

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 6, 1998 Revised: _____

Subject: Professional Regulation/Rulemaking Authority

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides specific statutory authority for rules relating to the practice of geology, real estate, and construction contracting. The rules were identified as lacking adequate statutory authority, pursuant to the procedures outlined in 1996 amendments to the Florida Administrative Procedures Act.

This bill substantially amends the following sections of the Florida Statutes: 475.17, 475.25, 489.115, 489.1195, and 492.105, F.S.

II. Present Situation:

In 1996, the Legislature adopted a comprehensive rewrite of the Florida Administrative Procedures Act (APA). Section 120.536, F.S., of the revised APA requires a specific law to be implemented, in addition to a grant of rulemaking authority, for a statute to be sufficient to allow an agency to adopt a rule. The section requires all agencies to notify the Joint Administrative Procedures Committee (JAPC) by October 1, 1997, of all existing rules, or portions thereof, adopted before October 1, 1996, and identified as exceeding the agency's statutory rulemaking authority under this stricter standard. If the agency does not secure specific legislative authority for an identified rule during the 1998 Regular Session, the agency must initiate rulemaking by January 1, 1999, to repeal the rule. Effective July 1, 1999, the JAPC or any substantially affected person has standing to petition the agency to repeal identified rules that have not yet been repealed by the agency.

Part I of ch. 475, F.S., provides for the regulation of real estate brokers and salespersons by the Florida Real Estate Commission (FREC) within the Division of Real Estate of the Department of Business and Professional Regulation (DBPR). Section 475.05, F.S., authorizes the commission

to adopt rules in the exercise of its powers. The commission identified several existing rules for which it lacks sufficient statutory authority, pursuant to s. 120.536, F.S.

Section 475.17 (1)(a), F.S., requires an applicant for a real estate license to demonstrate honesty, truthfulness, trustworthiness, good character, and good reputation, but does not specify how the commission is to determine that these requirements are met. To implement this provision the board adopted Rule 61J2-2.032, F.A.C., requiring an applicant who requests informal hearings for consideration of an application for licensure to submit at least three letters of reference regarding the applicant's honesty, truthfulness, trustworthiness, good character, and good reputation.

Section 475.25, F.S., provides grounds for disciplinary action against licensees and specifies actions the board may take for violations. Section 475.25(1)(c), F.S., prohibits licensees from advertising property or services in a manner that is fraudulent, false, deceptive, or misleading. Pursuant to this prohibition, Rule 61J2-10.035, F.A.C., requires a licensee to obtain a seller's permission to place "sold" on a for sale sign prior to the closing of the contract for sale and purchase.

One of the penalties the board may impose for violations of s. 475.25, F.S., is probation. Rule 61J2-24.006, F.A.C., delegates to the Director of the Division of Real Estate (a DBPR employee) the limited authority to extend the time frame within which a licensee must complete a term of probation. This allows a licensee to obtain an extension to meet the probation requirements more expediently than waiting for the monthly meetings of the commission.

Part I of ch. 489, F.S., provides for the regulation of construction contractors by the Construction Industry Licensing Board (CILB) within the Division of Professions of the DBPR. Section 489.108, F.S., authorizes the board to adopt rules as necessary to implement the provisions of the part. The CILB identified two rules for which it lacked adequate statutory authority pursuant to s. 120.536, F.S.

Section 489.115, F.S., provides biennial licensure renewal requirements, including continuing education, but does not address the requirements for individuals receiving their initial license in the second year of the biennial renewal cycle. Rule 61G4-18.001(4), F.A.C., allows the board to prorate the continuing education requirements for licensees who obtain their initial license in the second year.

Section 489.1195, F.S., allows a business organization to designate a financially responsible officer for licensure purposes. The financially responsible officer is responsible for all financial aspects of the business organization. (If no financially responsible officer is designated, the primary qualifying agent is responsible for the business organization's finances). Section 489.115, F.S., allows the CILB to evaluate the financial responsibility of a qualifying agent prior to issuing a certificate. The statute does not address the financial responsibility of a designated financially responsible officer. Rule 61G4-15.0021(3), F.A.C., requires the board to evaluate the financial responsibility of the financially responsible officer.

