dwelling as described in s. 509.242(1)(c), (d), and (f) ~~(g)~~.

Section 61. Chapter 555, Florida Statutes, consisting of sections 555.01, 555.02, 555.03, 555.04, 555.05, 555.07, and 555.08, is repealed.

Section 62. Part VIII of chapter 559, Florida Statutes, consisting of sections 559.80, 559.801, 559.802, 559.803, 559.805, 559.807, 559.809, 559.811, 559.813, and 559.815, is repealed.

Section 63. Part IX of chapter 559, Florida Statutes, consisting of sections 559.901, 559.902, 559.903, 559.904, 559.905, 559.907, 559.909, 559.911, 559.915, 559.916, 559.917, 559.919, 559.920, 559.921, 559.9215, 559.922, 559.92201, and 559.9221, is repealed.

Section 64. Paragraph (a) of subsection (9) of section 320.27, Florida Statutes, is amended to read:

320.27 Motor vehicle dealers.—

(9) DENIAL, SUSPENSION, OR REVOCATION.—

(a) The department may deny, suspend, or revoke any

license issued hereunder or under the provisions of s. 320.77 or s. 320.771 upon proof that an applicant or a licensee has:

1. Committed fraud or willful misrepresentation in application for or in obtaining a license.

2. Been convicted of a felony.

3. Failed to honor a bank draft or check given to a motor vehicle dealer for the purchase of a motor vehicle by another motor vehicle dealer within 10 days after notification that the bank draft or check has been dishonored. ~~If the transaction is disputed, the maker of the bank draft or check shall post a bond in accordance with the provisions of s. 559.917, and no proceeding for revocation or suspension shall be commenced until the dispute is resolved.~~

4.a. Failed to provide payment within 10 business days to the department for a check payable to the department that was dishonored due to insufficient funds in the amount due plus any statutorily authorized fee for uttering a worthless check. The department shall notify an applicant or licensee when the applicant or licensee makes payment to the department by a check that is subsequently dishonored by the bank due to insufficient funds. The applicant or licensee shall, within 10 business days after receiving the notice, provide payment to the department in the form of cash in the amount due plus any statutorily authorized fee. If the applicant or licensee fails to make such payment within 10 business days, the department may deny, suspend, or revoke the applicant's or licensee's motor vehicle dealer license.

b. Stopped payment on a check payable to the department,

issued a check payable to the department from an account that has been closed, or charged back a credit card transaction to the department. If an applicant or licensee commits any such act, the department may deny, suspend, or revoke the applicant's or licensee's motor vehicle dealer license.

Section 65. Paragraph (a) of subsection (1) of section 445.025, Florida Statutes, is amended to read:

445.025 Other support services.—Support services shall be provided, if resources permit, to assist participants in complying with work activity requirements outlined in s. 445.024. If resources do not permit the provision of needed support services, the regional workforce board may prioritize or otherwise limit provision of support services. This section does not constitute an entitlement to support services. Lack of provision of support services may be considered as a factor in determining whether good cause exists for failing to comply with work activity requirements but does not automatically constitute good cause for failing to comply with work activity requirements, and does not affect any applicable time limit on the receipt of temporary cash assistance or the provision of services under chapter 414. Support services shall include, but need not be limited to:

(1) TRANSPORTATION.—Transportation expenses may be provided to any participant when the assistance is needed to comply with work activity requirements or employment requirements, including transportation to and from a child care provider. Payment may be made in cash or tokens in advance or through reimbursement paid against receipts or invoices.

Transportation services may include, but are not limited to, cooperative arrangements with the following: public transit providers; community transportation coordinators designated under chapter 427; school districts; churches and community centers; donated motor vehicle programs, van pools, and ridesharing programs; small enterprise developments and entrepreneurial programs that encourage participants to become transportation providers; public and private transportation partnerships; and other innovative strategies to expand transportation options available to program participants.

(a) Regional workforce boards may provide payment for vehicle operational and repair expenses, including repair expenditures necessary to make a vehicle functional; vehicle registration fees; driver's license fees; and liability insurance for the vehicle for a period of up to 6 months. Request for vehicle repairs must be accompanied by an estimate of the cost prepared by a repair facility ~~registered under s. 559.904~~.

Section 66. Paragraph (i) of subsection (1) of section 713.585, Florida Statutes, is redesignated as paragraph (h), subsections (12) and (13) of that section are renumbered as subsections (11) and (12), respectively, and present paragraph (h) of subsection (1) and present subsection (11) of that section is amended, to read:

713.585 Enforcement of lien by sale of motor vehicle.—A person claiming a lien under s. 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale of the vehicle in accordance with the following procedures:

(1) The lienor must give notice, by certified mail, return receipt requested, within 15 business days, excluding Saturday and Sunday, from the beginning date of the assessment of storage charges on said motor vehicle, to the registered owner of the vehicle, to the customer as indicated on the order for repair, and to all other persons claiming an interest in or lien thereon, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or of a corresponding agency of any other state in which the vehicle appears registered. Such notice must contain:

~~(h) Notice that the owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting bond in accordance with the provisions of s. 559.917.~~

~~(11) Nothing in this section shall operate in derogation of the rights and remedies established by s. 559.917.~~

Section 67. Part XI of chapter 559, Florida Statutes, consisting of sections 559.926, 559.927, 559.928, 559.9285, 559.929, 559.9295, 559.931, 559.932, 559.933, 559.9335, 559.934, 559.935, 559.9355, 559.936, 559.937, 559.938, and 559.939, is repealed.

Section 68. Section 205.1971, Florida Statutes, is repealed.

Section 69. Subsections (21) through (28) of section 501.604, Florida Statutes, are renumbered as subsections (20) through (28), respectively, and present subsection (20) of that section is amended to read:

501.604 Exemptions.—The provisions of this part, except

ss. 501.608 and 501.616(6) and (7), do not apply to:

~~(20) A person who is registered pursuant to part XI of chapter 559 and who is soliciting within the scope of the registration.~~

Section 70. Paragraph (b) of subsection (1) of section 501.608, Florida Statutes, is amended to read:

501.608 License or affidavit of exemption; occupational license.—

(1)

(b) Any commercial telephone seller claiming to be exempt from the act under s. 501.604(2), (3), (5), (6), (9), (10), (11), (12), (17), (20) ~~(21)~~, (21) ~~(22)~~, (23) ~~(24)~~, or (25) ~~(26)~~ must file with the department a notarized affidavit of exemption. The affidavit of exemption must be on forms prescribed by the department and must require the name of the commercial telephone seller, the name of the business, and the business address. Any commercial telephone seller maintaining more than one business may file a single notarized affidavit of exemption that clearly indicates the location of each place of business. If a change of ownership occurs, the commercial telephone seller must notify the department.

Section 71. Subsection (5) of section 636.044, Florida Statutes, is amended to read:

636.044 Agent licensing.—

~~(5) A person registered as a seller of travel under s. 559.928 is not required to be licensed under this section in order to sell prepaid limited health service contracts that cover the cost of transportation provided by an air ambulance~~

~~service licensed pursuant to s. 401.251. The prepaid limited health service contract for such coverage is, however, subject to all applicable provisions of this chapter.~~

Section 72. Paragraph (d) of subsection (3) of section 721.11, Florida Statutes, is amended to read:

721.11 Advertising materials; oral statements.—

(3) The term "advertising material" does not include:

(d) Any audio, written, or visual publication or material relating to the promotion of the availability of any accommodations or facilities, or both, for transient rental, ~~including any arrangement governed by part XI of chapter 559,~~ so long as a mandatory tour of a timeshare plan or attendance at a mandatory sales presentation is not a term or condition of the availability of such accommodations or facilities, or both, and so long as the failure of any transient renter to take a tour of a timeshare plan or attend a sales presentation does not result in the transient renter receiving less than what was promised to the transient renter in such materials.

Section 73. Section 686.201, Florida Statutes, is repealed.

Section 74. Section 817.559, Florida Statutes, is repealed.

Section 75. This act shall take effect July 1, 2011.

PCS FOR HB 5007

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 5007 Relating to reducing and streamlining regulations
SPONSOR(S): Economic Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee		Morton Livingston Whittington	Tinker TBT
1) Appropriations Committee			

SUMMARY ANALYSIS

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions.

Specifically the bill:

- Eliminates duplicate licensure requirements for sole proprietorships that are asbestos consultants, asbestos contractors, and architects;
- Reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive;
- Decriminalizes many violations of professional boards' rules and administrative requirements that currently carry second-degree misdemeanor fines and penalties;
- Aligns minimum education requirements for Certified Public Accounting licensure with college requirements;
- Reduces licensing, examination, and training requirements for Mold Assessors and Remediators;
- Provide that home inspectors are not required to comply with the license requirements for mold assessment and allows individuals with certain certifications and/or licenses to be licensed as a home inspector;
- Allows landscape architects, who practice of landscape design, to submit plans to government agencies for approval;
- Allows a CPA licensed in another state with 5 years of experience in the field of public accountancy to become licensed in Florida;
- Revises which matters relating to the regulation of public lodging establishments and food service establishments are preempted to the state and authorizes the Division of Hotels and Restaurants to address remedial training for violations of the food code;
- Revises the validity period for inactive status certificates of fire protection system contractors from two years to 8 years;
- Provides for the release of certain driver license information by the Department of Highway Safety and Motor Vehicles to the Department of Business and Professional Regulation for investigative purposes related to unlicensed activity;
- Changes statutory references in the security industry from "repossesors" to "recovery agents";
- Transfers duplicative authority for regulation and enforcement of the Lemon Law and Price Gouging from the Department of Agriculture and Consumer Services to the Department of Legal Affairs;
- Removes the requirement that certain fees paid by professions of the Security Industry must be in the form of a certified check; and
- Authorizes the direct sale of certain homemade foods to consumers and provides definitions and requirements for such practices.

The bill has an indeterminate fiscal impact on state trust funds and a positive fiscal impact to private businesses. See fiscal comments.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Duplicate licensing

Architects

Current Situation

"Architecture" is defined as services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures. Services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

Architects are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation (DBPR).

License Categories:

Architect – is person who is licensed to engage in the practice of architecture. An applicant for licensure as a registered architect must complete, prior to licensure, an internship of diversified architectural experience, approved by the board of Architects and Interior Designers, in the design and construction of structures which have the principal purpose of human habitation or use. The internship is for a period of three years for an applicant holding the degree of Bachelor of Architecture; or two years for an applicant holding the professional degree of Master of Architecture.

Each applicant for licensure is required to complete 1 year of the internship experience subsequent to graduation from a school or college of architecture.

Business Entity - means a corporation or partnership licensed to practice architecture or interior design.

Methods of Licensure:

Examination - The board of Architects and Interior Designers certify for licensure by examination any applicant who passes the prescribed licensure examination and satisfies the statutory requirements for architects.

Business Entity – A certificate of authorization is required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, is not required to be certified.

