

STORAGE NAME: h1975a.ca

DATE: April 14, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1975 (PCB BRCA 99-03)

RELATING TO: Construction Industry

SPONSOR(S): Committee on Business Regulation & Consumer Affairs; Representative Ogles and others

COMPANION BILL(S): CS/SB 2444 (s), CS/SB 1148 (c)

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS (CAC) YEAS 10 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill comprises the Department of Business and Professional Regulation's (DBPR) annual legislative package for boards and professions related to the construction industry. It includes provisions relating to building inspectors and administrators, asbestos abatement contractors, and electrical and alarm system contractors. It is primarily technical and clarifying in nature. However, it does provide new grounds for disciplining local building code administrators and inspectors.

This bill has no significant impact on state or local government, or on the private sector.

(See Section V. Amendments or Committee Substitute Changes).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

BUILDING CODE INSPECTORS AND ADMINISTRATORS

Part XII of chapter 468, F.S., establishes licensure requirements and other regulations for building code administrators, inspectors, and plans examiners. Currently, the qualification paths available for a building code inspector or plans examiner do not include a path which gives credit for technical education.

Under current law, there is no explicit requirement that the building code administrator, or any other licensee under this part, obtain a contractor's registration or certification number prior to issuing a building permit, nor are there explicit grounds for discipline if the person responsible for issuing the permit fails to do so.

TECHNICAL CROSS-REFERENCE ISSUES

Regulation of Building Code Administrators, Inspectors, and Plans Examiners is currently designated as Part XII of chapter 468, F.S. Previously, it had been designated as part XIII of that same chapter.

ASBESTOS ABATEMENT CONTRACTORS AND CONSULTANTS

The Asbestos School Hazard Abatement Reauthorization Act (ASHARA), a federal program, is not defined in Chapter 489. ASHARA has been adopted as superseding AHERA, a previous federal asbestos program.

The Asbestos Hazard Emergency Response Act of 1986 (AHERA) has been superseded by ASHARA. However, AHERA has essentially been adopted as *part* of the newer ASHARA, so references to AHERA will not necessarily be incorrect in all instances.

There are no Continuing Education (CE) requirements for licensure renewal of asbestos abatement contractors or consultants. The department indicates that CE courses are required to maintain Environmental Protection Agency (EPA) accreditation.

Chapter 469, F.S., currently requires both the asbestos contractor/supervisor course and the project designer course to meet the requirements to take the asbestos consultant examination.

There is currently no standard regarding the regulation of asbestos abatement contractors or consultants which guides allowing (or disallowing) a licensee to qualify more than one business organization. However, such a standard exists with regard to other professions, such as electrical and alarm system contractors, in part II of chapter 489, F.S.

The Joint Administrative Procedures Committee has made recommendations for standard statutory language granting rulemaking authority.

Current law requires an asbestos contractor's onsite supervisor to complete an asbestos project management and supervision course. That requirement is established in s. 469.012, F.S., by cross-reference to s.469.005(2)(a), F.S. However, the asbestos project management and supervision course was recently moved from 469.005(2)(a) to 469.005(3)(a), F.S., without changing the cross-reference.

The statute does not currently require project designers to take the 3-day project designer course.

CONSTRUCTION CONTRACTORS

The department indicates that because local jurisdictions issue local construction licenses, some local jurisdiction officials and private citizens are under the mistaken impression that such a local license makes them a "licensed" contractor. That view is in error. The chapter plainly states that to be considered lawfully entitled to act as a contractor, one must be either registered by the state, or certified by the state. The local license is simply required as a *prerequisite* for obtaining the state

registration. Simply holding that license, without obtaining the state registration, is not sufficient to lawfully practice as a contractor.

ELECTRICAL AND ALARM SYSTEM CONTRACTORS

Companies performing low voltage electrical work on telephone, computer, and cable television systems are exempt from having to have an electrical or alarm system contractor's license. However, provisions were adopted several years ago intended to prevent exempted telecommunications companies from competing with licensed electrical or alarm system contractors. The language preventing this competition limited the exemption to instances of requested extension of existing telephone service. However, this limitation could also be read to apply to the exemption for cable television work, thereby effectively eliminating the exemption for cable television work.

The Electrical Contractor Licensing Board (ECLB) has been struggling to adopt a standard that allows them to be sure that an applicant for the unlimited alarm system contractor's license has the proper experience in commercial systems. It attempted to do this through rule, but now has determined that statutory change seems advisable.

On another issue, there is some confusion as to what number of years and types of experience or education is required for licensure as an electrical speciality contractor.

On a third issue, when some persons who hold a registration obtain a statewide certification, they have been retaining their registration. There is one instance in which a person did this, and when he had his certified license suspended, he tried to go back to using his registered license in order to continue working.

Some applicants for state registration read this section as allowing an occupational license to qualify them for obtaining a state registration. The statute is not clear. However, the intent has been to require a local *professional* license, not simply a local occupational license. A local occupational license is more properly characterized as a business tax, and does not require any professional qualifications for its issuance.

In 1988, the statutory authority of registered contractors to install alarm systems, including heat and smoke detectors was deleted.

B. EFFECT OF PROPOSED CHANGES:

The bill provides a path for qualification as a building code inspector or plans examiner that gives credit for technical education. It provides that a licensee under this part may be disciplined if that person issues a building permit to a contractor without obtaining the contractor's certification or registration number.

