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DATE: January 3, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 499
RELATING TO: Real Estate Professionals
SPONSOR(S): Representative(s) Mahon

TIED BILL(S):

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

- (1) BUSINESS REGULATION
 - (2) SMARTER GOVERNMENT COUNCIL
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The regulation of real estate brokers, salespersons, schools and businesses is established under part I of chapter 475, F.S. Regulation is administered by the Florida Real Estate Commission under the Department of Business and Professional Regulation. Among other responsibilities, the commission is authorized to conduct or approve real estate educational courses for persons who apply for licensure or are licensed or permitted. Distance learning educational courses are currently available for compliance with continuing education requirements and for circumstances where attending classroom courses creates an identifiable hardship.

Rules of the commission define "distance education" as "education that takes place when the learner is separated from the source of instruction by time and/or distance."

This bill is designed to implement a distance learning educational program for real estate licensure to include prelicensure, postlicensure and continuing education compliance. The bill specifies that courses that are required to be completed in order to qualify to be initially licensed as a real estate broker or salesperson or to meet education requirements for license renewal, must be made available by distance learning in addition to traditional classroom instruction. The bill authorizes the Florida Real Estate Commission to approve distance learning courses and it requires the satisfactory completion of a timed distance learning course examination.

The Department of Business and Professional Regulation anticipates the provisions of the bill to encourage licensure through an expanded distance learning program. A projected fiscal impact has not been estimated at this time.

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:

The regulation of real estate brokers, salespersons, schools and businesses is established under part I of chapter 475, F.S. Regulation is administered by the Florida Real Estate Commission (commission) under the Department of Business and Professional Regulation (DBPR). This program is designed for the primary purposes of assuring minimal competency of real estate practitioners in order to protect the public from potential economic losses.

Applicants for licensure must be at least 18 years old, possess a high school diploma or its equivalent, be of good moral character, and pass an examination. Licensees must maintain continuing education credits to continue in good standing. Real estate businesses must register and real estate schools must be permitted to operate.

Section 475.04, F.S., authorizes the commission to support the education of licensees and real estate instructors "concerning the ethical, legal, and business principles which govern their conduct." To this end the commission is authorized to conduct or approve real estate educational courses for persons who are licensed or permitted.

Section 475.17(2), F.S., further specifies the commission may require educational courses for persons to become initially licensed or for license renewal. Courses for initial licensure may not exceed 63 classroom hours for a salesperson or 72 classroom hours for a broker. Courses must be taken at an "accredited college, university, or community college, at an area technical center, or at a registered real estate school." Satisfactory completion of this requirement is determined by the successful passage of an examination covering the class material.

Similar to initial licensure, the commission is authorized to prescribe postlicensure education requirements to be completed. Courses may not exceed 45 classroom hours for a licensed salesperson or 60 classroom hours for a licensed broker. The course is to be completed prior to the first license renewal following initial licensure. Successful passage of an examination is also required.

Provisions of section 475.17, F.S., further provide that courses must be made available by correspondence "or other suitable means" to any person who cannot attend normal classes due to "hardship" as defined by rule of the commission. Commission rule 61J2-3.013, Florida Administrative Code, provides for "distance education courses for hardship cases." A hardship case

Is defined by rule “as a case wherein a person desiring to take the Commission prescribed courses cannot, by reason of a physical disability, attend the place where the classes are conducted.”

The rule further provides:

Distance Education courses containing the same subject matter and requiring substantially the same assignment work will be prescribed by the Commission for any person who by reason of hardship cannot attend the place for classroom instruction... The scholastic standards and other related requirements will be substantially the same as the courses offered by classroom instruction, having due regard, however, to the different method of presentation. A copy of the course and all materials shall be submitted to the Commission for evaluation at least 60 days prior to use. The approval or denial of the course will be based on the extent to which the course complies with the requirements set forth... Examinations, if required, must test the course material...

License renewal is mandated by statute. Among the requirements for renewal include completion of continuing education studies. Section 475.182, F.S., requires at least 14 classroom hours of courses during each biennium be completed by a licensee. This section further provides the commission may accept substitute studies on a “classroom-hour-for-classroom-hour” basis if the commission finds the courses are adequate to satisfy the intent of educating licensees. This section restricts the commission from requiring a written examination to be given at a centralized location and be monitored if the instruction is provided by “an approved correspondence course.”