Fees:

Initial Fees:
Architects
- Initial Licensure, Application, and Examination Fee - $1,040
- Licensure by Endorsement - $200 ($90 if applicant holds certification from the National Council for Architecture Registration Boards)

- Business Entity
- Certificate of Authorization - $100 (Architect Corporations and Partnerships)

Biennial License Renewal Fees:
- Architects

- Registered Architects and Architects - $120

Business Entity

- Certificate of Authorization - $120

In addition to the license fees above, all applicants are required to pay a $5 unlicensed activity fee. Each year, $5 of every license fee funds an unlicensed activity media campaign. Unlicensed activity advertisements are intended to educate the public and prevent unlicensed activity. The DBPR staff creates ads to communicate with the public about unlicensed activity. The DBPR produces several ads each year tailored to each profession that run online, in print and in movie theaters and buses across the state.

Proposed Changes

The bill specifies that, if a person holds an individual license and is operating a business under a fictitious name as a sole proprietorship, an additional business license will not be required.

Asbestos Consultants and Contractors

Current Situation

"Asbestos" means the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Asbestos Contractors and Consultants are regulated by the DBPR.

License Categories:

An "Asbestos Contractor" is a person who removes, encapsulates, or encloses asbestos-containing materials or disposes of asbestos-containing waste in the course of activities including, but not limited to, construction, renovation, maintenance, or demolition.

An "Asbestos Consultant" is a person who conducts surveys for asbestos-containing materials, develops operation and maintenance plans, monitors and evaluates asbestos abatement, prepares asbestos abatement specifications, or performs related tasks.

Business Organization – An asbestos contracting business must be licensed by the state. Each application for licensure must include the name of the partnership and of each of its partners, the name of the corporation and of each of its officers and directors and the name of each of its stockholders who is also an officer or director, the name of the business trust and of each of its trustees, or the name of such other legal entity and of each of its members. Business organization applications must also include certain documents. The major documents required are:

- Affidavit for financial responsibility.
- Affidavit for proof of worker's compensation insurance.
- Affidavit attesting that the applicant has authority to supervise all construction work performed by the entity.

Fees:

Initial Fees:

- Application Fee - $300
- Examination Fee - $400
- Re-Examination - $400
- Initial License (individual and business entity) - $500
- Training Course - $100

Biennial License Renewal Fees:

- Asbestos Consultants and Contractors - $300
- Business Organizations - $500

In addition to the license fees above, all applicants are required to pay a $5 unlicensed activity fee. Each year, $5 of every license fee funds an unlicensed activity media campaign. Unlicensed activity advertisements are intended to educate the public and prevent unlicensed activity. The DBPR staff creates ads to communicate with the public about unlicensed activity. The DBPR produces several ads each year tailored to each profession that run online, in print and in movie theaters and buses across the state.

Proposed Changes

The bill specifies that, if a person holds an individual license and is operating a business under a fictitious name as a sole proprietorship, an additional business license will not be required.

Continuing Education Requirements for Inactive Licenses

Current Situation

A licensee may practice a profession only if the licensee has an active status license. An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements.

Generally, if a licensee allows their license to go inactive, they must complete enough continuing education to fulfill the continuing education cycle for each licensure cycle in which they were inactive.

Proposed Changes

The bill amends ss. 455.271(4), 481.217, 489.116, 477.0212(2), and 489.515, F.S., reducing the amount of continuing education a licensee must complete to the equivalent of one renewal cycle before reactivating an inactive licensee. This language excludes real estate professionals licensed pursuant to ch. 475, F.S., due to current federal guidelines.

This language applies to the following professions:

- Accountants
- Architects
- Asbestos Contractors
- Building Code Administrators and Inspectors
- Construction Contractors
- Cosmetologists
- Electrical Contractors
- Engineers
- Landscape Architects
- Home Inspectors
- Mold Assessors and Remediators

Home Inspector Licensing

Current Situation

Currently, ch. 468, Part XV, F.S., relates to the licensure and regulation of home inspectors.
"Home inspection services" means a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of

determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition based on visual appearances. A home inspection is performed by private individuals rather than by local government inspectors.

In addition to submitting the application form, the applicant must pay the appropriate fees and meet the following criteria:

- be of good moral character: "good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation as defined by s. 468.8313(5)(a), F.S.
- provide proof of completion of a course of study approved by the department of not less than 120 hours that covers at a minimum the following components of an inspection under the supervision of a licensed Florida home inspector:
    - Structure, exterior components, roof covering, site conditions that affect the structure, electrical system, interior components, HAVC system, plumbing system, and 20 hours of field-based inspection of the components of a home.
- submit a log of all inspections completed for purposes of providing proof of their field-based training, with verification of completion of the required training hours. The log must contain the following information:
    - the date of the inspections, the address of the properties inspected, the names of the clients, the amount of time spent on the inspections, and the name, license number and signature of the licensed home inspector providing the training.
- pass the required examination.

To be "grandfathered" into licensure an applicant must:

- either submit proof of certification as a home inspector by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 14 hours of relevant verifiable education; or
- submit proof of 3 years experience as a home inspector, demonstrable by at least 120 inspection reports, and complete at least 14 hours of relevant verifiable education. Applications must be made before March 1, 2011.

In addition, S. 627.711, F.S., currently requires that a person making application to become a licensed home inspector in the area of hurricane mitigation, must complete at least 3 hours of hurricane mitigation training that includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and must also pass a proficiency exam. Further, these home inspectors must complete at least 2 hours of continuing education related to mitigation inspection and the uniform mitigation form.

The regulation of home inspector services was first enacted in 2007, however, the effective date was delayed until July I, 2010. In 2010, legislation delayed unlicensed activity enforcement relating to home inspectors until July 1, 2011. This deferred enforcement, as a result, effectively delayed license requirements one year to allow applicants to have time to apply and be processed and approved or rejected and begin operations without the fear of being prosecuted for unlicensed activity. The responsibility of issuing licenses by DBPR has still existed during this interim period.

Proposed Changes

The bill provides that individuals with the following certifications and/or licenses are qualified for licensure, if the individual submits an application to the department postmarked on or before July 1, 2012. A person may qualify for a license if he or she:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International;

- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board; or
- Possesses a Division I contractor license, a Division II certified air-conditioning license, and an electrical contractor license.

The bill also deletes the current qualifications for license as a home inspector to be submitted before March 1, 2011 in the current s. 468.8324(1), F.S., which includes the requirement of:

- A state or national certification with a proctored examination on home inspections, completion of at least 14 hours of verifiable education on home inspections,
- or At least three years of experience verified through home inspection reports submitted by the applicant and completion of at least 14 hours of verifiable education on home inspections.

The bill revises requirements relating to home inspectors conducting hurricane mitigation inspections. The bill provides that a home inspector who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board may be licensed. The bill also eliminates the specified continuing education course requirements.

In addition, the bill amends s. 468.841(1), F.S., to provide that licensed home inspectors are not required to comply with the license requirements for mold assessment in part XVI of ch. 468, F.S.

Mold Assessors and Remediators Licensing

Current Situation

Currently, ch. 468, Part XVI, F.S., relates to the licensure and regulation of mold assessors and mold remediators by DBPR.

"Mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.

"Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under ch. 489 unless performed by a person who is licensed under that chapter or the work complies with that chapter.

"Mold assessor" means any person who performs or directly supervises a mold assessment. "Mold remediator" means any person who performs mold remediation. A mold remediator may not perform any work that requires a license under ch. 489, F.S., (construction contracting) unless the mold remediator is also licensed under that chapter or complies with that chapter.

All applicants must submit to a criminal background check, disclose contact and background information and obtain general liability insurance. Applicants for licensure as a mold assessor must also obtain errors and omissions insurance for both preliminary and post remediation mold assessment.

Mold Assessor

- Examination – Applicants must pass a department-approved proctored examination on mold assessment; and either hold at least an Associate of Arts degree, with 30 credit hours in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science, or have a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be "grandfathered" into licensure – Applicants must either submit proof of certification as a mold assessor by a state or national association that requires successful completion of a

relevant proctored exam and completion of at least 60 hours of relevant verifiable education; or submit proof of 3 years experience as a mold assessor, demonstrable by at least 40 invoices. Applications must be made before March 1, 2011.

Mold Remediator

- Examination – Applicants must pass a department-approved proctored examination on mold remediation; and either hold at least an Associate of Arts degree in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science and demonstrate a minimum of 1 year of documented field experience in microbial sampling or investigations, or applicants may submit proof of a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be "grandfathered" into licensure – Applicants must hold certification as a mold remediator by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 30 hours of relevant verifiable education; or have at least 3 years of experience as a mold remediator, established by at least 40 invoices. Applications must be made before March 1, 2011.

The regulation of mold services was first enacted in 2007, however, the effective date was delayed until July I, 2010. In 2010, legislation delayed unlicensed activity enforcement relating to mold assessors and mold remediators until July 1, 2011. This deferred enforcement, as a result, effectively delayed license requirements one year to allow applicants to have time to apply and be processed and approved or rejected and begin operations without the fear of being prosecuted for unlicensed activity. The responsibility of issuing licenses by DBPR has still existed during this interim period.

Proposed Changes

- The bill eliminates the requirements for applicants to hold at least an Associate of Arts degree, with 30 credit hours in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science and 1 year field experience; or 4 years experience under the supervision of a licensed mold assessor or remediators. Effectively, applicants for mold assessors or remediators must only have a high school diploma and successfully pass the examination.
- The bill reduces the years of experience required for applicants from 3 years to 1 year and reduces the experience shown by invoices from 40 to 10 to be grandfathered into licensure.
- The bill also deletes the requirements that mold assessors and remediators pre-licensure training include water, mold, and respiratory protection.

Landscape Architecture and Design

Current Situation

The Legislature added the regulation of landscape designers to part II of ch. 481, F.S., in 1998. In general, part II, of ch. 481, F.S., provides for the regulation of landscape architects by the Board of Landscape Architecture within the Department of Business and Professional Regulation (DBPR). Prior to 1998, landscape designers were not regulated in Florida, except to the extent that they were not permitted to perform tasks of a landscape architect. The Legislature in adopting ch. 1998-245, L.O.F., defined the term "landscape design" and provided an exemption from landscape architect license requirements for landscape designers.

Section 481.303(7), F.S., defines the term landscape design to mean:

> "The consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law."

Proposed Changes

The bill amends subsection (5) of s. 481.329, F.S., to delete language that currently prohibits a person engaging in the practice of landscape design from submitting planting plans to government agencies for approval.

Decriminalization of Rule Violations

Cosmetologists

Current Situation

Cosmetologists are licensed by the Board of Cosmetology within the DBPR pursuant to ch. 477, F.S.

Section 477.0265(1)(c), F.S., makes engaging in willful or repeated violations of ch. 477 or any rule adopted by the Board of Cosmetology an unlawful act, punishable as a second-degree misdemeanor.[1] This criminalizes violations of the professional practice act and the board rules, including violations for failure to attach a recent photo to the license, failure to keep furniture and equipment free from dust, failure to comply with local building and fire codes, and failure to keep hair from accumulating on the floor.

Proposed Changes

The bill repeals s. 477.0265(1)(c), decriminalizing repeated or willful violation of administrative rules and the practice act.

