

STORAGE NAME: h1179.grr
DATE: March 24, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1179

RELATING TO: Regulation of professions and occupations

SPONSOR(S): Representative Brown

STATUTE(S) AFFECTED: Fla. Stat. §§ 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

COMPANION BILL(S): SB 1532 (identical)

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

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

I. SUMMARY:

Ch. 96-298, § 15, Laws of Fla., 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 to the Legislature on December 1, 1996.

HB 1179 includes some of the recommendations of that report. It expands privatization activities in the Department, establishes reciprocity criteria for Construction Industry License Board (CILB) and local governments, establishes 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 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.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Construction Industry License Board (CILB) regulates construction contracting in Florida, pursuant to provision found in Part 1, Ch. 489, F.S. (Supp. 1996). The CILB is created under the Department of Business and Professional Regulation (DBPR).

Regulation of construction contractors is administered by the CILB, 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.

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 Department of Business and Professional Regulation (DBPR) 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 an local licensing requirements 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. Others 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 have limited jurisdiction to discipline only registered contractors. In such instances, jurisdictions which are capable of conducting disciplinary proceedings against a contractor conduct the necessary investigations and proceedings, and if warranted, issue penalties. The results are sent to CILB for Board action. Other local jurisdictions will receive the complaint and forward the information to CILB for disciplinary action.

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B. EFFECT OF PROPOSED CHANGES:

An 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 the 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

Several local government issues are addressed in the HB 1179. First, local government enforcement of regulatory laws covering the construction industry is clarified through legislative intent language. Second, local government will not be limited by anything in pt. 1, ch. 489, F.S. when issuing Occupational License Tax Certificates.

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.

DBPR states that any cost increases associated with contracting for services resulting from privatization activities can be absorbed into the budget and also will be offset by cost savings achieved through reductions in Department operations.

Please see section-by-section analysis, p. 6, for details.

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?

None.

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

None.

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

None.

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?

N/A

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

N/A

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

Section 2: Amends § 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 § 455.225, F.S. to exclude the right of confidentiality for investigations from those being investigated for unlicensed practice.

Section 4: Amends § 489.109, F.S. to add new reference to certificate of authority, and requires an applicant to pay as an examination fee the actual cost of DBPR conducting the examination.

Section 5: Amends § 489.113, F.S. to add that an licensure applicant must prove competency by passing a Board approved and DBPR certified examination; and amends authority of local construction regulation boards to permit the suspension or revocation of certified contractor authority to obtain a building permit or to limit such authority.

Amends § 489.131, F.S. to establish Legislative policy and intent regarding local government enforcement of regulatory laws; provides procedures for local governments for dealing with violators; establishes that in the first instance of non-compliance, the local government is to issue a notice of non-compliance under the presumption that violator was unaware of such a [regulatory] law or is unclear as to how to comply with it; defines "minor violator" and "notice of noncompliance"

Section 6: Amends § 489.114, F.S. to add new reference for certificate of authority as a document for which evidence of Workers' compensation coverage must be demonstrated as a condition for renewal.

Section 7: Amends § 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 licences; requires the CILB to adopt by administrative rule establishing criteria for continuing education course standards and continuing education provider approval standards; and requires initial licensure applicants to furnish credit report.

Section 8: Amends § 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 § 489.127, F.S. to add references for “certificate of authority”; 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 § 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; 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 § 489.131, F.S. to specify that nothing in pt. 1, ch. 489 F.S., shall limit the power of local government to issue occupational license tax certificates; amends the statute to reflect that contractor bonds conditioned for compliance with local building code requirement adopted pursuant to § 553.73 shall now be payable to the Construction Industry Recovery Fund;

Amends § 489.131, F.S. to establish Legislative policy and intent regarding local government enforcement of regulatory laws; provides procedures for local governments for dealing with violators; establishes that in the first instance of non-compliance, the local government is to issue a notice of non-compliance under the presumption that violator was unaware of such a [regulatory] law or is unclear as to how to comply with it; defines “minor violator” and “notice of noncompliance”

Section 12: Amends § 489.132, F.S. to add a reference to “certificate of authority” to provisions concerning prohibited acts by unlicensed principals.

Section 13: Creates § 489.1455, F.S. to permit for reciprocity of journeyman licensees among Florida’s local governments without an additional examination or license fee but with a registration fee of no more that \$25.

Section 14: Creates § 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.

NOTE: This section becomes effective upon becoming law.

Section 15: Amends § 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:

None.

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.

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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:

None.

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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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