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HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS

BILL #: HB 1179

RELATING TO: Fla. Land Sales/Condominiums, & Mobile Homes Division

SPONSOR(S): Representative(s) Negron and others

TIED BILL(S):

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

(1) STATE ADMINISTRATION
(2) FISCAL RESPONSIBILITY COUNCIL
(3)
(4)
(5)

I. SUMMARY:

The Department of Business and Professional Regulation's (DBPR) Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) was organized into the following bureaus until February 2000: the Bureau of Land Sales, the Bureau of Condominiums, the Bureau of Timeshares, and the Bureau of Mobile Homes. This organizational structure has been replaced by the DBPR with a new structure that divides the Division into the following bureaus: Bureau of Standards and Registration, Bureau of Customer Service, and Bureau of Compliance. The Division still has regulatory authority pursuant to statute over the areas of land sales, condominiums, timeshares, and mobile homes. HB 1179 requires the Division to reinstitute three of the four bureaus: the Bureau of Condominiums, the Bureau of Timeshares, and the Bureau of Mobile Homes.

There is currently one trust fund for the Division. All fees and penalties collected for the different businesses are deposited into this trust fund. These businesses include: land sales, yacht and ship brokers, condominiums, cooperatives, timeshares, and mobile homes. The individual businesses must maintain a separate revenue account, but moneys in the trust fund may be transferred between businesses. Current law additionally provides that an agency may transfer moneys between an agency's trust funds without legislative approval if the amount transferred is less than $1 million. If the amount is greater than $1 million, the request must go before the Legislative Budget Commission. HB 1179 requires that no more than 10 percent of the moneys deposited in the Division trust fund may be transferred to the office of the secretary or to other parts of the DBPR during any fiscal year without the prior specific authorization by the Legislature in the General Appropriations Act.

This bill does not appear to have a fiscal impact on local governments, but does have a fiscal impact on the DBPR. Please see the "Fiscal Comments" section of this analysis for further discussion.

In addition, please see the "Other Comments" section for the positions of both proponents and opponents to this legislation.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

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

B. PRESENT SITUATION:

Department of Business and Professional Regulation Organization

Chapter 20, Florida Statutes, pertains to the organizational structure of Florida's governmental departments. This chapter creates the Department of Business and Professional Regulation (DBPR) and creates numerous divisions within the DBPR. For example, the following divisions are under the supervision of the DBPR: Division of Administration; Division of Alcoholic Beverages and Tobacco; Division of Certified Public Accounting; Division of Hotels and Restaurants; and the Division of Florida Land Sales, Condominiums, and Mobile Homes.

The Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) administers six regulatory programs: land sales,[1] licensing of yacht and ship brokers,[2] condominiums,[3] cooperatives,[4] mobile home parks,[5] and timeshares.[6] The Division was organized by program area with the following bureaus until February 2000: the Bureau of Land Sales, the Bureau of Condominiums, the Bureau of Timeshares, and the Bureau of Mobile Homes.[7] In February 2000, this organizational structure was abolished by the DBPR and replaced with a new organizational structure which divides the Division into the following bureaus: Bureau of Standards and Registration, Bureau of Customer Service, and Bureau of Compliance.[8] This reorganization was an internal organization initiated by the DBPR. Although the structure of the Division has changed, the Division still has regulatory authority pursuant to statute over the areas of land sales,[9] yacht and ship brokers,[10] condominiums,[11] timeshares,[12] cooperatives,[13] and mobile homes.[14]

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[1] Chapter 498, F.S.
[2] Chapter 326, F.S.
[3] Chapter 718, F.S.
[4] Chapter 719, F.S.
[5] Chapter 723, F.S.
[6] Chapter 721, F.S.
[7] The Bureau of Land Sales included responsibilities related to the licensing of yacht and shipbrokers. The Bureau of Condominiums included responsibilities relating to cooperatives. Pursuant to the Department of Business and Professional Regulation's Legislative Analysis Form, HB 1179, received by email on February 20, 2002.
[8] *Id*.
[9] Section 498.007, F.S., provides the Division with regulatory authority over Florida Land Sales Practices.
[10] Section 326.007, F.S., provides the Division with regulatory authority over Yacht and Ship Brokers.
[11] Section 718.501, F.S., provides the Division with regulatory authority over Condominiums.
[12] Section 721.26, F.S., provides the Division with regulatory authority over Vacation and Timeshare Plans.