The board will still be able to impose administrative discipline against a cosmetology licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Real Estate Commission

Current Situation

Currently, Florida Statutes criminalize violations of rules and orders of the Florida Real Estate Commission (FREC). Section 475.42(1)(e), F.S., provides: A person may not violate any lawful order or rule of the commission which is binding upon her or him. In addition, s. 475.42(2), F.S., provides:

> Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, it is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

As a result, a licensee is subject to criminal sanctions for a rule violation of the FREC. This means a licensee can be subject to criminal sanctions for minor rule infractions, for example, improper use of a guest lecturer or failure to maintain the proper office sign at the entrance of the office. In addition, a violation of s. 475.42(1)(e) is subject to an administrative fine issued by the FREC ranging from $250-

[1] Fla. Stat. s. 477.0265(2).

$1,000 on the first occurrence. Violators can also be subject to suspension or revocation of their license.[2]

Proposed Changes

The bill deletes s. 475.42(1)(e). As a result, it decriminalizes a violation of an order or rule of the FREC.

The FREC will still be able to impose administrative discipline against a real estate licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Real Estate Appraisal

Background

Currently, Florida Statutes criminalize violations of practices acts and administrative rules promulgated by the Florida Real Estate Appraisal Board (FREAB). Section 475.626(1), F.S., provides: (b) No person shall violate any lawful order or rule of the board which is binding upon her or him. (c) No person shall commit any conduct or practice set forth in s. 475.624.

Section 475.626(2), F.S., provides:

> Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except when a different punishment is prescribed by this section. Nothing in this section shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

As a result, a licensee is subject to criminal sanctions for a rule violation of the FREAB. This means a licensee can be subject to criminal sanctions for minor rule infractions, for example, improper use of the designation or abbreviation of appraiser. Appraisers licensed under Part II of ch. 475, F.S., are also exposed to criminal sanctions for violations of s. 475.624, F.S. In addition, these violations are subject to fines issued by the FREAB and can range from $500-$5,000 per occurrence. Violators can also be subject to suspension or revocation of their license.[3]

Proposed Changes

The bill deletes ss. 475.626(1)(b) and 475.626(1)(c), F.S., and as a result, it decriminalizes the violation of FREAB rules and practice acts set forth in s. 475.624, F.S.

The FREC will still be able to impose administrative discipline against a real estate licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Use of Digital Images

Current Situation

---

[2] 61J2-24.001, F.A.C.
[3] 61J1-8.002, F.A.C.

Currently, s. 322.142, F.S., provides for the issuance of drivers licenses by the Department of Highway Safety and Motor Vehicles using a color photographic or digital imaged driver's license bearing a photograph or digital image of the licensee. The application of this technology is also used for numerous other identification purposes, such as law enforcement.

This section specifically allows the use of reproductions from the file by the DBPR "pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses" issued by the DBPR.

Proposed Changes

The bill expands the use of digital image data for the purpose of identifying subjects under criminal investigation for unlicensed activity by the DBPR.

Lemon Law

Current Situation

Commonly known as Florida's "Lemon Law," the Motor Vehicle Warranty Enforcement Act (Act) establishes arbitration boards throughout the state to hear and settle complaints between car manufacturers and owners.[4] The Act provides remedies for consumers purchasing or leasing motor vehicles in Florida for personal use that have a manufacturing defect or non-conformity which substantially impairs the vehicle's value, use, or safety.

Although arbitration is completed by a New Motor Vehicle Arbitration Board within the Department of Legal Affairs, the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS) screens requests for arbitration for eligibility and distributes consumer information on the program.

Proposed Changes

The bill removes DACS's roles of public education and eligibility determination from the Motor Vehicle Warranty Enforcement Act. These tasks are transferred to the Department of Legal Affairs, who administers the rest of the Act.

Price Gouging

Current Situation

Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency.[5] A commodity includes goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce which includes food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency. A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.

The law may be enforced by the DACS, the office of the state attorney, or the Department of Legal Affairs. Penalties that may be assessed include a civil penalty of not more than $1,000 per violation with an aggregate total not to exceed $25,000 for any 24-hour period.[6]

Proposed Changes

[4] Chapter 681, F.S
[5] Fla. Stat. s. 501.160.
[6] Fla. Stat. s. 501.164.

The bill removes the ability of the DACS to enforce the prohibition on charging unconscionable prices for commodities during declared states of emergency.

Accountants

Current Situation

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy within the DBPR, Division of Certified Public Accountants. Qualifications for licensure include meeting the requirements for formal education and successful completion of a comprehensive licensure examination.

An applicant for licensure must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business as specified by the board. DBPR reviews an applicant's transcripts to determine if the courses satisfy the board's specific requirements.

CPAs from other states are required to have substantially equivalent education courses as Florida's required coursework. In the event, through an extensive review of all applicants' course work, the Board finds the applicant's courses are not equivalent to Florida requirements, the CPA may not be licensed until additional hours are completed.

Proposed Changes

The bill amends s. 473.308, F.S. to deem a graduate of an accredited university in Florida with a 5-year Masters degree in accounting eligible for licensure after passing the CPA exam and demonstrating one year of acceptable work experience and good moral character. This removes the requirement for DBPR to review such an applicant's coursework.

The bill also amends s. 473.308, F.S., to allow a CPA licensed in another state with 5 years of relevant work experience to become licensed in Florida, if all applicable fees are paid to the DBPR.

Fire Sprinkler System Contractors

Current Situation

Chapter 633, F.S., relates to fire prevention and control. Certification is defined to mean "the act of obtaining or holding a certificate of competency from the State Fire Marshal." Contracting means "engaging in business as a contractor" and is divided into various classes of certification based on work requirements.

A person who holds a certificate may maintain the certificate in an inactive status during which time she or he may not engage in contracting. An inactive status certificate is void after 2 years. The biennial renewal fee for an inactive status certificate is $75. An inactive status certificate may be reactivated upon application to the State Fire Marshal and payment of the initial application fee of $300.

Proposed Changes

The bill changes the inactive status term to extend for four two year periods (8 years).

Real Estate Appraisers

Current Situation

In 2007, as part of the great recession, the United States faced a mortgage crisis. Numerous industries were identified as contributing causes, including the property appraisal industry, and steps were taken to combat practices that were deemed to have contributed to the crisis. As a result, Fannie Mae and

Freddie Mac instituted the Home Valuation Code of Conduct (HVCC) which went into effect on May 1, 2009, and Fannie Mae and Freddie Mac no longer accepted loans that did not comply with HVCC.

The HVCC provided a non-exhaustive list of ten specific practices or acts that were prohibited.[7] In all, the HVCC contained 11 sections.[8] In essence, HVCC provided that, among other things, only a creditor or its agent could select, engage, and compensate an appraiser and that a creditor ensured that its loan production staff did not influence the appraisal process or outcome.

During the 2010 legislative session, Florida passed legislation to regulate appraisers and appraisal management companies (AMC).[9] The legislation has an effective date of July 1, 2011, and requires the DBPR to create a new license type for the regulation of AMCs.

Subsequent to the passage of the Florida legislation, Congress passed its own version of regulations for these businesses, superseding the HVCC. The Dodd-Frank Act requires states to regulate AMCs.[10] Among its many provisions, the Dodd-Frank Act expanded protections from and requirements of real estate appraisers and appraisal management companies. The Dodd-Frank Act is very complex and requires numerous regulations that will be implemented over the next 18 to 36 months.

Proposed Changes

The bill changes the effective date of ch. 2010-84, Laws of Florida, to July 1, 2014. This change will allow time for federal regulators to promulgate rules as they relate to real estate appraisers and real estate appraisal management companies. Delaying implementation of the state regulator program is designed to minimize inconsistencies with the requirements of the federal law. The effect of the bill is to prevent Florida businesses from being subject to two potentially conflicting sets of regulations.

Education Requirements for Real Estate Brokers

Current Situation

Currently, s. 475.17, F.S., provides: "The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree in real estate from an accredited institution of higher education."

According to the DBPR website, in order to be licensed as a real estate broker in Florida, one must fulfill six requirements:

1. Hold an active real estate sales associate license and complete 24 months of real estate experience during the 5 year period preceding becoming licensed as a broker or a licensed real estate sales associate or broker who has real estate experience in another state may apply the experience toward a Florida real estate broker license if the applicant has held an active sales associate or a valid broker license for at least 24 months during the preceding 5 years. If the applicant is claiming experience from a jurisdiction other than Florida, attach to the application a current certification of real estate license history (not more than 30 days old) from the licensing agency of that jurisdiction. The real estate license must have been obtained from the real estate licensing authority by completing its education and examination requirements. NOTE: If the applicant holds a Florida real estate sales associate license (s)he must fulfill the sales associate post-licensing education requirement before being eligible to obtain a broker license. This method does not exempt a sales associate who holds a Florida sales associate license from successfully completing the sales associate post-licensing course.

[7] Home Valuation Code of Conduct, on file with subcommittee.
[8] *Id.*
[9] Chapter 2010-84, L.O.F.
[10] Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 STAT. 1376, Public Law 111–203-July 21, 2010.

2. Successfully complete a [Florida Real Estate Commission] FREC approved pre-licensing course for brokers consisting of 72 classroom hours and covering the topics required by the FREC. The course is valid for licensure purposes for two years after the course completion date. Applicants with a permanent physical disability as defined by FREC Rule 61J2-3.013(2) may qualify for a correspondence pre-licensing course if unable, due to a permanent physical disability, to attend the site where the course is conducted.
3. Submit a completed application, electronic fingerprints, and appropriate fee.
4. Pass the Florida Real Estate Broker Examination with a grade of at least 75.
5. Submit a completed DBPR RE 11-Broker Transactions form to activate the license, otherwise the license is issued in an inactive status. Alternatively, the broker can activate the license using the broker's online account .
6. Successfully complete a FREC-approved post-licensing course for brokers consisting of at least 60 classroom hours prior to the expiration of the initial broker license.

Requirements 2 and 6 illustrate the pre-licensure and post-licensure educational course requirements required of a real estate broker applicant or licensee. The pre-licensure and post-licensure educational course requirements are provided through a number of licensed private real estate schools.[11] Each licensed real estate school pays a biennial fee to offer educational courses.[12]

A plain language reading of the s. 475.17, F.S., allows holders of a 4-year degree in real estate from an accredited institution of higher education to exempt out of the education requirements of the section, but it prevents applicants and licensees with advanced degrees from qualifying for the exemption.

Proposed Changes

The bill expands the exemption from the pre-licensure and post-licensure education requirements for a real estate broker applicant or licensee under the jurisdiction of the FREC to become licensed. Under the bill, the education course requirements to become initially licensed and the post-licensure education requirements of the section do not apply to any applicant or licensee who has received a bachelor's degree in real estate, a bachelor's degree in business with a concentration or emphasis in real estate, or a graduate degree with a concentration or emphasis in real estate from an accredited institution of higher education.

Under the bill, those with a 4-year degree in business with a concentration in real estate, as well as those with masters' and doctorate degrees from accredited institutions may also claim the exemption.