The bill makes a technical, cross-reference change in each of those sections to reflect the fact that regulation of Building Code Administrators, Inspectors, and Plans Examiners is currently designated as Part XII of chapter 468, F.S. The bill establishes a definition for ASHARA which is Asbestos School Hazard Reauthorization Act. Also, the bill replaces, where appropriate, references of AHERA with ASHARA. This is done in order to reflect the fact that the more newly enacted ASHARA has superseded AHERA. Makes technical changes relating to rulemaking grant of authority and adding a reference to ASHARA.

The bill establishes Continuing Education requirements for licensure renewal of asbestos abatement contractors or consultants. The asbestos abatement consultant must complete a two-day course. The asbestos abatement contractor must complete a one-day course.

The bill deletes the asbestos contractor/supervisor course as a requirement for the asbestos consultant examination. The bill establishes a standard for the regulation of asbestos abatement contractors or consultants which guides allowing (or disallowing) a licensee to qualify more than one business organization. The standard, based on the capacity and intent of the licensee to supervise the various businesses the contractor qualifies, is the same as found in part II of chapter 489, F.S., regarding electrical and alarm system contractors. The bill corrects the reference establishing a requirement for an asbestos contractor's onsite supervisor to complete an asbestos project management and supervision course.

The bill requires project designers to take a minimum 3-day project designer course. The Department of Business and Professional Regulation indicated this change is needed to retain Environmental Protection Agency accreditation.

The bill clarifies that a local construction license is not sufficient to allow a person to practice contracting, and that a contractor without a state issued certificate or registration may not lawfully pull a building permit, nor may the building official lawfully issue one. It also clarifies the existing exemptions for low voltage cable TV work and low voltage telecommunications work. It does this by "disentangling" their provisions, and placing them in new paragraphs (a) and (b) under the same subsection.

The bill provides that an applicant for the unlimited alarm system contractors' license must have at least 40% of the applicant's required experience in commercial type alarm systems. It also provides that the standards for qualification, as an electrical speciality contractor, are the same as for other types of contractors under this part.

Finally, the bill provides that upon a certificate, any previously issued registration for the classification in which the certification is issued is rendered void. This section clarifies that a local *professional* license is needed as a prerequisite to obtaining a state registration.

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?

No.

(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?

No.

- 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?

No.

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

No.

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. STATUTE(S) AFFECTED:

Part XII of ch. 468, F.S., and chapters 469 and 489, F.S. Purely technical (cross reference) changes are made to chapters 20, 471, and 481, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 468.609, F.S., adding a licensure qualification path for building code inspectors and plans examiners.

Section 2. Amends s. 468.621, F.S., providing additional grounds for discipline.

Sections 3-7. Amends ss. 20.165, 471.045, 481.222, 489.109, and 489.519, F.S., making a technical, cross-reference change in each section.

Section 8. Amends s. 469.001, F.S., adding a definition.

Section 9. Amends s. 469.002, F.S., making a technical change.

Section 10. Amends s. 469.004, F.S., establishing Continuing Education (CE) requirements for licensure renewal.

Section 11. Amends s. 469.005, F.S., removing a required course for licensure applicants.

Section 12. Amends s. 469.006, F.S., establishing a standard for allowing an asbestos abatement contractor or consultant to qualify more than one business organization.

Section 13. Amends s. 469.011, F.S., making technical changes.

Section 14. Amends s. 469.012, F.S., changing training course requirements.

Section 15. Amends s. 469.013, F.S., changing training course requirements.

Section 16. Creates s. 489.13, F.S., providing explicit clarification regarding unlicensed contracting and authority to issue or receive a building permit.

Section 17. Amends s. 489.503, F.S., to clarify the existing telecommunications and cable television exemptions regarding "low voltage" work.

Section 18. Amends s. 489.511, F.S.: (1) Establishing a standard for assuring that applicants for the unlimited alarm system contractor certification have experience in commercial systems; (2) Providing clarification on how many years of experience is needed to obtain a specialty electrical contractor license; and (3) Providing that when a person obtains a certification, the person's registration in that category becomes void.

Section 19. Amends s. 489.513, F.S., clarifying that a local occupational license does amount to qualification for obtaining a state registration.

Section 20. Amends s. 489.537, F.S., allowing registered contractors to install heat and smoke detectors in residential buildings.

Section 21. Provides an effective date of July 1, 1999.

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:

None.

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:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

This section allows registered contractors to install heat and smoke detectors in residential buildings.

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

E. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend money or take action that requires the expenditure of money.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

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

G. 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.

IV. COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Business Regulation and Consumer Affairs Committee adopted four amendments on March 11, 1999. Those four amendments made technical or glitch-fixing corrections, including adding a new section to the bill clarifying the existing telecommunications and cable TV low voltage exemption from licensure requirements under part II of chapter 489, F.S. The amendments were incorporated into PCB BRCA 99-03.

On April 14, 1999, the House Community Affairs Committee adopted four amendments to HB 1975, numbered as 1, 2a, 3, and 4. These amendments are traveling with the bill. The amendments do the following:

Amendment #1: Clarifies that a local building department can issue a building permit to a locally licensed or certified contractor for an activity which does not require licensure under certain circumstances.

Amendment #2a: Provides for contractor's rights under circumstances where the contractor relies on the building code interpretation of a building official.

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Amendment #3: Clarifies a provision relating to companies certified pursuant to chapter 364, F.S.

Amendment #4: Clarifies that a registered contractor who practices outside the geographical scope of their registration, thereby committing an unlicensed activity, is susceptible to the penalties of chapter 489.

VI. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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