

STORAGE NAME: h0533a.ag.doc
DATE: April 4, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
AGRICULTURE & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 533
RELATING TO: Professions Regulated by the Department of Business and Professional Regulation
SPONSOR(S): Representative(s) Miller
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION (CSG) YEAS 9 NAYS 0
- (2) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 7 NAYS 0
- (3) FISCAL RESPONSIBILITY COUNCIL
- (4)
- (5)

I. SUMMARY:

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the Department of Business and Professional Regulation (DBPR). Among these powers is the authority to enforce provisions relating to unlicensed activity. The DBPR may impose administrative penalties including fines in an amount not to exceed \$5,000 against any person not licensed by the DBPR or a regulatory board within the DBPR and who violates a regulatory statute.

This bill is designed to authorize the practitioners of a profession regulated by the DBPR to use funds from their unlicensed activity account to help finance public education programs regarding the scope of services authorized to be performed by practitioners of that profession. The release of funds from the account is conditioned upon their use to inform the general public of activity by persons not required to be licensed because the services being performed do not reach the threshold to be considered a level of practice that requires licensure.

The bill authorizes operating revenues within the Professional Regulation Trust Fund to be transferred to the unlicensed activity account of a particular profession. Conditions for a transfer of funds include the requirement that the operating fund not be in a deficit and it contains a reasonable cash balance.

The bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to ss. 455.228 and 455.2281, F.S. Programs of the DBPR are "trust funded." Revenues collected from fees and fines are deposited into the Professional Regulation Trust Fund and are earmarked for funding specific programs as appropriated by the Legislature. Funding for unlicensed activity is generated from a \$5.00 special fee pursuant to s. 455.2281, F.S., imposed on all licensees and the renewal of licenses.

Specific practice acts may further address unlicensed activity. "Unlicensed construction contracting," as generally understood, is actually a set of nine specific violations set forth as paragraphs under s. 489.127(1), F.S. Violations are enforced through criminal penalties or administrative sanctions of the DBPR.

Among the tools the DBPR may use to combat unlicensed activity, are educational programs aimed at alerting the general public, unlicensed practitioners and licensed professionals themselves to the requirements of law, the potential for harm for noncompliance and means of combating this activity. Public Service Announcements (PSAs) have been recognized as an effective means of delivering the intended message to these audiences.

Current practices of the Florida Real Estate Commission include the use of PSAs as specified in proviso language in the DBPR budget:

From the funds in Specific Appropriation 1963, up to \$300,000 from the Professional Regulation Trust Fund is provided to the department to continue an unlicensed activity campaign designed to inform: (1) the public and prevent unlicensed activity in the real estate market; (2) the real estate licensee of the requirements of licensure pursuant to Chapter 498, Florida Statutes, regarding land sales practices; and (3) the public and real estate licensees of the public lodging licensure requirements pursuant to Chapter 509, Florida Statutes. The department shall develop the campaign in consultation with a corporation registered under Chapter 617, Florida Statutes, as a not-for-profit corporation registered under the Internal Revenue Service Code as a 501(c)(6) corporation which represents the largest number of licensed real estate professionals. The department shall be authorized to accept in-kind contributions of services, media production, or advertising materials from the not-for-profit corporation in order to further the aims of the unlicensed activity campaign. Any advertising, media, or materials produced as a result of contributions shall carry acknowledgments of joint production and sponsorship.

This authority allows the Commission to joint venture the PSAs with the Florida Association of Realtors.

The Board of Accountancy has utilized another common practice. The board and the Florida Institute of Certified Public Accountants (FICPA) have partnered the production and airing of PSAs. The FICPA has in the past produced the PSA piece. This allows the board the opportunity to use their funding allocation for air time. The former Secretary of DBPR interpreted this arrangement as lacking statutory authority.

C. EFFECT OF PROPOSED CHANGES:

This bill is designed to authorize the practitioners of a profession regulated by the DBPR to use funds from their unlicensed activity account to help finance public education programs regarding the scope of services authorized to be performed by practitioners of that profession. The release of funds from the account is conditioned upon their use to inform the general public of activity by persons not required to be licensed because the services being performed by them do not reach the threshold to be considered a practice that requires licensure. This authorization closely reflects the theme utilized by the Real Estate Commission and FICPA in producing PSAs.

The bill authorizes operating revenues within the Professional Regulation Trust Fund to be transferred to the unlicensed activity account of a particular profession. Conditions for a transfer of funds include the requirement that the operating fund not be in a deficit and it contains a reasonable cash balance.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No new revenues are anticipated.

2. Expenditures:

No new expenditures are anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact though there is the possibility of funds being transferred between the operating account and the unlicensed activity account of a particular board.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

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AS REVISED BY THE COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

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Susan D. Reese

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