USPAP and Federally-Related Financial Transactions

Current Situation

State-licensed or state-certified appraisers must be used in the performance of an appraisal for any federally-related transaction, and those appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). A federally-related transaction is defined as any real estate related financial transaction which:

- Involves the transfer of an interest in real property, the financing or refinancing of a transfer of an interest in real property, or the use of an interest in real property as security for a loan or for mortgage-backed securities; or,
- Involves a federal financial regulatory agency or one of the specific agencies names in Title XI of the U.S.C. that require the services of a state-licensed or state-certified appraiser.

[11] Florida Department of Business and Professional Regulation, Real Estate Schools (on file with subcommittee).

[12] See 61J2-1.011, F.A.C. Each school permit-holder pays a biennial permit fee of $135; the chief administrative person at each school pays a biennial permit fee of $80; each school instructor pays a biennial permit fee of $80. There is an $80 application fee for approval of each educational offering by an entity, sponsor, organization or individual equivalent education course offering; there is an $80 biennial renewal fee for each course offering.

Federal financial regulatory agencies or federally related financial transactions include the:

- Board of Governors of the Federal Reserve System (In addition to the 12 member banks, the Federal Reserve has regulatory authority over state-chartered banks and bank holding companies);
- Federal Deposit Insurance Corporation (FDIC) (In addition to insuring the accounts of depositors in member banks, the FDIC regulates savings banks and state-chartered banks that are not members of the Federal Reserve System);
- Office of the Comptroller of the Currency (OCC) (The OCC regulates more than 2,500 national banks all across the U. S.);
- Office of Thrift Supervision (OTS) (The OTS regulates the nation's savings and loan or thrift institutions);
- National Credit Union Administration (NCUA) (The NCUA insures the accounts of depositors in federally chartered credit union and regulates those institutions);
- Federal National Mortgage Association (Fannie Mae);
- Federal Home Loan Mortgage Corporation (Freddie Mac);
- Resolution Trust Company (the agency created by Congress to liquidate the assets of the nation's failed savings and loan institutions);
- Veteran's Administration (VA) loans; and,
- Loans insured by the Federal Housing Administration (FHA).

Chapter 475, Part II, F.S., (the Real Estate Appraisal Act), specifically incorporates, and references, the 1991 USPAP standards as the guidelines that apply to all real estate appraisal connected with all federally-related financial transactions (as defined above). The federal authorities have changed the USPAP guidelines several times since Florida adopted the 1991 version. The Florida Statutes have not reincorporated the USPAP since 1991. A recent appellate ruling, Mylan Pharmaceutical, and recent DOAH rulings hold that the version of USPAP which is applicable to all of our cases is the version specifically incorporated by our statutes...the 1991 version. The current USPAP is version 2010-2011.

Proposed Changes

The bill amends ch. 475, Part II, to conform to Federal law.

Security Industry

Current Situation

The security industry is regulated by the Division of Licensing within the DACS. This industry includes private security, private investigative and recovery services to the public. Additionally, the Division manages concealed weapon or firearm licenses. Statutory license requirements include certain fees to be paid by certified check, money order, or by some other means as required by the DACS.

Section 493.6101, F.S., defines "recovery agent" as "any individual who, for consideration, advertises as providing or performs repossessions." In some places, the statutes refer to recovery agents as repossessors.

Proposed Changes

The bill removes the requirement that the payment of certain fees be paid by certified check and changes terminology from "repossessor" to "recovery agent" to conform to the current statutory definition.

Restaurants

Current Situation

Under ch. 509, F.S., the Division of Hotels and Restaurants within the DBPR oversees public food service establishments.

State Preemption

Regulation of public food service and public lodging establishments, including inspections for compliance with sanitation standards and food service personnel food safety training standards, is preempted to the state.[13] Some local governments have adopted ordinances governing issues of food marketing, including nutritional values.

Remedial Training

The DBPR may take disciplinary action against licensees for violations of ch. 509, F.S., including requiring remedial training. This training used to be provided by the Hospitality Education Program, which is funded by a $10 annual fee on all public food service and public lodging licenses.[14] Until 2009, the Hospitality Education Program provided training programs, including continuing education and remedial training, for no additional charge to the licensee.

The DBPR also selects private nonprofit providers to administer the food safety training certificate program for food service employees.[15] The DBPR has approved approximately 130 such food service employee training programs.

Proposed Changes

State Preemption

The bill amends the preemptions for regulation of public lodging and public food service establishments to preempt to the state the regulation of food nutritional content and marketing in restaurants.

Remedial Training

The bill also amends available disciplinary actions to permit a food safety training provider with an approved remedial educational program to administer disciplinary action-related educational programs, in place of the Hospitality Education Program.

Homemade Foods

Current Situation

In Florida, food establishments are subject to the licensure and regulatory requirements of the DACS. Florida statute defines food establishment as "any factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail."

DACS has adopted, by reference, provisions of the 2001 FDA Food Code, including the following definition of "food establishment"

> 1-201.10 Statement of Application and Listing of Terms.
> (A) The following definitions apply in the interpretation and application of this Code.
> (B) Terms Defined.
> (36) Food Establishment.
> (a) "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.

[13] Fla. Stat. s. 509.032 (7).
[14] Fla. Stat. s. 509.302(2)(a).
[15] Fla. Stat. s. 509.049.

(c) "Food establishment" does not include:
(i) An establishment that offers only prepackaged foods that are not potentially hazardous;
(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;
(iii) A food processing plant;
(iv) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

DACS has also adopted by reference the following 2001 FDA Food Code prohibition on the sale of homemade food products:

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition.
A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.

Therefore, in Florida, it is illegal to sell homemade foods, except for not potentially hazardous foods, which may only be sold at functions, such as bake sales.

The DACS defines "potentially hazardous foods" as any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form:
(a) Capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; or
(b) Capable of supporting the slower growth of Clostridium botulinum.
(c) The term "potentially hazardous food" does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less, or air-cooled hard-boiled eggs with the shell intact.

Proposed Changes

The bill:
- Authorizes the direct sale of homemade foods, labeled 'cottage foods' and provides requirements.
- Defines 'cottage food operation" as a natural person who produces or packages cottage food products only in a kitchen of that person's private residence.
- Defines "cottage food product" as not potentially hazardous food as defined by DACS rule.
- Excludes cottage food operations from the definitions of "food establishment" and "food service establishment."
- Authorizes the DACS to investigate consumer complaints against cottage food operations.

The bill requires cottage food operations meet the following:
- Sales by internet or mail order or at wholesale are prohibited.
- The annual gross sales of a cottage food operation may not exceed $15,000. The DACS may request in writing documentation to verify the annual gross sales.

The bill provides cottage food products must:
- Be stored at the private residence.
- Be prepackaged.
- Be properly labeled.

The bill provides cottage food product label must include:
- The name and address of the cottage food operation.
- The name of the cottage food product.

- The ingredients of the cottage food product, in descending order of predominance by weight.
- The net weight or net volume of the cottage food product.
- Allergen labeling as specified by federal labeling requirements.
- If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements.
- The following statement: "Made in a cottage food operation that is not subject to Florida food safety regulations."

B. SECTION DIRECTORY:

Section 1 amends s. 320.90, F.S.; transferring the responsibility for distribution of a motor vehicle consumer's rights pamphlet to a motor vehicle owner from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

Section 2 amends s. 322.142, F.S.; providing for the release of driver license photos by the Department of Highway Safety and Motor Vehicles to the Department of Business and Professional Regulation under certain circumstances.

Section 3 amends s. 468.8324, F.S.; providing alternative criteria for obtaining a home inspector's license; removing certain application requirements for a person who performs home inspection services and who qualifies for licensure on or before a specified date.

Section 4 amends s. 468.8413, F.S.;

Section 5 amends s. 468.8414, F.S.;

Section 6 amends s. 468.8419, F.S.;

Section 7 amends s. 468.8423, F.S.;

Section 8 amends s. 468.841, F.S.; adding licensed home inspectors to those who are exempt from complying with provisions related to mold assessment.

Section 9 amends s. 469.006, F.S.; authorizing a licensed asbestos consultant or contractor to do business as a sole proprietorship.

Section 10 amends s. 475.611, F.S.; deleting the definition of "Uniform Standards of Professional Appraisal Practice".

Section 11 amends s. 475.624, F.S.; establishing professional standards by board rule.

Section 12 amends s. 475.628, F.S.; authorizing the board to adopt rules establishing standards of professional practice.

Section 13 amends s. 475.42, F.S.; deleting criminal penalties for persons who violate orders or rules of the Florida Real Estate Commission.

Sections 14 and 15 amend s. 475.626, F.S.; deleting criminal penalties for persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action.

Section 16 amends s. 477.0265, F.S.; deleting criminal penalties for persons who commit certain violations of the Florida Cosmetology Act or rules of the Board of Cosmetology.

Sections 17 through 24 amend ss. 455.271, 468.8317, 468.8417, 477.0212, 481.315, 481.217, 489.116, and 489.519, F.S.; revising the continuing education requirements for reactivating a license, certificate, or registration to practice certain regulated professions and occupations.

Section 25 amends s. 473.308, F.S.; revising licensure requirements for certified public accountants and firms.

Section 26 amends s. 475.17, F.S.; revising the education requirements for licensed real estate brokers and sales associates.

Section 27 amends s. 481.219, F.S.; providing that a certificate of authorization is not required for an architect doing business as a sole proprietorship under his or her fictitious name.

Section 28 amends s. 481.329, F.S.; providing that part II of ch. 481, F.S., does not preclude any person who engages in the business of landscape design from submitting such plans to governmental agencies for approval.

Section 29 and 30 amend ss. 493.6107 and 493.6202, F.S.; revising requirements for the method of payment of certain fees.

Section 31 amends s. 493.6401, F.S.; revising terminology for repossessor schools and training facilities.

Section 32 amends s. 493.6402, F.S.; conforming terminology; revising requirements for the method of payment of certain fees.

Section 33 amends s. 493.6406, F.S.; conforming terminology.

Section 34 amends s. 500.03, F.S.; providing and revising definitions for purposes of the Florida Food Safety Act.

Section 35 amends s. 500.121, F.S.; providing penalties for food safety violations committed by cottage food operations.

Section 36 creates s. 500.80, F.S.; exempting certain cottage food operations from food permitting requirements.

Section 37 amends s. 501.160, F.S.; deleting authority for the Department of Agriculture and Consumer Services to enforce prohibitions against unconscionable practices during states of emergency.

Section 38 amends s. 509.032, F.S.; preempting to the state regulation of nutritional content and marketing of foods in food service establishments.

Section 39 amends s. 509.261, F.S.; authorizing the Division of Hotels and Restaurants to require certain public lodging and public food service establishments to complete food safety training.

Section 40 amends s. 627.711, F.S.; revising requirements relating to home inspectors conducting hurricane mitigation inspections.

Section 41 amends s. 633.537, F.S.; revising the validity period for inactive status certificates of fire protection system contractors.

Sections 42 through 48 amend ss. 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, and 681.112, F.S., to transfer responsibilities over aspects of the Motor Vehicle Warranty Enforcement Act from the Division of Consumer Services to the Department of Legal Affairs.

Section 49 amends s. 681.117, F.S.; deleting provisions providing for the transfer of fees and interagency contracting between the Department of Legal Affairs and the Division of Consumer Services.

