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DATE: April 5, 2001

HOUSE OF REPRESENTATIVES

**FISCAL RESPONSIBILITY COUNCIL
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. DBPR may impose administrative penalties including fines in an amount not to exceed \$5,000 against any person not licensed by DBPR or by a regulatory board within the DBPR and who violates a regulatory statute.

This bill is designed to authorize a profession regulated by DBPR to use funds from its 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 not subject to regulation when provided by an unlicensed person.

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 are that the operating fund not be in a deficit and that it contain 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 DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to ss. 455.228 and 455.2281, F.S. Programs of DBPR are funded by fees paid by regulated professionals. 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 initial licenses 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 in s. 489.127(1), F.S. Violations are enforced through criminal penalties or administrative sanctions of DBPR.

Among the tools 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 the 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 enter into joint ventures for 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 entered into partnerships for the production and airing of PSAs. The FICPA has in the past produced the PSA piece. This allows the board the opportunity to use its 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 professions regulated by DBPR to use funds from unlicensed activity accounts 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 an account is conditioned upon their use to inform the general public of activity not subject to regulation when provided by an unlicensed person. 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 are that the operating fund not be in a deficit and that it contain a reasonable cash balance.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No new revenues are anticipated.

2. Expenditures:

New expenditures to educate the public are anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not appear to have an appropriations 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.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

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