

STORAGE NAME: h1179.brc

DATE: April 3, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1179

RELATING TO: Regulation of Professions and Occupations

SPONSOR(S): Representative Brown

STATUTE(S) AFFECTED: Sections 455.213, 455.217, 455.225, 489.109, 489.113, 489.114, 489.115, 489.119, 189.127, 489.129, 489.131, 489.132, 489.1455, 489.146, 466.007, F.S.

COMPANION BILL(S): SB 1532 (l) SB 1950 (c)

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (3) FINANCE AND TAXATION
- (4)
- (5)

I. SUMMARY:

Chapter 96-298, L.O.F., directed the Secretary of the Department of Business and Professional Regulation (DBPR) to appoint a committee to study aspects of the licensing and regulation of construction, electrical, and alarm system contracting. The committee reviewed provisions regarding regulatory board structure and authority, examination and licensing processes and procedures, regulatory and disciplinary jurisdiction and procedures, and privatization issues. This committee presented its report on December 1, 1996.

HB 1179 includes some of the recommendations of that report. It expands privatization activities in the Department, requires local jurisdictions to accept the journeyman license issued by other local jurisdictions, provided that such license was issued pursuant to stipulated criteria and standards, provides direction regarding the manner in which local governments are to discipline licensees, and establishes a "Certificate of Authority" to license and regulate business organizations in the construction industry. The act is to take effect on July 1, 1997, except that section 14, is to take effect upon becoming law.

The Department anticipates no overall impact to its budget, as cost savings will offset any increase in expenditures that may arise as a result of privatization activities.

The bill was heard in the Governmental Rules and Regulations Committee. It was passed unanimously, with four amendments; the first three by Rep. Ogles and the fourth by Rep. Brown. The first two amendments provided language to allow DBPR and the CILB to make use of computer based examinations. The third amendment codifies a Department procedure that any request to translate an examination into another language must be made 6 months prior the date of the examination. The fourth amendment struck the section

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relating to dental hygienists from the bill and renumbered the subsequent section. All four amendments passed without objection.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

GENERAL INFORMATION ON CONSTRUCTION AND ELECTRICAL CONTRACTING:

Construction contracting is regulated under Part I of chapter 489, F.S. Electrical and alarm system contracting is regulated under Part II of the same chapter.

The Construction Industry Licensing Board (CILB) regulates construction contracting in Florida. The Electrical Contractors' Licensure Board (ECLB), regulates electrical and alarm system contracting. Both boards are created under the Department of Business and Professional Regulation (DBPR).

The CILB is composed of 18 members: 4 general contractors, 3 building or residential contractors, 2 consumer members, 2 building official members, and 1 each from the following categories: roofing; sheet metal; air conditioning; mechanical; pool; plumbing; and underground utility and excavation.

Chapter 489, F.S., require all individuals who practice contracting in Florida must either be "registered" or "certified." Florida has thus taken the very unusual (and perhaps unique) step of allowing two alternative systems of licensure to exist simultaneously and in a parallel fashion.

All individuals who practice contracting in Florida must be registered with or certified by the Board. Registration allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. This registration is issued by the Department of Business and Professional Regulation upon proof of local licensure. Such proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exist. The CILB has no input in, or control over, the licensure standards utilized by local jurisdictions. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and have no experience or examination requirements.

On the other hand, certification allows an individual to practice contracting in any jurisdiction in the State. DBPR will issue a certificate to an individual who applies to the CILB, shows four (4) years of experience, and passes a DBPR/CILB sanctioned and administered examination.

The CILB is *ultimately* responsible for the discipline of both registered and certified contractors in the State. Local jurisdictions may discipline only their locally licensed (registered) contractors -- they have no legal authority to conduct discipline against certified contractors. One exception to that is that the local government can suspend permitting privileges for a specific contractor if they find that contractor guilty of fraud or of a willful building code violation. Suspending permitting privileges effectively prohibits the contractor from operating in that jurisdiction.