Trust Fund

In 1987, the Florida Land Sales Trust Fund, the Florida Condominiums Trust Fund, and the Florida Mobile Home Trust Fund were dissolved and the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust fund (the Division trust fund) was established within the State Treasury.[15] All funds contained within the previous three funds were merged and credited to the new Division trust fund.[16] In 1988, the language creating the Division trust fund was amended. The amended language retains the single trust fund, but requires separate revenue accountings for each of the businesses regulated by the division, *i.e.*, land sales, yacht and ship brokers, condominiums, timeshares, cooperatives, and mobile homes. The amended language also requires the Division to provide for a proportionate allocation of administrative expenses incurred by the Division among the businesses' individual accounts. In addition, the Division must prepare an annual report of revenue and allocated expenses related to the operation of each of the businesses which may be used to determine fees charged by the Division.[17] All fees and penalties collected under the specific chapters relating to land sales, yacht and ship brokers, condominiums, timeshares, cooperatives, and mobile homes are deposited into the Division trust fund.[18]

Current law permits a state agency to transfer moneys between separate agency trust funds without legislative approval if the amount transferred is less than $1 million. If the amount transferred is in excess of $1 million, the transfer must be approved by the Legislative Budget Commission pursuant to a request of the state agency filed with the Executive Office of the Governor.[19]

C. EFFECT OF PROPOSED CHANGES:

HB 1179 requires the Division of Florida Land Sales, Condominiums, and Mobile Homes (the Division) to be organized with at least three bureaus to be known as the Bureau of Condominiums, the Bureau of Timeshares, and the Bureau of Mobile Homes. This is a return to the previous organizational structure of the Division which was in place until February 2001, prior to the reorganization of the Division by the Department of Business and Professional Regulation (DBPR). HB 1179 does not require a Bureau of Land Sales, which was previously a bureau within the Division.

HB 1179 additionally requires that no more than 10 percent of the moneys deposited in the Division trust fund may be transferred to the office of the secretary or to other parts of the DBPR during any fiscal year without the prior specific authorization by the Legislature in the General Appropriations Act. Essentially, this requires that a majority of the funds deposited into the Division's trust fund must remain in the trust fund and can only be allocated for those activities that relate specifically to the individual bureaus, rather than being used by the DBPR for other department actions. This is more restrictive than current law which permits a state agency to transfer moneys between an agency's trust funds without approval by the Legislature if the transfer is less than $1 million. Current law does require an agency to seek approval of the Legislative Budget Commission for any transfer in excess of $1 million.

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[13] Section 719.501, F.S., provides the Division with regulatory authority over Cooperatives.
[14] Section 723.006, F.S., provides the Division with regulatory authority over Mobile Home Park Lot Tenancies.
[15] Chapter 87-102, L.O.F.
[16] Chapter 87-102, Section 27, L.O.F.
[17] Section 498.019, F.S.
[18] Sections 498.019 (land sales), 326.006 (yacht and ship brokers), 718.509 (condominiums), 721.28 (timeshares), 719.501 (cooperatives), and 723.009 (mobile homes), F.S.
[19] Section 216.181(11), F.S.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Business and Professional Regulation (DBPR), the DBPR is in the middle of a 24-month reengineering process, and the Division of Land Sales, Condominiums, and Mobile Homes (the Division) is scheduled to start using the new technology created as part of the reengineering process in February 2003. The DBPR believes that if HB 1179 passes

> the Division may not be able to use some of the shared services that are provided by the new technology . . . The department anticipates the division will lose $420,000 in FY 2002-2003 and $1,265,000 in FY 2003-04 and thereafter from not fully utilizing the new technology and processes. These large increases in expenses would have a negative fiscal effect on business programs which are already in a significant deficit situation. There are no additional fees in this bill to fund these administrative expenses.[20]

In regards to the provision in HB 1179 which does not allow the DBPR to transfer more than 10 percent of the moneys deposited in the Division trust fund to the office of the secretary without approval by the Legislature, DBPR believes

> [t]he division will need additional positions if it cannot transfer more than 10 percent of the moneys deposited in the Land Sales, Condominiums, and Mobile Homes Trust Fund

[20] Pursuant to the Department of Business and Professional Regulation's Legislative Analysis Form, HB 1179, received by email on February 20, 2002.