Chapter 455, F.S., is the general powers authority of the DBPR. Section 455.2123, F.S., specifies that “a board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements.” Rules of the commission specify that for purposes of continuing education “distance education course subject matter, assignment work, scholastic standards and other related requirements shall be substantially the same as the course offered by classroom instruction, having due regard however, to the different method of presentation.”

Section 475.451, F.S., addresses permitting and operational requirements for proprietary schools that provide real estate courses. These provisions require a permit to be obtained by the school and by instructors. “Accredited colleges, universities community colleges, and area technical centers” are exempt from these permitting requirements. Proprietary real estate courses are required to meet the standards of s. 475.17, F.S. but are otherwise free to operate when and where they choose. Video instruction is specifically authorized under s. 475.451(6), F.S., pursuant to guidelines adopted by the commission, including requiring live instruction as a part of the video course.

Chapter 241, F.S., is titled “Distance Learning” and establishes the responsibilities of the Department of Education relating to the coordination of distance learning issues and networking between interested parties. The provisions of this chapter do not appear to directly affect the authority or operation of the DBPR relating to distance learning programs for real estate.

Currently the terms “distance learning,” “distance education courses,” “correspondence courses” or “course of correspondence” do not appear to be defined by statute. Rules of the commission, 61J2-3.009, FAC, define “distance education” as “education that takes place when the learner is separated from the source of instruction by time and/or distance.” “Distance learning” is commonly associated with the provision of instruction or education via telecommunications.” “Correspondence courses” are commonly thought of as hard copy instruction material provided through the mail.

C. EFFECT OF PROPOSED CHANGES:

This bill is designed to implement a distance learning educational program for real estate licensure to include prelicensure, postlicensure and continuing education compliance. The bill specifies that courses that are required to be completed in order to qualify to be initially licensed as a real estate broker or salesperson or to meet educational requirements prior to the first renewal of a license, must be made available by distance learning in addition to traditional classroom instruction. The bill authorizes the commission to approve distance learning courses, and it requires the satisfactory completion of a timed distance learning course examination by persons participating in distance learning courses.

The bill continues to allow correspondence courses to be made available for hardship cases. Additionally, correspondence courses would be authorized to be made available should access to a distance learning course be unavailable (i.e. no computer access).

The bill allows distance learning instruction to be substituted on a classroom-hour-for-classroom-hour basis for purposes of satisfying statutory continuing education requirements for the renewal of a license by a real estate broker or salesperson.

The bill allows proprietary schools to provide distance learning courses, in addition to the current traditional class instruction and video tape courses.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 475.17, F.S., to require that distance learning courses be made available in addition to classroom instruction in order to qualify to be initially licensed as a real estate broker or salesperson or to meet educational requirements prior to the first renewal of a license; authorizes the commission to approve distance learning courses and requires the satisfactory completion of a timed distance learning course examination.

Section 2. Amends s. 475.182, F.S., to allow distance learning instruction to be substituted on a classroom-hour-for-classroom-hour basis for purposes of satisfying continuing education requirements for the renewal of a license.

Section 3. Amends s. 475.451, F.S., to allow proprietary schools to provide distance learning courses.

Section 4. Reenacts s. 475.05, F.S., relating to rule authority of the commission.

Section 5. Effective date – July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant. The DBPR estimates an increase in the number of persons applying for licensure due to the availability of educational courses through the distance learning program. Fees paid by new licenses and subsequently renewal fees by licensees should generate additional revenues for the regulatory trust fund. The DBPR does not have a clear estimate of the potential impact at this time.

2. Expenditures:

Minor expenditures may be anticipated in relation to the approval process relating to distance learning courses by the commission. This approval process should be absorbed within the current staffing and budget appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some savings could be identified for those applicants and licensees who take the required classes through a distance learning program rather than attend classroom instruction and examination.

D. FISCAL COMMENTS:

None.

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 counties or municipalities 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.

STORAGE NAME: h0499.br.doc

DATE: January 3, 2002

PAGE: 6

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Staff Director:

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