Section 50 amends s. 10, ch. 2010-84, Laws of Florida; revising the effective date of provisions relating to the regulation of real estate appraisers and appraisal management companies.

Section 41 provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Home Inspector Licensing

Department of Business and Professional Regulation estimates there will be between 8,000 and 10,000 new home inspector initial licenses and biennial renewals as a result of this bill, generating an increase in licensing revenue of $2,640,000 for FY 2011-12 and $1,640,000 in FY 2013-14. The

bill further revises the home inspector license qualifications for contractors, the department's revenue estimates are not available for this analysis.

Duplicate licensing

The bill is anticipated to have an insignificant negative fiscal impact on state trust funds from the reduction in fees associated with applications for licensure. The DBPR indicates that the actual reduction is unknown at this time.

Lemon Law

The transfer of duplicative regulatory and enforcement activities related to the Lemon Law from DACS to the Department of Legal Affairs will have a negative fiscal impact to state trust funds within DACS of $241,227. The revenues generated from this function do not cover the cost to administer the program in the DACS.

2. Expenditures:

Home Inspector Licensing

The department also states that the bill will cause a projected 13,513 additional calls to the call center per year, resulting in the need for an additional FTE. The FTE, is estimated to cost the department $51,202 per year.

Duplicate licensing

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing applications. The DBPR indicates that the actual positive impact is unknown at this time.

Lemon Law

The transfer of duplicative regulatory and enforcement activities related to the Lemon Law from DACS to the Department of Legal Affairs will have a positive fiscal impact to state trust funds within DACS of $386,415. The savings to DACS will be realized from the reduction in administrative and enforcement functions.

Price Gouging

The transfer of duplicative regulatory and enforcement activities related to Price Gouging oversight from DACS to the Department of Legal Affairs will have a positive fiscal impact to state trust funds within DACS of $58,667. The savings to DACS will be realized from the reduction in administrative and enforcement functions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Home Inspector Licensing

Division I contractors and one and two family dwelling inspectors will be permitted to be licensed as home inspectors by endorsement. The Department of Business and Professional Regulation estimates that there are currently over 40,000 Division I Contractors and over 1,000 one and two family dwelling inspectors certified and licensed in Florida.

Education Requirements for Real Estate Brokers

Registrants and licensee's receiving the exemption will experience an indeterminate savings associated with pre and post licensure classes. It is unknown how many real estate broker applicants this would affect.

Certain educational course providers will experience a decline in the number of students and, as a result, an indeterminate reduction in revenues may occur.

Duplicate licensing

Asbestos Contractors and Consultants and Architects will experience costs savings related to the elimination of duplicate licensing for sole proprietorships. The initial and biennial business license fees for Asbestos Contractors and Consultants and Architects are as follows:

Asbestos Consultants and Contractors
- Initial Fee-$500
- Biennial Renewal-$500

Architects
- Initial Fee-$100
- Biennial Renewal-$120

There are currently 224 licensed Asbestos Contractors and Consultants and 12,822 licensed Architects. Depending on how many of these licensed professionals also are licensed as a sole proprietorship, the elimination of the duplicate licensure requirement could potentially have a positive impact on up to 13,046 licensees.

Other provisions of the bill will have a positive impact on the private sector, such as:
- The ability to sell homemade food products without having to be licensed;
- The effect of reduced penalties;
- The reduction in mandatory education and training requirements; and
- The reduction in the continuing education course requirements.

USPAP and Federally-Related Financial Transactions

If Florida fails to follow current USPAP standards, not the 1991 version, on federally-related financial transactions requiring an appraisal, Florida appraisers will lose the ability to handle such loans.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reducing and streamlining regulations; amending s. 320.90, F.S.; transferring the responsibility for distribution of a motor vehicle consumer's rights pamphlet to a motor vehicle owner from the Department of Agriculture and Consumer Services to the Department of Legal Affairs; amending s. 322.142, F.S.; providing for the release of certain driver license information by the Department of Highway Safety and Motor Vehicles to the Department of Business and Professional Regulation under certain circumstances; amending s. 468.8324, F.S.; providing alternative criteria for obtaining a home inspector's license; removing certain application requirements for a person who performs home inspection services and who qualifies for licensure on or before a specified date; amends s. 468.8413, F.S.; revising licensing requirements for mold assessors and remediators; amends s. 468.8414, F.S.; revising the training requirements for mold assessors and remediators; amends s. 468.8419, F.S.; related to prohibitions and penalties for mold assessors and remediators; amends s. 468.8423, F.S.; revises licensing qualifications for mold assessors and remediators; amending s. 468.841, F.S.; adding licensed home inspectors to those who are exempt from complying with provisions related to mold assessment; amending s. 469.006, F.S.; authorizing an asbestos consultant or contractor doing business as a sole proprietorship to be licensed under his or her fictitious name; amending s. 475.611, F.S.; deleting the definition of "Uniform Standards of Professional Appraisal Practice"; amending s. 475.624, F.S.; establishing professional

standards by board rule; amending s. 475.628, F.S.; authorizing the board to adopt rules establishing standards of professional practice; amending ss. 475.42, 475.626, and 477.0265, F.S.; deleting criminal penalties for persons who violate orders or rules of the Florida Real Estate Commission, persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action, and persons who commit certain violations of the Florida Cosmetology Act or rules of the Board of Cosmetology; amending ss. 455.271, 477.0212, 468.8317, 468.8417, 481.217, 481.315, 489.116, and 489.519, F.S.; revising the continuing education requirements for reactivating a license, certificate, or registration to practice certain regulated professions and occupations; amending s. 473.308, F.S.; revising licensure requirements for certified public accountants and firms; deleting obsolete provisions; revising licensure requirements for certain persons licensed to practice public accounting in another state or territory; amending s. 475.17, F.S.; revising the education requirements for licensed real estate brokers and sales associates; amending s. 481.219, F.S.; providing that a certificate of authorization is not required for an architect doing business as a sole proprietorship under his or her fictitious name; amending s. 481.329, F.S.; providing that part II of ch. 481, F.S., does not preclude any person who engages in the business of landscape design from submitting such plans to governmental agencies for approval; amending ss. 493.6107 and 493.6202, F.S.; revising requirements for the method of payment of certain fees; amending s. 493.6401, F.S.; revising terminology for repossessor schools

and training facilities; amending s. 493.6402, F.S.; conforming terminology; revising requirements for the method of payment of certain fees; amending s. 493.6406, F.S.; conforming terminology; amending s. 500.03, F.S.; providing and revising definitions for purposes of the Florida Food Safety Act; amending s. 500.121, F.S.; providing penalties for food safety violations committed by cottage food operations; creating s. 500.80, F.S.; exempting cottage food operations from food permitting requirements; limiting the annual gross sales of cottage food operations and the methods by which cottage food products may be sold or offered for sale; requiring certain packaging and labeling of cottage food products; limiting the sale of cottage food products to certain locations; providing for application; authorizing the Department of Agriculture and Consumer Services to investigate complaints and enter into the premises of a cottage food operation; amending s. 501.160, F.S.; deleting authority for the department to enforce certain prohibitions against unconscionable practices during a declared state of emergency; amending s. 509.032, F.S.; revising which matters relating to the regulation of public lodging establishments and food service establishments are preempted to the state; amending s. 509.261, F.S.; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to require certain public lodging establishments and public food service establishments to complete certain remedial educational programs; amending s. 627.711, F.S.; revising requirements relating to home inspectors conducting hurricane mitigation inspections; amending s.

633.537, F.S.; revising the validity period for inactive status certificates of fire protection system contractors; amending ss. 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, and 681.112, F.S.; deleting a definition; transferring certain responsibilities of the Division of Consumer Services for the Motor Vehicle Warranty Enforcement Act to the Department of Legal Affairs; conforming provisions; amending s. 681.117, F.S.; deleting provisions providing for the transfer of certain fees and interagency contracting between the Department of Legal Affairs and the Division of Consumer Services, to conform; amending s. 10, ch. 2010-84, Laws of Florida; revising the effective date of provisions relating to the regulation of real estate appraisers and appraisal management companies; providing for retroactive operation under certain circumstances; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 320.90, Florida Statutes, is amended to read:

320.90 Notification of consumer's rights.—The department shall develop a motor vehicle consumer's rights pamphlet which shall be distributed free of charge by the Department of Legal Affairs ~~Agriculture and Consumer Services~~ to the motor vehicle owner upon request. Such pamphlet must contain information relating to odometer fraud and provide a summary of the rights and remedies available to all purchasers of motor vehicles.

Section 2. Subsection (4) of section 322.142, Florida

Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and shall be made and issued only for departmental administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of Business and Professional Regulation pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation or for the purpose of identifying subjects under investigation for unlicensed activity pursuant to s. 455.228; to the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases; to the Department of Children and Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; to the Department of Children and Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use

as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations; or to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims.

Section 3. Paragraph (1) of section 468.8324, Florida Statutes is amended to read:

468.8324 Grandfather clause.—

(1) A person who performs home inspection services may qualify for licensure as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012, which shows that the applicant:

(a) Possesses certification as a one- and two-family dwelling inspector issued by the International Code Council or the Southern Building Code Congress International;

(b) Has been certified as a one- and two-family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII of this chapter; or

(c) Possesses a Division I contractor license under part I of chapter 489, a Division II certified air-conditioning contractor license under part I of chapter 489, and an electrical contractor license under part II of chapter 489.

~~(1) A person who performs home inspection services as defined in this part may qualify for licensure by the department as a home inspector if the person submits an application to the department postmarked on or before March 1, 2011, which shows~~

~~that the applicant:~~

~~(a) Is certified as a home inspector by a state or national association that requires, for such certification, successful completion of a proctored examination on home inspection services and completes at least 14 hours of verifiable education on such services; or~~

~~(b) Has at least 3 years of experience as a home inspector at the time of application and has completed 14 hours of verifiable education on home inspection services. To establish the 3 years of experience, an applicant must submit at least 120 home inspection reports prepared by the applicant.~~

~~(2) The department may investigate the validity of a home inspection report submitted under paragraph (1)(b) and, if the applicant submits a false report, may take disciplinary action against the applicant under s. 468.832(1)(c) or (g).~~

Section 4. Subsections (2), and (3) of section 468.8413, Florida Statutes, are amended to read:

468.8413 Examinations.—

(1) A person desiring to be licensed as a mold assessor or mold remediator must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a mold assessor or mold remediator if he or she passes the required examination, is of good moral character, and possesses a high school diploma or its equivalent. ~~completes one of the following requirements:~~

~~(a)1. For a mold remediator, at least a 2-year associate of arts degree, or the equivalent, with at least 30 semester~~

~~hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of documented field experience in a field related to mold remediation; or~~

~~2. A high school diploma or the equivalent with a minimum of 4 years of documented field experience in a field related to mold remediation.~~

~~(b)1. For a mold assessor, at least a 2-year associate of arts degree, or the equivalent, with at least 30 semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of documented field experience in conducting microbial sampling or investigations; or~~

~~2. A high school diploma or the equivalent with a minimum of 4 years of documented field experience in conducting microbial sampling or investigations.~~

~~(3) The department shall review and approve courses of study in mold assessment and mold remediation.~~

Section 5. Paragraphs (2) and (3) of s. 468.8414, Florida Statutes are amended to read:

(2) The department shall certify for licensure any applicant who satisfies the requirements of s. 468.8413 who has passed the licensing examination ~~and has documented training in water, mold, and respiratory protection~~. The department may refuse to certify any applicant who has violated any of the provisions of this part.

