

**STORAGE NAME:** h0955.brc

**DATE:** March 15, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION AND CONSUMER AFFAIRS  
ANALYSIS**

**BILL #:** HB 955

**RELATING TO:** Contracting

**SPONSOR(S):** Representative Lacasa

**COMPANION BILL(S):** SB 134(c)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
  - (2) COMMUNITY AFFAIRS
  - (3) GENERAL GOVERNMENT APPROPRIATIONS
  - (4)
  - (5)
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**I. SUMMARY:**

This bill makes several changes to state construction and electrical contractor regulation, by :

- 1) Establishing "supervision of field work" as an element of the job scope (the list of activities requiring licensure) of all construction contractors;
- 2) Defining "field work" as being performance of those activities which occur on the job site, and which also require construction contractor licensure;
- 3) Providing that the Construction Industry Licensing Board (CILB), or the Electrical Contractors Licensing Board (ECLB), may issue a statewide journeyman certificate to any person who meets the existing statutory qualifications necessary to receive reciprocity between local jurisdictions;
- 4) Establishing that the CILB or ECLB may charge a biennial journeyman certification fee of up to \$100, and an application fee of up to \$50;
- 5) Establishing that a local jurisdiction may discipline a journeyman certificateholder for misconduct or negligence, related to the journeyman's trade; and
- 6) Providing that a person fraudulently representing himself or herself as a journeyman commits a felony of the third degree.

The fiscal impact on state or local governments is indeterminate. The fiscal impact on the private sector should be positive, but is not readily quantifiable.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

*GENERAL INFORMATION ON CONTRACTOR REGULATION*

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 in Florida. A contractor may obtain either a state certification, which authorizes practice in all jurisdictions across Florida, or the person 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 the person the local license. Certification requires four years experience and the passage of an examination.

A certified contractor is not subject to local jurisdiction licensure qualification controls. The local jurisdiction must accept the state-issued certification as sufficient to practice. Local jurisdictions are also unable to impose disciplinary control over certified contractors, except that they may withhold permitting privileges (the ability to pull a permit to conduct work) if they find the contractor guilty of fraud or a willful building code violation.

In contrast, local jurisdictions have broad authority to determine the qualifications for practice of those who seek *local* licensure (the first and essential step in becoming registered). They also have broad, and relatively unfettered, authority to discipline these locally licensed contractors. Once the local jurisdiction has imposed a penalty against the local license, they forward any recommendation for a suspension or revocation of the registration to the CILB. A suspension or revocation of the registration has the effect of invalidating all of the various licenses the registered contractor holds. Without the action by the CILB against the registration, the licensee would be free to continue work in any other jurisdiction in which the person holds a local license. Preventing the contractor from doing so is the entire purpose of the registration program.

*JOURNEYMEN*

An enduring controversy relating to journeymen and the issue of on-site supervision began in Dade County on April 4, 1995. On that date, the Dade County Commission placed its existing construction contractor and electrical contractor regulatory ordinance (chapter 10) into its building code. By making this change, Dade County was seeking to impose local control over state certified contractors, with specific intent to assure that all contractors, both certified and registered, would have to comply with the provision in its ordinance requiring the contractor to have a licensed journeyman on every job-site.

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 incorporate a journeyman license option.

Since the state does not license journeymen, the portability of the locally-issued journeyman license had been an acute concern of contractors. At the time this controversy arose, a person who might be a highly-qualified and licensed journeyman in one jurisdiction may not have had that license accepted in another jurisdiction. Industry sources alleged that this non-reciprocity was almost always the case. At that time, Dade County did not accept journeyman licenses from any county other than Broward.

Over a period of time, two approaches were proposed by contractor organizations to address the portability issue: either statewide journeyman licensure, or forced reciprocity. Statewide journeyman licensure envisions the CILB issuing a single license which must be accepted in all jurisdictions, essentially a license analogous to the existing statewide certification for contractors. Forced reciprocity amounts to establishing standards which, if the existing journeyman licensees meet them, force local jurisdictions to accept the journeyman license issued by another jurisdiction.