Not all local jurisdictions have the capacity (investigators, a regulatory board, etc.) to engage in discipline. The local jurisdictions that do choose to engage in discipline against their locally licensed contractors conduct the necessary investigations and proceedings, and if warranted, issue penalties. The results are sent to CILB for Board action, and the CILB may then take action against the registration.

Other local jurisdictions -- the ones that do not perform discipline themselves -- will receive the complaint and simply forward the information to CILB for investigation and possible disciplinary action.

Ch. 96-298, L.O.F., directed the Secretary of DBPR to appoint a committee to study aspects of the licensing and regulation of construction, electrical, and alarm system contracting. The committee reviewed provisions regarding regulatory board structure and authority, examination and licensing processes and procedures, regulatory and disciplinary jurisdiction and procedures, and privatization issues. This committee presented its report to the Legislature on December 1, 1996. This bill includes some of the recommendations of that report.

ADDITIONAL, INFORMATION ON THE CURRENT SITUATION REGARDING SPECIFIC AREAS THE BILL SEEKS TO CHANGE:

Currently, the licensure of journeymen is a local phenomenon, and the state does not regulate them or issue journeyman licenses. Most local jurisdictions do not honor the journeyman license issued by another jurisdiction, and consequently, it is difficult for a journeyman licensed in one jurisdiction to work in another jurisdiction, as a *journeyman*. In such an instance, the person could work as a laborer, but would not be accorded the status of a journeyman.

Currently, s. 489.131, F.S., allows local jurisdictions to require contractors to hold a \$5,000 bond to assure code compliance, payable to *the Governor*.

Currently, the CILB is having a problem whereby a business owner may be responsible for a disciplinary violation, but the only person who they can punish is the licensee. The owner may then discard the licensee, secure another licensee to qualify his company, and repeat the incompetent or fraudulent behavior. The CILB has indicated that there is a need to be able to discipline *the business*.

B. EFFECT OF PROPOSED CHANGES:

One issue addressed in HB 1179 is privatization of DBPR activities. First, the bill directs that DBPR and the CILB to privatize examination development and administration activities. Second, applicants will interact directly with private examination providers when applying and sitting for examinations. Further, DBPR is directed to use all reasonable efforts to privatize the operations of such departmental services that can be provided in a more efficient manner by private entities.

Another issue addressed in HB 1179 is reciprocity. First, contractors holding licenses from other states will be permitted to practice in Florida where the other state has a reciprocity agreement with Florida. Second, those holding county journeyman licenses will have the opportunity to work outside their home county without being subject to additional licensure requirements by the county in which they wish to work.

Finally, HB 1179 creates a "Certificate of Authority" for licensure of business organizations, and provides for the regulation and discipline of holders of the certificate. This will allow the CILB to discipline the business.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

DBPR is directed to promulgate rules in its efforts to privatize ministerial functions.

DBPR is to promulgate rules to specify fees related to the actual costs of creating and administering examinations, and promulgate rules for the approval of national examinations for use by the boards.

CILB is to promulgate rules establishing criteria for continuing education course standards and continuing education provider approval standards.

DBPR is responsible for establishing procedures for review of examinations by those who have failed such examinations.

(2) any new responsibilities, obligations or work for other governmental or - private organizations or individuals?

With the privatization of examination development and administration, private vendors or organizations that provide such services will see increases in activity.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

HB 1179 modifies the fee charge to examinees who fail an examination to review the examination results from \$75 to a figure that will reflect the actual costs of providing the review. This may result in an increase in the fee charged.

DBPR may also charge a fee, where applicable, for the development and administration of a required board examination.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

Local governments may charge a \$25 registration fee for journeyman licensees who wish to work within the local government's boundaries.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 455.213(1), F.S., to permit direct payment of examination fees to private vendor testing companies.