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character, who has the insurance coverage required under s. 468.8421, and who:

(a) Is qualified to take the examination as set forth in s. 468.8413 and has passed a certification examination offered by a nationally or state recognized organization that certifies persons in the specialty of mold assessment or mold remediation that has been approved by the department as substantially equivalent to the requirements of this part and s. 455.217; or

Section 6. Subsections (1) and (2) of section 468.8419, Florida Statutes, are amended to read:

468.8419 Prohibitions; penalties.—

(1) A person may not:

~~(a) Effective July 1, 2011, perform or offer to perform any mold assessment unless the mold assessor has documented training in water, mold, and respiratory protection under s. 468.8414(2).~~

(a) ~~(b)~~ Effective July 1, 2011, perform or offer to perform any mold assessment unless the person has complied with the provisions of this part.

(b) ~~(c)~~ Use the name or title "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof unless the person has complied with the provisions of this part.

(c) ~~(d)~~ Perform or offer to perform any mold remediation to a structure on which the mold assessor or the mold assessor's company provided a mold assessment within the last 12 months.

This paragraph does not apply to a certified contractor who is classified in s. 489.105(3) as a Division I contractor. However, the department may adopt rules requiring that, if such contractor performs the mold assessment and offers to perform the mold remediation, the contract for mold remediation provided to the homeowner discloses that he or she has the right to request competitive bids.

(d) ~~(e)~~ Inspect for a fee any property in which the assessor or the assessor's company has any financial or transfer interest.

(e) ~~(f)~~ Accept any compensation, inducement, or reward from a mold remediator or mold remediator's company for the referral of any business to the mold remediator or the mold remediator's company.

(f) ~~(g)~~ Offer any compensation, inducement, or reward to a mold remediator or mold remediator's company for the referral of any business from the mold remediator or the mold remediator's company.

(g) ~~(h)~~ Accept an engagement to make an omission of the assessment or conduct an assessment in which the assessment itself, or the fee payable for the assessment, is contingent upon the conclusions of the assessment.

(2) A mold remediator, a company that employs a mold remediator, or a company that is controlled by a company that also has a financial interest in a company employing a mold remediator may not:

~~(a) Perform or offer to perform any mold remediation unless the remediator has documented training in water, mold,~~

~~and respiratory protection under s. 468.8414(2).~~

(a) ~~(b)~~ Perform or offer to perform any mold remediation unless the person has complied with the provisions of this part.

(b) ~~(c)~~ Use the name or title "certified mold remediator," "registered mold remediator," "licensed mold remediator," "mold remediator," "professional mold remediator," or any combination thereof unless the person has complied with the provisions of this part.

(c) ~~(d)~~ Perform or offer to perform any mold assessment to a structure on which the mold remediator or the mold remediator's company provided a mold remediation within the last 12 months. This paragraph does not apply to a certified contractor who is classified in s. 489.105(3) as a Division I contractor. However, the department may adopt rules requiring that, if such contractor performs the mold remediation and offers to perform the mold assessment, the contract for mold assessment provided to the homeowner discloses that he or she has the right to request competitive bids.

(d) ~~(e)~~ Remediate for a fee any property in which the mold remediator or the mold remediator's company has any financial or transfer interest.

(e) ~~(f)~~ Accept any compensation, inducement, or reward from a mold assessor or mold assessor's company for the referral of any business from the mold assessor or the mold assessor's company.

(f) ~~(g)~~ Offer any compensation, inducement, or reward to a mold assessor or mold assessor's company for the referral of any business from the mold assessor or the mold assessor's company.

Section 7. Paragraphs (1) of s. 468.8423, Florida Statutes are amended to read:

(1) A person who performs mold assessment or mold remediation as defined in this part may qualify for licensure by the department as a mold assessor or mold remediator if the person submits his or her application to the department ~~by March 1, 2011~~ and if the person:

(a) Is certified as a mold assessor or mold remediator by a state or national association that requires, for such certification, successful completion of a proctored examination on mold assessment or mold remediation, as applicable; or

(b) At the time of application, has at least 1 ~~3~~ year~~s~~ of experience as a mold assessor or mold remediator. To establish the 1 ~~3~~ year~~s~~ of experience, an applicant must submit at least 10 ~~40~~ mold assessments or remediation invoices prepared by the applicant.

Section 8. Paragraph (d) of subsection (1) of section 468.841, Florida Statutes, is amended to read:

468.841 Exemptions.—

(1) The following persons are not required to comply with any provisions of this part relating to mold assessment:

(d) Persons or business organizations acting within the scope of the respective licenses required under part XV of chapter 468, chapter 471, part I of chapter 481, chapter 482, chapter 489, or part XV of this chapter, are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold

themselves out for hire to the public as a "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure under this part.

Section 9. Subsection (1) and paragraph (a) of subsection (2) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(1) If an individual proposes to engage in consulting or contracting in that individual's own name, or a fictitious name under which the individual is doing business as a sole proprietorship, the license may be issued only to that individual.

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the legal entity must apply for licensure through a qualifying agent or the individual applicant must apply for licensure under the fictitious name.

Section 10. Subsection (1)(v)through (1)(x) of 475.611, Florida Statutes, is amended to read:

475.611 Definitions.-

~~(v) "Uniform Standards of Profession Appraisal Practice" means the most recent standards approved and adopted by the Appraisal Standards Board of the Appraisal Foundation."~~

~~(w)~~ (v) "Valuation services" means services pertaining to aspects of property value and includes such services performed

by certified appraisers, registered trainee appraisers, and others.

~~(x)~~ (w) "Work file" means the documentation necessary to support an appraiser's analysis, opinions, and conclusions.

Section 11. Subsection (14) of 475.624, Florida Statutes, is amended to read:

475.624 Discipline.-

(14) Has violated any standard of professional practice, including standards for the development or communication of a real estate appraisal, as established by board rule ~~or other provision of the Uniform Standards of Professional Appraisal Practice~~.

Section 12. Chapter 475.628, Florida Statutes, is amended to read:

475.628 Professional standards for appraisers registered, licensed, or certified under this part.-

Each appraiser registered, licensed, or certified under this part shall comply with the standards of professional practice as established by board rules. The board shall adopt rules setting forth the standards of professional practice. The standards of professional practice rules established by the board shall set standards that meet or exceed nationally recognized standards of appraisal practice, including the professional standards set forth by the Appraisal Foundation ~~Uniform Standards of Professional Appraisal Practice. Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation shall also be~~

~~binding on any appraiser registered, licensed, or certified under this part~~.

Section 13. Paragraphs (f) through (o) of subsection (1) of section 475.42, Florida Statutes, are redesignated as paragraphs (e) through (n), respectively, and present paragraph (e) of that subsection is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

~~(e) A person may not violate any lawful order or rule of the commission which is binding upon her or him.~~

Section 14. Paragraphs (d) through (g) of subsection (1) of section 475.626, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, and present paragraphs (b) and (c) of that subsection are amended to read:

475.626 Violations and penalties.—

(1) VIOLATIONS.—

~~(b) No person shall violate any lawful order or rule of the board which is binding upon her or him.~~

~~(c) No person shall commit any conduct or practice set forth in s. 475.624.~~

Section 15. Effective July 1, 2014, paragraphs (d) through (h) of subsection (1) of section 475.626, Florida Statutes, as amended by chapter 2010-84, Laws of Florida, and this act, are redesignated as paragraphs (b) through (f), respectively, and paragraphs (b) and (c) of that subsection are amended to read:

475.626 Violations and penalties.—

(1) A person may not:

~~(b) Violate any lawful order or rule of the board which~~

~~is binding upon her or him.~~

~~(c) If a registered trainee appraiser or a licensed or certified appraiser, commit any conduct or practice set forth in s. 475.624.~~

Section 16. Paragraphs (d) through (h) of subsection (1) of section 477.0265, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and present paragraph (c) of that subsection is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

~~(c) Engage in willful or repeated violations of this chapter or of any rule adopted by the board.~~

Section 17. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department when there is no board, shall require ~~Before reactivation,~~ an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete one renewal cycle of ~~shall meet the same~~ continuing education to reactivate a license ~~requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent~~. ~~This subsection does not apply to persons regulated under chapter 473.~~

Section 18. Subsection (2) of section 468.8317, Florida Statutes, is amended to read:

468.8317 Inactive license.—

(2) A license that has become inactive may be reactivated

upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall be limited to one renewal cycle of continuing education requirements ~~may not exceed 14 hours for each year the license was inactive~~.

Section 19. Subsection (2) of section 468.8417, Florida Statutes, is amended to read:

468.8417 Inactive license.—

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license shall be limited to one renewal cycle of continuing education requirements ~~may not exceed 14 hours for each year the license was inactive~~.

Section 20. Subsection (2) of section 477.0212, Florida Statutes, is amended to read:

477.0212 Inactive status.—

(2) The board shall adopt ~~promulgate~~ rules relating to licenses that ~~which have~~ become inactive and for the renewal of inactive licenses. The rules must require one renewal cycle of continuing education to reactivate a license. The board shall prescribe by rule a fee not to exceed $50 for the reactivation of an inactive license and a fee not to exceed $50 for the renewal of an inactive license.

Section 21. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules must require one renewal cycle of continuing education to reactivate ~~requirements for reactivating~~ a license for a registered architect ~~may not exceed 12 contact hours for each year the license was inactive~~. ~~The minimum continuing education requirement for reactivating a license for a registered interior designer shall be those of the most recent biennium plus one-half of the requirements in s. 481.215 for each year or part thereof during which the license was inactive.~~ The board shall only approve continuing education that builds upon the basic knowledge of interior design.

Section 22. Subsection (1) of section 481.315, Florida Statutes, is amended to read:

481.315 Inactive status.—

(1) A license that has become inactive or delinquent may be reactivated under this section upon application to the department and payment of any applicable biennial renewal or delinquency fee, or both, and a reactivation fee. The board shall also require a licensee to complete one renewal cycle of continuing education requirements. ~~The board may prescribe by rule continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.~~

Section 23. Subsections (3) and (6) of section 489.116, Florida Statutes, are amended to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(3) An inactive status certificateholder or registrant may change to active status at any time if~~, provided~~ the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, ~~and~~ pays any applicable late fees, and meets all continuing education requirements prescribed by the board.

(6) The board may not require an inactive certificateholder or registrant to complete more than one renewal cycle of ~~shall comply with the same~~ continuing education for reactivating a certificate or registration ~~requirements, if any, that are imposed on an active status certificateholder or registrant~~.