However in 1997, two years after the original action by Dade County precipitating the controversy, both of these issues -- local government's ability to impose journeyman requirements on the workforce of a certified contractor via the building code, and the portability of existing journeyman licenses -- were resolved. HB 1441 (1997) provided that local jurisdictions could not gain workforce control over certified contractors by virtue of placing such ordinances in their building codes. HB 1197 (1997) established forced reciprocity, requiring local jurisdictions to accept the journeyman license issued by other local jurisdictions, provided that such license was issued pursuant to stipulated criteria and standards.

Since 1997, advocates of the need to have qualified supervision on the job site when construction work is being performed have continued to try various means to accomplish their goals. One court case, Construction Industry Licensing Board, et al, v. Florida Home Builders Assn., Inc., et al. (1st District Court of Appeal, #'s 98-895, 98-920), is still under appeal. The central question in that appeal is whether certified contractors have a duty to comply with local ordinances, such as those which require on-site supervision.

**B. EFFECT OF PROPOSED CHANGES:**

This bill has the effect of explicitly requiring the contractor to perform all on-site supervision work for any activity requiring licensure. It also establishes a statewide certification for journeymen, including an application fee and biennial certification fee. It provides that local jurisdictions can discipline a journeyman certificateholder for misconduct or negligence related to the journeyman's trade. And, finally, it provides that a person fraudulently representing himself or herself as a journeyman commits a felony of the third degree.

**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. The bill gives the DBPR the responsibility to assure that licensed contractors are physically on the job site providing supervision. It also provides that the DBPR shall issue a statewide journeyman certification to qualified applicants who have paid the appropriate fees. Disciplinary activity and fee responsibilities often require promulgation of rules.

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

Yes. See above.

(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. Journeymen seeking a statewide license will have that option, but are not *required* to pay any additional fees in order to perform activities they are presently able to do.

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

No.

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

Indeterminate. The option of a statewide journeyman license may allow a journeyman to practice across the state at less cost than having to seek numerous separate licenses or reciprocity accommodations among numerous local jurisdictions.

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?

Yes. Those who seek statewide licensure as a journeyman will do so only if they perceive that the statewide license will provide them a benefit. As such, they are required to pay an application fee and biennial certification fee.

4. Individual Freedom:

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

Yes. The bill allows persons wishing to practice statewide as a journeyman the option of seeking a single license, and not having to apply and negotiate reciprocity agreements with the myriad of local jurisdictions.

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

Yes, the bill does create new government interference with a presently lawful activity. Presently, it is lawful for the contractor to provide supervision without being on-site. This bill will make such a supervision procedure unlawful.

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:

Sections 489.105, 489.1455, and 489.5335, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 489.105, F.S., to provide an additional job scope responsibility for contractors.

Section 2-3. Amend ss. 489.1455, and 489. 5335, F.S., to establish a statewide certification for journeymen; to provide that certified journeymen can be disciplined for misconduct or negligence related to their practice as journeymen; and to provide that fraudulently representing yourself as a licensed journeyman is a third degree felony.

Section 4. 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:

The DBPR will have greater responsibilities, and greater expenses, from being required to open disciplinary cases against contractors who attempt to exercise their on-site supervision responsibilities from off-site.

The DBPR will incur an indeterminate amount of expense, and receive an indeterminate amount of revenue, from its new responsibility for issuing journeyman certificates.

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:

If a significant number of locally licensed journeymen choose to obtain the statewide certificate, local jurisdictions will lose revenue because those journeymen will no longer be required to obtain and renew the locally issued journeyman license.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Contractors may find being required to provide on-site supervision more difficult and inconvenient at best, and more expensive at worst. Contractors with multiple jobs occurring at the same time may find compliance impossible.

2. Direct Private Sector Benefits:

The statewide journeyman certification provision should provide journeyman with a more useful license, at a lower cost, than the alternative of pursuing multiple local journeyman licenses or multiple reciprocity accommodations.

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 authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

The interested parties on both sides of this issue recognize that having and maintaining a qualified supervisor on each job site may be difficult for the contractor. However, the proponents of this bill firmly believe that such a requirement will produce better work and safer structures.

The bill has a number of flaws. A principle flaw is that it places the requirement for on-site supervision only in part I of ch. 489, F.S. Therefore, the trade most associated with journeymen (electrical contracting) is not covered. A detailed litany of the flaws will not be made here, since it is the sponsor's intent to offer a "strike everything" amendment to address the flaws, as well as somewhat alter the approach of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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