Section 2. Amends s. 455.217, F.S., to permit DBPR to contract for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations; requires DBPR to certify such exams will properly measure an applicant's ability to practice the given profession; requires DBPR or the respective Board to specify by administrative rule fees related to creation of examinations; permits DBPR to specify by administrative rule approval of national examinations; limits control to DBPR of procedures for applicant's review of examination after failure; removes the \$75 cap in favor of charging for the actual costs of such a review; and, excludes DBPR from the requirement of maintaining records of examinations and examination materials related to national examinations approved and administered by DBPR.

Section 3. Amends s. 455.225, F.S., to exclude the right of confidentiality for investigations from those being investigated for unlicensed practice.

Section 4. Amends s. 489.109, F.S., to move some of the responsibility for examinations from the board to the department; and requires a business to obtain a certificate of authority.

Section 5. Amends s. 489.113, F.S., to make applicable to the limited disciplinary authority local governments have against certified contractors language which is similar to that which applies to state agencies pursuant to s.120.695 (stating that a notice of noncompliance should be the disciplinary agency's response to a first offense of a minor violation).

Section 6. Amends s. 489.114, F.S., to make a technical change to reflect the new certificate of authority regarding its use as a document for which evidence of Workers' compensation coverage must be demonstrated as a condition for renewal.

Section 7. Amends s. 489.117, F.S., to add reference for reciprocity for those holding contracting licenses from other states or United States territories that have a reciprocity agreement with the Board based on substantially equivalent criteria for the recognition of such licenses; requires the CILB to adopt by administrative rule criteria for continuing

education course standards and continuing education provider approval standards; and requires initial licensure applicants to furnish credit report.

Section 8. Amends s. 489.119, F.S., to provide for a certificate of authority for licensure of business organizations; requires renewal every two (2) years; provides that disciplinary action taken against a holder of a certificate of authority be done in the same manner as required for an individual licensee; permits the CILB to deny licensure to any business organization if previously involved in disciplinary action or on grounds for which an individual license can be denied; and requires the conspicuous display of the certificate of authority number on local occupational licenses and other local government documents, business forms, and business vehicles.

Section 9. Amends s. 489.127, F.S., to add references for "certificate of authority"; and clarifies statute to hold that an individual or business organization operating on an inactive or suspended license is considered unlicensed and that a local occupational license is not a license for this part.

Section 10. Amends s 489.129, F.S., to add references for "certificate of authority"; adds reference for "penalties" to provision concerning fines imposed under this chapter against persons or organizations which have not paid the imposed fine by its due date; and prohibits the CILB from issuing or renewing a license, registration, or certificate of authority until all terms and conditions, now to include payment of restitution, and fulfillment of all terms and conditions for satisfaction of a final order, have been satisfied.

Section 11. Amends s. 489.131, F.S., to establish virtually identical provisions to those established in s. 489.113, F.S. -- by section 5 of this bill -- making applicable to local government's prosecution ability against *locally licensed contractors* language which is similar to that which applies to state agencies pursuant to s.120.695 (stating that a notice of noncompliance should be the disciplinary agency's response to a first offense of a minor violation); provides that any bond which may be required pursuant to existing language in s. 489.131, F.S., shall be made payable to the Construction Industry Recovery Fund, rather than to the Governor, as current language states.

Section 12. Amends s. 489.132, F.S., to add a reference to "certificate of authority" to provisions concerning prohibited acts by unlicensed principals.

Section 13. Creates s. 489.1455, F.S., to require reciprocity of journeyman licensees among Florida's local governments -- without an additional examination or license fee -- but with a registration fee of no more than \$25.

Section 14. Effective upon becoming law, creates s. 489.146, F.S., to require DBPR to use all reasonable efforts to privatize ministerial functions if any or all such services can be provided more efficiently by private concerns; that DBPR shall adopt rules to implement the provisions of this section; and that DBPR shall report all progress on the status of privatization and privatization efforts to the Legislature by March 1, 1998.

