

STORAGE NAME: h1441a.brc
DATE: April 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1441
RELATING TO: Building Codes
SPONSOR(S): Representative Lacasa
STATUTE(S) AFFECTED: s. 553.73, F.S.
COMPANION BILL(S): CS/SB 1246 (s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 5 NAYS 2
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill modifies s. 553.73, F.S., and establishes prohibitions and limitations on what type of provisions may be placed within the locally-adopted state minimum building codes.

This is known as “the journeyman issue.” A journeyman is a person in a construction or electrical trade who has undergone (usually, formalized) training and testing. It takes three to five years to gain a journeyman license, during which time the person is considered an “apprentice.” Journeyman licenses are issued only by local jurisdictions, and most local jurisdictions do not accept the license issued by another jurisdiction.

The central controversy concerns whether local jurisdictions can require the presence of a (locally) licensed journeyman *on each job site*, and whether that requirement *can be imposed on a state certified contractor*. A journeyman-on-site requirement is essentially a workforce composition requirement, and most certified contractors do not believe that local jurisdictions have the right to determine such things regarding their *statewide* license. **This bill says, in effect, that local jurisdictions may NOT demand that a state certified contractor compose his workforce according to the wishes of the local jurisdiction.** A bill with essentially the same provision was passed in HB 2721 (1995), but was vetoed by the Governor. Several workshops were then conducted on the issue across the state, and in 1996, virtually the same provisions were passed by the House in CS/HB 711. The Senate took no action on that bill, and the provision therefore did not become law.

The reason this issue appears to involve *building codes* is because certain local jurisdictions discovered that virtually the only basis that chapter 489, F.S., allows them control over state certified contractors is that they may refuse to issue building permits to any certified contractor guilty of a *willful building code violation*. Therefore, the jurisdictions reasoned that if they placed the workforce composition requirements in their locally adopted building code, then they would gain control over state certified contractors as far as this issue is concerned.

Two court cases with diametrically opposing rulings on this issue have emerged (see Current Situation section of this bill for a more full discussion).

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A clarifying amendment was adopted in the BRCA Committee to conform the HB 1441 to SB 1246.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

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.

Pursuant to this chapter, two parallel systems of contractor licensing exist side-by-side in Florida. A contractor may obtain either a state certification, which authorizes practice in all jurisdictions across Florida, or he may obtain a local license, which is in turn "registered" with the state board. A registration allows the licensee to practice only within the jurisdiction which has issued him the local license. Certification requires four years experience and the passage of an examination.

This enduring controversy was triggered by actions taken in Dade County. On April 4, 1995, the Dade County Commission placed its existing construction contractor and electrical contractor regulatory ordinances ("chapter 10") into its building code (the South Florida Building Code). The change was to become effective 60 days subsequent to adoption (June 3, 1995). By making this change, Dade County was seeking to impose local control over state certified contractors.

Chapter 553, F.S., requires local jurisdictions to adopt any one of several building codes. These codes include the Standard Building Code (the one most local jurisdictions have adopted), and the South Florida Building Code, which has been adopted in many jurisdictions in South Florida. These codes are substantially identical.

Once the jurisdiction has adopted a code, s. 553.73(4), F.S., allows them to amend the code, making it "more stringent," by simply adopting an ordinance to that effect. Many local jurisdictions have, in fact, amended their building codes. Usually, they do so believing that they have specific unique circumstances (such as being coastal, subject to salt water erosion problems or hurricanes), or because they wish to create different, more stringent standards than those found in the original, "base" building code.

Chapter 489, F.S., prohibits local jurisdictions from exercising licensure qualification requirements, disciplinary, or other control over state certified contractors, except that state certified contractors have to obey local building codes. If state certified contractors violate local building codes, the local jurisdiction can refuse them "permitting" privileges. Such a move will bar the contractor from operating in that jurisdiction.

Principal among those provisions which were placed in the building code by Dade County is a requirement that the contractor must have a licensed journeyman on every job-site, and that his workforce must be composed in such a way as to assure that one out of every four workers on each job is a licensed journeyman.

The state does not license journeymen. Many local jurisdictions, including Dade County, license journeymen. Historically, the primary path to achieving journeyman status is to enter a union and comply with their requirements for licensure as a journeyman. These requirements include a minimum number of years of experience as an apprentice, and the passage of an examination. More recently, "non-union" paths have been made available by local jurisdictions. The primary trade which includes journeyman licensure is electrical. Plumbing and air conditioning often also involve a journeyman license.

Since the state does not license journeymen, the "portability" of the locally-issued license is an important concern. A person who is a highly-qualified and licensed journeyman in one jurisdiction may not have that license accepted in another jurisdiction. Industry sources allege that this "non-reciprocity" is almost always the case. Dade County does not accept journeyman licenses from any county other than Broward (and that is a very recent development).

A state-certified contractor obtains his "statewide" license for the express purpose of having the capability to work anywhere in the state, across multiple jurisdictions, without having to face 100 different sets of city and county licensing and workforce composition requirements. However, if local jurisdictions are able to require varying licensure requirements, simply by putting these requirements in their building code, then "state certification" becomes useless. If local jurisdictions are allowed to impose "workforce composition" requirements on statewide contractors, then these contractors will not be allowed to "carry" their own workforce with them, and will instead have to hire at least 25% of their workforce from among the limited pool of persons holding a journeyman license in that county.