Section 24. Subsection (1) of section 489.519, Florida Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that becomes ~~has become~~ inactive may be reactivated under s. 489.517 upon application to the department. The licensee must complete one renewal cycle of ~~board may prescribe, by rule,~~ continuing education to reactivate ~~requirements as a condition of reactivating~~ a certificate or registration. ~~The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 25. Subsections (3) and (4) and paragraph (b) of

subsection (7) of section 473.308, Florida Statutes, are amended to read:

473.308 Licensure.—

(3) An applicant for licensure must:

(a) Complete ~~have~~ at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business in the total educational program to the extent specified by the board; or

(b) Graduate from an accredited university in the state with a master's degree in accounting.

(4) ~~(a)~~ An applicant for licensure ~~after December 31, 2008,~~ must show that he or she has had 1 year of relevant work experience. This experience must ~~shall~~ include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which must be verified by a certified public accountant who is licensed by a state or territory of the United States and who has supervised the applicant. This experience is acceptable if it was gained through employment in government, industry, academia, or public practice; constituted a substantial part of the applicant's duties; and was under the supervision of a certified public accountant licensed by a state or territory of the United States. The board shall adopt rules specifying standards and providing for the review and approval of the work experience required by this section.

~~(b) However, an applicant who completed the requirements~~

~~of subsection (3) on or before December 31, 2008, and who passes the licensure examination on or before June 30, 2010, is exempt from the requirements of this subsection.~~

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(b)1.a. Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued; or

b. Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of sub-subparagraph a.; has met the requirements of this section for ~~education, work experience, and~~ good moral character; has at least 5 years of work experience that meets the requirements of subsection (4) or at least 5 years of experience in the practice of public accountancy or its equivalent that meets the requirements of subsection (8); and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and

2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.

Section 26. Subsection (6) of section 475.17, Florida

Statutes, is amended to read:

475.17 Qualifications for practice.—

(6) The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a bachelor's degree in real estate, a bachelor's degree in business with a concentration or emphasis in real estate, or a higher degree with a concentration or emphasis ~~4-year degree~~ in real estate from an accredited institution of higher education.

Section 27. Subsection (2) of section 481.219, Florida Statutes, is amended to read:

481.219 Certification of partnerships, limited liability companies, and corporations.—

(2) For the purposes of this section, a certificate of authorization is ~~shall be~~ required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, or in a fictitious name under which the individual is doing business as a sole proprietorship, she or he is ~~shall~~ not ~~be~~ required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services.

Section 28. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) Nothing in this part prohibits any person from engaging in the practice of landscape design, as defined in s. 481.303(7), nor submitting such plans to governmental agencies for approval. Persons providing landscape design services shall not use the title, term, or designation "landscape architect," "landscape architectural," "landscape architecture," "L.A.," "landscape engineering," or any description tending to convey the impression that she or he is a landscape architect unless she or he is registered as provided in this part.

Section 29. Subsection (3) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for a Class "G" or Class "M" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee shall not be refunded.

Section 30. Subsection (3) of section 493.6202, Florida Statutes, is amended to read:

493.6202 Fees.—

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for

a Class "G," Class "C," Class "CC," Class "M," or Class "MA" license must pay the license fee at the time the application is made. If a license is revoked or denied or if the application is withdrawn, the license fee shall not be refunded.

Section 31. Subsections (7) and (8) of section 493.6401, Florida Statutes, are amended to read:

493.6401 Classes of licenses.—

(7) Any person who operates a recovery agent ~~repossessor~~ school or training facility or who conducts an Internet-based training course or a correspondence training course must have a Class "RS" license.

(8) Any individual who teaches or instructs at a Class "RS" recovery agent ~~repossessor~~ school or training facility shall have a Class "RI" license.

Section 32. Paragraphs (f) and (g) of subsection (1) and subsection (3) of section 493.6402, Florida Statutes, are amended to read:

493.6402 Fees.—

(1) The department shall establish by rule biennial license fees which shall not exceed the following:

(f) Class "RS" license—recovery agent ~~repossessor~~ school or training facility: $60.

(g) Class "RI" license—recovery agent ~~repossessor~~ school or training facility instructor: $60.

(3) The fees set forth in this section must be paid by ~~certified~~ check or money order~~,~~ or, at the discretion of the department, by electronic funds transfer ~~agency check~~ at the time the application is approved, except that the applicant for

a Class "E," Class "EE," or Class "MR" license must pay the license fee at the time the application is made. If a license is revoked or denied, or if an application is withdrawn, the license fee shall not be refunded.

Section 33. Section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent ~~Repossession services~~ school or training facility.—

(1) Any school, training facility, or instructor who offers the training outlined in s. 493.6403(2) for Class "EE" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application accompanied by an application fee in an amount to be determined by rule, not to exceed $60. The fee shall not be refundable. This training may be offered as face-to-face training, Internet-based training, or correspondence training.

(2) The application shall be signed and notarized and shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

(3) The department shall adopt rules establishing the criteria for approval of schools, training facilities, and

instructors.

Section 34. Paragraphs (j) through (z) of subsection (1) of section 500.03, Florida Statutes, are redesignated as paragraphs (l) through (bb), respectively, present paragraphs (n) and (p) are amended, and new paragraphs (j) and (k) are added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(j) "Cottage food operation" means a natural person who produces or packages cottage food products at his or her residence and sells such products in accordance with s. 500.80.

(k) "Cottage food product" means food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80.

(p) ~~(n)~~ "Food establishment" means any factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail. The term does not include any business or activity that is regulated under s. 500.80, chapter 509, or chapter 601. The term includes tomato packinghouses and repackers but does not include any other establishments that pack fruits and vegetables in their raw or natural states, including those fruits or vegetables that are washed, colored, or otherwise treated in their unpeeled, natural form before they are marketed.

(r) ~~(p)~~ "Food service establishment" means any place where food is prepared and intended for individual portion service,

and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include schools, institutions, fraternal organizations, private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, cottage food operations, and supply vehicles, nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 35. Subsection (1) of section 500.121, Florida Statutes, is amended to read:

500.121 Disciplinary procedures.—

(1) In addition to the suspension procedures provided in s. 500.12, if applicable, the department may impose a fine not to exceed ~~exceeding~~ $5,000 against any retail food store, ~~or~~ food establishment, or cottage food operation that violates ~~has violated~~ this chapter, which fine, when imposed and paid, shall be deposited by the department into the General Inspection Trust Fund. The department may revoke or suspend the permit of any such retail food store or food establishment if it is satisfied that the retail food store or food establishment has:

(a) Violated any of the provisions of this chapter.

(b) Violated or aided or abetted in the violation of any law of this state governing or applicable to retail food stores or food establishments or any lawful rules of the department.

(c) Knowingly committed, or been a party to, any material fraud, misrepresentation, conspiracy, collusion, trick, scheme, or device whereby any other person, lawfully relying upon the word, representation, or conduct of a retail food store or food establishment, acts to her or his injury or damage.

(d) Committed any act or conduct of the same or different character than that enumerated which constitutes fraudulent or dishonest dealing.

Section 36. Section 500.80, Florida Statutes, is created to read:

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $15,000.

(b) For purposes of this subsection, a cottage food operation's annual gross sales include all sales of cottage food products at any location, regardless of the types of products sold or the number of persons involved in the operation. A cottage food operation must provide the department, upon request, with written documentation to verify the operation's annual gross sales.

(2) A cottage food operation may not sell or offer for sale cottage food products over the Internet, by mail order, or at wholesale.

(3) A cottage food operation may only sell cottage food products which are prepackaged with a label affixed that contains the following information:

(a) The name and address of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen information as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements.

(g) The following statement printed in at least 10-point type in a color that provides a clear contrast to the background of the label: "Made in a cottage food operation that is not subject to Florida's food safety regulations."

(4) A cottage food operation may only sell cottage food products that it stores on the premises of the cottage food operation.

(5) This section does not exempt a cottage food operation from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations.

(6) A cottage food operation must comply with all applicable county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's

residence.

(7)(a) The department may investigate any complaint which alleges that a cottage food operation has violated an applicable provision of this chapter or rule adopted under this chapter.

(b) Only upon receipt of a complaint, the department's authorized officer or employee may enter and inspect the premises of a cottage food operation to determine compliance with this chapter and department rules, as applicable. A cottage food operation's refusal to permit the department's authorized officer or employee entry to the premises or to conduct the inspection is grounds for disciplinary action pursuant to s. 500.121.

(8) This section does not apply to a person operating under a food permit issued pursuant to s. 500.12.

Section 37. Subsection (8) of section 501.160, Florida Statutes, is amended to read:

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.—

(8) Any violation of this section may be enforced by the ~~Department of Agriculture and Consumer Services, the~~ office of the state attorney~~,~~ or the Department of Legal Affairs.

Section 38. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—The regulation of public lodging establishments and public food service establishments, including, but not limited to, ~~the inspection of public lodging~~

~~establishments and public food service establishments for compliance with the~~ sanitation standards, inspections ~~adopted under this section~~, ~~and the regulation of food safety protection standards for required~~ training and testing of ~~food service establishment~~ personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, are preempted to the state. This subsection does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code~~,~~ pursuant to ss. 553.80 and 633.022.

Section 39. Subsection (1) of section 509.261, Florida Statutes, is amended to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(1) Any public lodging establishment or public food service establishment that has operated or is operating in violation of this chapter or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

(a) Fines not to exceed $1,000 per offense;

(b) Mandatory completion ~~attendance~~, at personal expense, of a remedial ~~at an~~ educational program administered ~~sponsored~~ by a food safety training program provider whose program is approved by the division as provided in s. 509.049 ~~the Hospitality Education Program~~; and

(c) The suspension, revocation, or refusal of a license

issued pursuant to this chapter.

Section 40. Paragraph (a) of subsection (2) of section 627.711, Florida Statutes, is amended to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(2)(a) The Financial Services Commission shall develop by rule a uniform mitigation verification inspection form that shall be used by all insurers when submitted by policyholders for the purpose of factoring discounts for wind insurance. In developing the form, the commission shall seek input from insurance, construction, and building code representatives. Further, the commission shall provide guidance as to the length of time the inspection results are valid. An insurer shall accept as valid a uniform mitigation verification form signed by the following authorized mitigation inspectors:

1. A home inspector licensed under s. 468.8314 who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam. ~~Thereafter, home inspectors licensed under s. 468.8314 must complete at least 2 hours of continuing education, as part of the existing licensure renewal requirements each year, related to mitigation inspection and the uniform mitigation form~~;

Section 41. Subsection (2) of section 633.537, Florida Statutes, is amended to read:

633.537 Certificate; expiration; renewal; inactive

certificate; continuing education.—

(2) A person who holds a valid certificate may maintain such certificate in an inactive status during which time she or he may not engage in contracting. An inactive status certificate shall be void after four ~~a~~ 2-year periods ~~period~~. The biennial renewal fee for an inactive status certificate shall be $75. An inactive status certificate may be reactivated upon application to the State Fire Marshal and payment of the initial application fee.