> to support the shared services and more efficient processes being developed by the reengineering project. In FY 2002-2003 the division will need four Regulatory Specialist I, two Regulatory Specialist II, and five Investigation Specialist II. In FY 2003-2004 the division will need an additional four Regulatory Specialist I, six Regulatory Specialist II, and 11 Investigation Specialist II. The total additional FTEs is 32 which will remain constant from FY 2003-2004 forward.[21]

According to the DBPR, there would also have to be changes to the Administrative Trust Fund within the DBPR if no more than 10 percent of the moneys deposited in the Division trust fund is allowed to be transferred to the office of the secretary. DBPR stated: "Though, the true administrative costs are below 10%, the combination of administrative costs and other Land Sales program costs exceed 10% due to shared compliance and enforcement, revenue collection, and the Office of the General Counsel services."[22] In addition, DBPR stated:

> If the Land Sales, Condominiums, and Mobile Homes Division limits its transfer to below 10 percent there would need to be a significant change in the way the Administrative Trust Fund is utilized . . . This bill does not provide for any such Administrative Trust Fund changes and would inhibit the Division's ability to pay for compliance and technology to run its programs and cost of revenue collection. This effect could be a significant decrease in program efficiency and increase in costs.[23]

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This act 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.

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[21] Pursuant to the Department of Business and Professional Regulation's Legislative Analysis Form, HB 1179, received by email on February 20, 2002.
[22] *Id*.
[23] *Id*.

C. OTHER COMMENTS:

According to proponents of this legislation, the Department of Business and Professional Regulation (DBPR) eliminated the Bureaus of Land Sales, Timeshares, Condominiums, and Mobile Homes without any consultation with the constituents who funded the Division through required fees and who were served by the individual bureaus. Therefore, proponents believe that the DBPR discontinued an organization practice that had existed for more than 30 years, and has subsequently rejected the requests of constituent groups to restore the historical regulatory format. In addition, the proponents believe that as a result of the reorganization, personnel from each new bureau must try and respond to different regulatory schemes for different housing types under laws not designed to accommodate the new organization, and therefore response times are longer and educational and information services have been delayed or eliminated. These proponents believe that the objective of this legislation is to restore the long-standing organization of the Division into separate bureaus to assure that monies paid by condominium, cooperative, mobile home, and time share owners to support the Division are used for their intended purposes. According to the proponents, between $4.1 million and $5.6 million of funds collected from constituents paying for services from the Division are being diverted to other parts of the DBPR.[24]

The DBPR is opposed to this legislation. The DBPR stated that “the agency’s strategic plan and budget are tied to the currently on-going reengineering project and geared toward a currently estimated net savings to the State of Florida of approximately $73 million. This bill is contrary to that project.”[25] According to the DBPR, three of the five business programs in the Division are running a significant deficit. The DBPR is currently looking at options to reduce these deficits, and believes the deficits can be greatly reduced without additional fees provided that the reengineering project’s benefits are allowed to materialize. The DBPR states that by “adding technology and changing the business process, the department has all the resources we need if we pool them and use them smartly. This approach is already generating tangible results for the areas of Real Estate and Pari-Mutuel Wagering, the first two areas to complete the reengineering process.”[26] The DBPR believes that continued efficiencies will occur as the reengineering process continues.

In addition, the DBPR has significant fiscal concerns with this bill. Please see the “Fiscal Comments” section of this analysis for discussion of those concerns.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:	Staff Director:
Lauren Cyran, M.S.	J. Marleen Ahearn, Ph.D., J.D.

[24] Pursuant to information received from the Director of Government Relations of the Florida Manufactured Housing Association, Inc., and information received from a government consultant representing the Mabry & Associates organization on February 19, 2002.
[25] Pursuant to the Department of Business and Professional Regulation’s Legislative Analysis Form, HB 1179, received by email on February 20, 2002.
[26] *Id.*