Section 15. Amends s 466.007, F.S., to renumber a cross-reference affected by this bill.

Section 16. Except as otherwise provided within the bill, this act becomes effective July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Any impacts to agency budget will be offset by costs savings resulting from privatization efforts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

In requiring local jurisdictions to accept journeymen licenses from other jurisdictions, the bill may cause some loss of revenue for the local jurisdictions, since presumably they will issue fewer journeyman licenses themselves. However, that effect is offset by allowing the local jurisdictions to charge up to \$25 to "register" the journeyman licenses that were issued in other jurisdictions.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Increase in cost to review examination by applicant that has failed that examination.

2. Direct Private Sector Benefits:

There will be an increase in examination related services provided to DBPR by private concerns. There may be an increase in other services that have been privatized by DBPR.

Reciprocity agreements between the states and reciprocity among the State's counties will increase competition in the contracting industry and provide a greater choice of contracting professionals for consumers.

3. Effects on Competition, Private Enterprise and Employment Markets:

Reciprocity will increase the number of persons in a locality that can provide professional contracting services.

D. FISCAL COMMENTS:

In section 4 of the bill, changes in s. 489.109(1)(a), F.S., provide that a \$350 fee which had been for initial application *and* examination will now only be for initial application. Costs for examination will be separate. This amounts to a substantial increase in the application fee.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to 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 revenue in the aggregate

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

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate

V. COMMENTS:

RE: COMPUTER BASED TESTING

The bill provides extensive language intended to allow the department to go what is described as "computer-based testing." Computer based testing would be similar to the testing done for driver's licenses. This method of testing has the advantage of being available upon demand (rather than available just two to four times a year), and of not requiring examination proctors and the like.

In order to accomplish this move to computer based testing, the bill moves the authority to determine who will promulgate and administer the examination from the board and gives it to the department. Provisions are also included to clarify the circumstances under which the department will seek or allow a private organization to handle examination promulgation and administration. In an instance where these duties may be "privatized," there does not appear to be any statutory provision establishing an examination fee cap. Instead, the board would adopt rules which set the fee at the "actual cost for any purchase, development, and administration" of the examination.

This could be a constitutional problem. The Legislature may not delegate to an executive branch body the power to make fundamental policy decisions. Therefore, throughout regulatory practice acts, fee caps are established in statute, then the board can by rule set the fee. By not establishing a fee cap in statute, the provisions could amount to an invalid delegation of legislative authority to an executive branch entity.

Even if it is not a *constitutional* problem, it could be bad public policy. Even though a private entity would be restricted from charging an amount exceeding its costs, this still leaves open the *possibility* that the private entity would engage in a needlessly wasteful development and administration figure which would result in licensees being charged more than necessary.

RE: THE FACT THAT THERE ARE TWO PARTS TO CHAPTER 489, F.S.

The bill has a technical problem in section 13. That section establishes reciprocity between local jurisdictions in accepting journeymen licenses issued by another jurisdiction. The problem is that regulation of electrical contracting is found in Part II of the chapter, not Part I. The way to correct this problem is to place provisions similar to those in section 13 of the bill in Part II of the chapter. In addition, many of the other provisions of the bill need to be duplicated in Part II, in order to have them apply to regulation of electrical contractors.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Amendment 1, by Rep. Ogles, inserts language to allow the Department and the Board to use computer based examinations. It passed without objection.

Amendment 2, by Rep. Ogles, also insert language to allow the Department and the Board to use computer based examinations. There was a technical change to correct a typographical error at line 16 of the amendment; it corrected "no-profit" to "non-profit". The amendment, with the technical change, passed without objection.

Amendment 3, by Rep. Ogles, codified a Department policy that any request to translate an examination to another language shall be at least six months prior to the date of the examination. It passed without objection.

Amendment 4, by Rep. Brown, struck section 15 from the bill and renumbered the subsequent section. It passed without objection.

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

David M. Greenbaum

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AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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