Section 42. Subsections (8) through (23) of section 681.102, Florida Statutes, are renumbered as subsections (7) through (22), respectively, and present subsection (7) of that section is amended to read:

681.102 Definitions.—As used in this chapter, the term:

~~(7) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.~~

Section 43. Subsection (3) of section 681.103, Florida Statutes, is amended to read:

681.103 Duty of manufacturer to conform a motor vehicle to the warranty.—

(3) At the time of acquisition, the manufacturer shall inform the consumer clearly and conspicuously in writing how and where to file a claim with a certified procedure if such procedure has been established by the manufacturer pursuant to s. 681.108. The nameplate manufacturer of a recreational vehicle shall, at the time of vehicle acquisition, inform the consumer clearly and conspicuously in writing how and where to file a claim with a program pursuant to s. 681.1096. The manufacturer

shall provide to the dealer and, at the time of acquisition, the dealer shall provide to the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the Department of Legal Affairs and shall contain a toll-free number for the department ~~division~~ that the consumer can contact to obtain information regarding the consumer's rights and obligations under this chapter or to commence arbitration. If the manufacturer obtains a signed receipt for timely delivery of sufficient quantities of this written statement to meet the dealer's vehicle sales requirements, it shall constitute prima facie evidence of compliance with this subsection by the manufacturer. The consumer's signed acknowledgment of receipt of materials required under this subsection shall constitute prima facie evidence of compliance by the manufacturer and dealer. The form of the acknowledgments shall be approved by the Department of Legal Affairs, and the dealer shall maintain the consumer's signed acknowledgment for 3 years.

Section 44. Section 681.108, Florida Statutes, is amended to read:

681.108 Dispute-settlement procedures.—

(1) If a manufacturer has established a procedure, which the department ~~division~~ has certified as substantially complying with the provisions of 16 C.F.R. part 703, in effect October 1, 1983, and with the provisions of this chapter and the rules adopted under this chapter, and has informed the consumer how and where to file a claim with such procedure pursuant to s. 681.103(3), the provisions of s. 681.104(2) apply to the

consumer only if the consumer has first resorted to such procedure. The decisionmakers for a certified procedure shall, in rendering decisions, take into account all legal and equitable factors germane to a fair and just decision, including, but not limited to, the warranty; the rights and remedies conferred under 16 C.F.R. part 703, in effect October 1, 1983; the provisions of this chapter; and any other equitable considerations appropriate under the circumstances. Decisionmakers and staff of a procedure shall be trained in the provisions of this chapter and in 16 C.F.R. part 703, in effect October 1, 1983. In an action brought by a consumer concerning an alleged nonconformity, the decision that results from a certified procedure is admissible in evidence.

(2) A manufacturer may apply to the department ~~division~~ for certification of its procedure. After receipt and evaluation of the application, the department ~~division~~ shall certify the procedure or notify the manufacturer of any deficiencies in the application or the procedure.

(3) A certified procedure or a procedure of an applicant seeking certification shall submit to the department ~~division~~ a copy of each settlement approved by the procedure or decision made by a decisionmaker within 30 days after the settlement is reached or the decision is rendered. The decision or settlement must contain at a minimum the:

(a) Name and address of the consumer;

(b) Name of the manufacturer and address of the dealership from which the motor vehicle was purchased;

(c) Date the claim was received and the location of the

procedure office that handled the claim;

(d) Relief requested by the consumer;

(e) Name of each decisionmaker rendering the decision or person approving the settlement;

(f) Statement of the terms of the settlement or decision;

(g) Date of the settlement or decision; and

(h) Statement of whether the decision was accepted or rejected by the consumer.

(4) Any manufacturer establishing or applying to establish a certified procedure must file with the department ~~division~~ a copy of the annual audit required under the provisions of 16 C.F.R. part 703, in effect October 1, 1983, together with any additional information required for purposes of certification, including the number of refunds and replacements made in this state pursuant to the provisions of this chapter by the manufacturer during the period audited.

(5) The department ~~division~~ shall review each certified procedure at least annually, prepare an annual report evaluating the operation of certified procedures established by motor vehicle manufacturers and procedures of applicants seeking certification, and, for a period not to exceed 1 year, shall grant certification to, or renew certification for, those manufacturers whose procedures substantially comply with the provisions of 16 C.F.R. part 703, in effect October 1, 1983, and with the provisions of this chapter and rules adopted under this chapter. If certification is revoked or denied, the department ~~division~~ shall state the reasons for such action. The reports and records of actions taken with respect to certification shall

be public records.

(6) A manufacturer whose certification is denied or revoked is entitled to a hearing pursuant to chapter 120.

(7) If federal preemption of state authority to regulate procedures occurs, the provisions of subsection (1) concerning prior resort do not apply.

(8) The department ~~division~~ shall adopt rules to administer ~~implement~~ this section.

Section 45. Section 681.109, Florida Statutes, is amended to read:

681.109 Florida New Motor Vehicle Arbitration Board; dispute eligibility.—

(1) If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a decision is not rendered by the certified procedure within 40 days of filing, the consumer may apply to the department ~~division~~ to have the dispute removed to the board for arbitration.

(2) If a manufacturer has a certified procedure, a consumer claim arising during the Lemon Law rights period must be filed with the certified procedure no later than 60 days after the expiration of the Lemon Law rights period. If a consumer is not satisfied with the decision or the manufacturer's compliance therewith, the consumer may apply to the department ~~division~~ to have the dispute submitted to the board for arbitration. A manufacturer may not seek review of a

decision made under its procedure.

(3) If a manufacturer has no certified procedure or if a certified procedure does not have jurisdiction to resolve the dispute, a consumer may apply directly to the department ~~division~~ to have the dispute submitted to the board for arbitration.

(4) A consumer must request arbitration before the board with respect to a claim arising during the Lemon Law rights period no later than 60 days after the expiration of the Lemon Law rights period, or within 30 days after the final action of a certified procedure, whichever date occurs later.

(5) The department ~~division~~ shall screen all requests for arbitration before the board to determine eligibility. The consumer's request for arbitration before the board shall be made on a form prescribed by the department. The department ~~division~~ shall assign ~~forward~~ to the board all disputes that the department ~~division~~ determines are potentially entitled to relief under this chapter.

(6) The department ~~division~~ may reject a dispute that it determines to be fraudulent or outside the scope of the board's authority. Any dispute deemed by the department ~~division~~ to be ineligible for arbitration by the board due to insufficient evidence may be reconsidered upon the submission of new information regarding the dispute. Following a second review, the department ~~division~~ may reject a dispute if the evidence is clearly insufficient to qualify for relief. If the department rejects a dispute, notice of such rejection ~~Any dispute rejected by the division shall be forwarded to the department and a copy~~

shall be sent by registered mail to the consumer and the manufacturer, containing a brief explanation as to the reason for rejection.

(7) If the department ~~division~~ rejects a dispute, the consumer may file a lawsuit to enforce the remedies provided under this chapter. In any civil action arising under this chapter and relating to a matter considered by the department ~~division~~, any determination made to reject a dispute is admissible in evidence.

(8) The department may ~~shall have the authority to~~ adopt ~~reasonable~~ rules to administer ~~carry out the provisions of~~ this section.

Section 46. Subsections (2), (4), (5), (11), and (12) of section 681.1095, Florida Statutes, are amended to read:

681.1095 Florida New Motor Vehicle Arbitration Board; creation and function.—

(2) The boards shall hear cases in various locations throughout the state so any consumer whose dispute is approved for arbitration by the department ~~division~~ may attend an arbitration hearing at a reasonably convenient location and present a dispute orally. Hearings shall be conducted by panels of three board members assigned by the department. A majority vote of the three-member board panel shall be required to render a decision. Arbitration proceedings under this section shall be open to the public on reasonable and nondiscriminatory terms.

(4) Before filing a civil action on a matter subject to s. 681.104, the consumer must first submit the dispute to the department ~~division~~, and to the board if such dispute is deemed

eligible for arbitration.

(5) Manufacturers shall submit to arbitration conducted by the board if such arbitration is requested by a consumer and the dispute is deemed eligible for arbitration by the department ~~division~~ pursuant to s. 681.109.

(11) All provisions in this section and s. 681.109 pertaining to compulsory arbitration before the board, the dispute eligibility screening by the department ~~division~~, the proceedings and decisions of the board, and any appeals thereof, are exempt from the provisions of chapter 120.

(12) An appeal of a decision by the board to the circuit court by a consumer or a manufacturer shall be by trial de novo. In a written petition to appeal a decision by the board, the appealing party must state the action requested and the grounds relied upon for appeal. Within 30 days after ~~of~~ final disposition of the appeal, the appealing party shall furnish the department with notice of such disposition and, upon request, shall furnish the department with a copy of the order or judgment of the court.

Section 47. Subsections (2) and (4) of section 681.1096, Florida Statutes, are amended to read:

681.1096 RV Mediation and Arbitration Program; creation and qualifications.—

(2) Each manufacturer of a recreational vehicle involved in a dispute that is determined eligible under this chapter, including chassis and component manufacturers which separately warrant the chassis and components and which otherwise meet the definition of manufacturer set forth in s. 681.102(13) ~~(14)~~,

shall participate in a mediation and arbitration program that is deemed qualified by the department.

(4) The department shall monitor the program for compliance with this chapter. If the program is determined not qualified or if qualification is revoked, then disputes shall be subject to the provisions of ss. 681.109 and 681.1095. If the program is determined not qualified or if qualification is revoked as to a manufacturer, all those manufacturers potentially involved in the eligible consumer dispute shall be required to submit to arbitration conducted by the board if such arbitration is requested by a consumer and the dispute is deemed eligible for arbitration by the department ~~division~~ pursuant to s. 681.109. A consumer having a dispute involving one or more manufacturers for which the program has been determined not qualified, or for which qualification has been revoked, is not required to submit the dispute to the program irrespective of whether the program may be qualified as to some of the manufacturers potentially involved in the dispute.

Section 48. Subsection (2) of section 681.112, Florida Statutes, is amended to read:

681.112 Consumer remedies.—

(2) An action brought under this chapter must be commenced within 1 year after the expiration of the Lemon Law rights period, or, if a consumer resorts to an informal dispute-settlement procedure or submits a dispute to the department ~~division~~ or board, within 1 year after the final action of the procedure, department ~~division~~, or board.

Section 49. Subsection (1) of section 681.117, Florida

Statutes, is amended to read:

681.117 Fee.—

(1) A $2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time of entry into a lease agreement for a motor vehicle. Such fees shall be remitted to the county tax collector or private tag agency acting as agent for the Department of Revenue. If the purchaser or lessee removes the motor vehicle from the state for titling and registration outside this state, the fee shall be remitted to the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the Department of Legal Affairs for deposit into the Motor Vehicle Warranty Trust Fund. ~~The Department of Legal Affairs shall distribute monthly an amount not exceeding one-fourth of the fees received to the Division of Consumer Services of the Department of Agriculture and Consumer Services to carry out the provisions of ss. 681.108 and 681.109. The Department of Legal Affairs shall contract with the Division of Consumer Services for payment of services performed by the division pursuant to ss. 681.108 and 681.109.~~

Section 50. (1) Effective upon this act becoming a law, section 10 of chapter 2010-84, Laws of Florida, is amended to read:

Section 10. This act shall take effect July 1, 2014 ~~2011~~.

(2) If this act becomes a law after June 30, 2011, this section shall operate retroactively to June 30, 2011.

Section 51. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2011.