Local jurisdictions counter that they are simply trying to protect their citizens by assuring that qualified persons are performing -- or at least overseeing -- the work. No one would argue that this is not a legitimate and laudable goal. However, it seems undeniable that if local jurisdictions are allowed to enforce workforce composition controls on state contractors, it also amounts to being the same thing as a requirement that state contractors hire a certain number of local tradesmen on each job. Unless a statewide journeyman license is made available, or unless local jurisdictions are compelled to accept qualifications issued by other jurisdictions, this will almost certainly be the (very predictable) result.

Both of these ideas -- statewide journeyman licensure, and "forced" reciprocity -- have been proposed by statewide contractor organizations in the past. However, such proposals have not been enacted into law.

Essentially the same provision as in this bill was passed in 1995 in HB 2721. That bill was vetoed by the Governor. In 1996, the same provisions were passed by the House as part of HB 711. The Senate took no action on that bill, and the provision therefore did not become law.

There have been two circuit court cases decided on this issue. In the *Eleventh Judicial Circuit in and for Dade County*, the case (Bradford Electric, Inc., vs. Metropolitan Dade County, Case #95-10813, decided April 29, 1996) was decided in favor of the local jurisdiction and held that local jurisdictions may impose such journeyman-on-site requirements on state certified contractors by placing such requirements in their locally adopted building code.

Another case in the *Fourth Judicial Circuit in and for Dual County*, (Florida Home Builders [and others] vs. the Florida CILB, Dade County, and Dual County, case # 96-2084, decided January 16, 1997) the court issued a final summary judgment in favor of the Florida Home Builders and against the local jurisdictions. That court held that local jurisdictions may not impose such controls over statewide contractors, even if they have included such provisions in their locally adopted building codes. That case is under appeal.

B. EFFECT OF PROPOSED CHANGES:

This bill prevents local jurisdictions from imposing workforce composition controls (i.e., requiring statewide contractors to have one or more locally licensed journeymen on each job site) on state certified contractors.

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?

Yes.

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

No.

(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?

No.

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

No.

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

Yes.

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

No.

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?

N/A

4. Individual Freedom:

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

Yes.

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

Yes, if you take the position that certified contractors presently have sole authority on how to compose their workforce.

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?

No.

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 RESEARCH:

Section 1. Amends s. 553.73, F.S., prohibiting inclusion in local building codes any provisions relating to the personnel, supervision or training of personnel, or any other professional qualification requirements relating to electrical or construction contractors or their workforce. The prohibition applies to both initial development and amendment of the code, and would have the effect of invalidating any such provisions which have previously been placed in the code.

Section 2. Provides that the act shall take effect July 1, 1997.

III. FISCAL RESEARCH & 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To some extent, this bill will reduce revenue because funds will no longer come from qualified journeymen having to obtain duplicate licenses.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Certified contractors would not have to bear the additional expense of duplicative journeyman licenses, necessitated by having to comply with different jurisdictions' journeyman-on-site requirements.

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

None.

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 to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does reduce the authority that municipalities or counties have to raise revenues in the aggregate. However, amount of money which this could cost local governments is determined to be insignificant, and therefore exempt from the constitutional prohibition.

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

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

ALLEGATION CLARIFICATIONS

This is the third year that this issue has come before the Legislature. Considerable confusion and sometimes outright misinformation has accompanied it in the past. Reduced to its essentials, the issue is basically local jurisdiction control versus certified contractor freedom from that control. To try and clear up several allegations that have been made, the following points of clarification are offered:

- 1) The provisions in this bill do not prohibit a local jurisdiction from enacting local construction licensing ordinances, local labor ordinances (such as a workforce composition requirement), or any other ordinance which local governments may now enact. It merely prohibits the placement of such ordinances in the building code (thereby having the effect of prohibiting the requirement from being applied against state certified contractors).
- 2) The bill also does not imply any interference with licensing ordinances or labor ordinances being applied as controls upon locally licensed contractors, and all such ordinances would remain valid and enforceable against locally licensed contractors, so long as the ordinances are not placed within the building code.
- 3) Finally, it is also important to note that the bill does not interfere with local government's ability to amend its building code with regard to building materials and construction methods.

What the bill does is allow state certified contractors to operate without having to comply with local ordinances which seek to have them compose their work force in a certain fashion.

THE GOVERNOR'S BUILDING CODES STUDY COMMISSION

The Governor's Building Codes Study Commission was established by Executive Order in July 1996 to study the current effectiveness of Florida's building codes system and recommend any necessary changes to that system. The Commission's work will culminate in a final report to the Governor in December of 1997. In a letter dated January 31, 1997, the Commission Chair stated that he "respectfully requests that any action on these bills or any other issues which overlap the Commission's work, be deferred until we complete our work." The letter specified SB 1246, which is the Senate companion to this bill, as one in which it was requested action be deferred. Therefore, the letter is, in effect, asking that action on this bill be postponed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Business Regulation and Consumer Affairs Committee adopted one amendment clarifying that insertion of extraneous matters into the state minimum building codes by local amendment is prohibited.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Gip Arthur

Lucretia Shaw Collins