

**STORAGE NAME:** h2015a.ca

**DATE:** April 15, 1999

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

**BILL #:** HB 2015 (PCB BRCA 99-04)

**RELATING TO:** Contracting

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

**COMPANION BILL(S):** CS/SB 2268(s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS (CAC) YEAS 8 NAYS 0
  - (2) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0
  - (3) GOVERNMENTAL RULES AND REGULATIONS (PRC)
  - (4) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
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**I. SUMMARY:**

The bill includes provisions:

- (1) Establishing a grandfathering path for local construction or electrical contractors to become licensed statewide;
- (2) Providing the Construction Industry Licensure Board the authority to establish the allowable job scopes of local licenses which it registers, in order to insure uniformity between the job scopes of the same license issued by different jurisdictions. A "job scope" is simply the listing of activities which the licensee performs and which require licensure. Job scopes are typically set forth in the definition of the license.
- (3) Mandating a study to determine the fiscal impact on local jurisdictions, should statewide licensure be established as the sole licensure option.
- (4) Providing that a contractor who has been subjected to an unlawful levy of an occupational license tax may initiate a court challenge to the local government's actions. If the contractor prevails, he or she is entitled to recover its reasonable attorney's fees.

The bill has no significant fiscal impact on state government or the private sector. Local jurisdictions could lose some revenue if a large number of registered contractors choose the grandfathering path allowing them to become state certified. However, since such a change in licensure status would also pass the responsibility for disciplining those contractors from the local jurisdictions to the state, local jurisdictions should experience an accompanying, and probably equivalent, reduction in disciplinary expenses.

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

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

This bill is the result of four workshops conducted on the issue of uniform licensure. Uniform licensure refers to an effort to change Florida's two-tier (state *and* local) system of construction and electrical contractor regulation to a single tier (state) system of regulation, *as far as the categories regulated under chapter 489, F.S., are concerned.*

Points to understand about the regulation of construction and electrical contractors in Florida:

- Presently, construction contractor (part I of ch. 489, F.S.) and electrical contractor (part II of ch. 489, F.S.) licensure requirements can be satisfied by *either* obtaining local licensure (which is then registered with the state) or statewide licensure (certification, also issued by the state).
- This current system is referred to as "two tier" licensure.
- "Single tier" refers to eliminating local licensure in the construction categories (general, residential, roofing, plumbing, etc.) regulated under chapter 489, F.S., and leaving statewide certification as the only construction or electrical contracting license available.
- Most plans to move to single tier envision allowing existing licensees the option of keeping their registered local license if they wish, or of availing themselves of a "grandfathering" path that would allow them to move to state certification.
- Registered contractors can operate only in those local jurisdictions which have issued them a local license, or in jurisdictions which have reciprocated with the local jurisdiction originally issuing the license. The local jurisdiction that issued the local license has initial authority to conduct discipline. They can investigate the case, levy penalties against the local license, and recommend that the Construction Industry Licensing Board (CILB) act against the state-issued registration.
- Certified contractors can operate statewide. Local jurisdictions are prohibited from exercising regulatory control over them, and the state CILB has sole disciplinary authority over them.
- Most certified contractors simply do not want local jurisdictions to exercise any disciplinary control over them; they fear bias against outside contractors in favor of locally licensed contractors.
- Contractors allege a variety of problems with the present system, and everyone agrees that it is, at the least, confusing.

At the conclusion of the workshops, it was determined that certain important data is needed before the full plan can be completed.

On a separate issue, s. 205.065, F.S. was created in 1992. The section provided that local jurisdictions could not charge businesses regulated under the Department of Business and Professional Regulations (DBPR) an occupational license tax simply because the business was performing work in that jurisdiction. Instead, the ability to charge an occupational license tax was to be conditioned on having a place of business located within that jurisdiction. This means that an electrical contractor, for instance, located in Broward County, could not be charged an occupational license tax by Dade County simply because the contractor performs work in that jurisdiction.

### B. EFFECT OF PROPOSED CHANGES:

The bill establishes a certification grandfathering path for registered contractors, a provision to ensure uniformity of job scopes between different local jurisdictions, and a study of the impact single tier licensing would have on local jurisdictions. Specifically: The bill provides that the job scopes for local licensure categories which the CILB registers, but which do not have a corresponding category in chapter 489, F.S., shall be subject to definition by the CILB, in order to impose uniformity upon the different job scopes created by different local jurisdictions, for the same license.

A path is provided for existing registered licensees to be “grandfathered” into statewide certification, if they have: (1) a registered local license; (2) taken an examination similar to the state certification examination; and (3) five years experience as a contractor, or building inspector or administrator, free of serious discipline.

A study is required to be made by the Legislative Committee on Intergovernmental Relations (LCIR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA), to gather and analyze data on the fiscal impact on local governments, and determine if uniform, state-issued licensure ought to be enacted.

Finally, the bill provides that a contractor who has been subjected to an unlawful levy of an occupational license tax may challenge the local government’s actions, and if the contractor prevails, is entitled to recover his or her reasonable attorney’s fees.

**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:

Chapters 489, and 205, F.S.

E. SECTION-BY-SECTION ANALYSIS:

**Sections 1 and 2.** Amend 489.117 and 489.513, F.S., to impose uniformity upon the different job scopes created by different local jurisdictions, for the same license.

**Sections 3 and 4.** Amend s. 489.118 and 489.514, F.S., to provide a certification grandfathering path for registered contractors.

**Section 5.** Commissions a study on the potential fiscal impact on local jurisdictions of single-tier licensure.

**Section 6.** Amends s. 205.065, F.S., to provide that any contractor who has been subjected to an unlawful levy of an occupational license tax may challenge the local government's actions, and if the contractor prevails, is entitled to recover its reasonable attorney's fees.

**Section 7.** Provides an effective date of July 1, 1999, except for section 5, which shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. The department could have increased disciplinary responsibilities, and associated costs.

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:

Local jurisdictions could lose some revenue if a large number of registered contractors choose to avail themselves of the grandfathering path allowing them to become state certified. However, since such a change in licensure status would also pass the responsibility for disciplining those contractors from the local jurisdictions to the state, local jurisdictions might experience an accompanying, and possibly equivalent reduction in disciplinary expenses.

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:

Contractors who obtain certification through the grandfathering provision will be able to practice their profession throughout Florida, instead of being limited to the local jurisdiction which issued their local license. Also, they will have one license to pay for (state certification), rather than two (local license and state registration).

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

See above.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

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

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1999, the House Community Affairs Committee adopted four amendments to HB 2015, numbered as amendments 1, 2, 3a, and 4. The amendments are traveling with the bill and do the following:

**Amendment #1** entitles the **prevailing** party to recover reasonable attorney's fees in a legal challenge relating to unlawful payment of an occupational license tax by a properly licensed contractor.

**Amendment #2** clarifies that the Construction Industry Licensure Board must establish, **by rule**, the allowable job scopes of local licenses to insure uniformity between job scopes.

**Amendment #3a** provides for contractor's rights where the contractor relies on the building code interpretation of a building official.

**Amendment #4** changes the effective date of the bill to October 1, 1999, unless otherwise provided in the bill. This change accommodates local governments' fiscal budget calendar and promotes government efficiency.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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