Chapter 492, F.S., provides for the regulation of geologists by the Board of Professional Geologists within the Division of Professions of the DBPR. Section 492.104, F.S., authorizes the board to adopt rules as necessary to implement the provisions of the chapter. The board identified one rule for which it lacked adequate statutory authority pursuant to s. 120.536, F.S.

Section 492.105, F.S., allows the DBPR to determine academic majors comparable to a geology major for the purposes of meeting education requirements for licensure. The board has adopted Rule 61G16-5.001, F.A.C., designating which degrees are considered to be related to a geology major.

III. Effect of Proposed Changes:

The bill contains provisions authorizing rules identified as lacking adequate statutory authority for FREC, the CILB, and the Board of Professional Geologists, within the DBPR.

Section 1 amends s. 475.17, F.S., to authorize FREC to adopt rules requiring an applicant for licensure to provide written information regarding the applicant's good character. While this provision is somewhat broader than the requirements of Rule 61J2-2.032, F.A.C., which only requires such information of applicants requesting an informal hearing, it is sufficient to authorize the rule, without conferring overly broad rulemaking authority to the commission.

Section 2 amends s. 475.25, F.S., to allow the commission to adopt rules defining methods of advertising that are false, fraudulent, or misleading and to allow the director of the Division of Real Estate to extend the time for a licensee to complete the terms of probation. The grant of authority to empower the division director to extend probation authorizes Rule 61J2-24.006, F.A.C., without otherwise expanding the commission's current rulemaking authority. While the provision authorizing the commission to adopt rules defining prohibited methods of advertising is slightly broader than the scope of Rule 61J2-10.035, F.A.C., which only states that placing sold signs on property with the consent of a seller is permissible, it is sufficient to authorize the rule without conferring overly broad rulemaking authority to the commission.

Section 3 amends s. 489.115, F.S., to authorize the CILB to prescribe by rule what, if any, continuing education requirements must be met by individuals obtaining licensure during the second year of a biennial renewal cycle. The section specifically prohibits the board from requiring such licensees to complete the full biennial requirement. This provision is sufficient to authorize Rule 61G4-18.001(4), F.A.C., without otherwise expanding the board's current rulemaking authority.

Section 4 amends s. 489.1195, F.S., to authorize the CILB to adopt rules prescribing the qualifications for financially responsible officers. The qualifications must be at least as extensive as the financial responsibility requirements for qualifying agents. This provision is sufficient to authorize Rule 61G4-15.002, F.A.C., without otherwise expanding the board's current rulemaking authority.

Section 5 amends s. 492.105, F.S., to allow the Board of Professional Geologists, rather than the DBPR, to determine which related degrees are acceptable for licensure as a geologist. This provision is sufficient to authorize Rule 61G16-5.001, F.A.C., without otherwise expanding the board's current rulemaking authority.

Section 6 provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that passage of this legislation validates board rules so that they will not have to be repealed pursuant to s. 120.536, F.S., FREC, the CILB, and the Board of Professional Geologists will not incur the costs generally associated with the rulemaking process.

VII. Related Issues:

The Board of Real Estate identified an additional rule, Rule 61J2-3.009(9), F.A.C., which make brokers responsible for salespersons meeting renewal requirements, that is not included in this bill. The original bill included authority for this rule, but the committee approved an amendment deleting this provision.

In addition, the Board of Professional Surveyors and Mappers identified Rule 61G17-2.003(3)(a) and (5), F.A.C., which prohibit a licensed professional surveyor or mapper from being the surveyor in residence at more than one business office, as exceeding current statutory authority pursuant to s. 120.536, F.S. Rule authorizing language for this provision is not included in this bill.

VIII. Amendments:

None.

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