

By Representative Green

1                                   A bill to be entitled  
 2           An act relating to engaging in contracting as a  
 3           business organization; amending s. 489.119,  
 4           F.S.; deleting provisions relating to obtaining  
 5           a certificate of authority to engage in  
 6           contracting as a business organization through  
 7           a qualifying agent; amending ss. 287.055 and  
 8           489.127, F.S., to conform; providing an  
 9           effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13           Section 1. Section 489.119, Florida Statutes, is  
 14 amended to read:

15           489.119 Sole proprietorships; certification ~~Business~~  
 16 ~~organizations; qualifying agents.--~~

17           (1) If an individual proposes to engage in contracting  
 18 in the individual's own name, or a fictitious name where the  
 19 individual is doing business as a sole proprietorship,  
 20 registration or certification may be issued only to that  
 21 individual.

22           ~~(2) If the applicant proposes to engage in contracting~~  
 23 ~~as a business organization, including any partnership,~~  
 24 ~~corporation, business trust, or other legal entity, or in any~~  
 25 ~~name other than the applicant's legal name or a fictitious~~  
 26 ~~name where the applicant is doing business as a sole~~  
 27 ~~proprietorship, the business organization must apply for a~~  
 28 ~~certificate of authority through a qualifying agent and under~~  
 29 ~~the fictitious name, if any.~~

30           ~~(a) The application for a certificate of authority~~  
 31 ~~must state the name of the partnership and of its partners.~~

1 ~~the name of the corporation and of its officers and directors~~  
2 ~~and the name of each of its stockholders who is also an~~  
3 ~~officer or director; the name of the business trust and its~~  
4 ~~trustees; or the name of such other legal entity and its~~  
5 ~~members; and must state the fictitious name, if any, under~~  
6 ~~which the business organization is doing business.~~

7 ~~1. The application for primary qualifying agent must~~  
8 ~~include an affidavit on a form provided by the board attesting~~  
9 ~~that the applicant has final approval authority for all~~  
10 ~~construction work performed by the entity and that the~~  
11 ~~applicant has final approval authority on all business~~  
12 ~~matters, including contracts, specifications, checks, drafts,~~  
13 ~~or payments, regardless of the form of payment, made by the~~  
14 ~~entity, except where a financially responsible officer is~~  
15 ~~approved.~~

16 ~~2. The application for financially responsible officer~~  
17 ~~must include an affidavit on a form provided by the board~~  
18 ~~attesting that the applicant's approval is required for all~~  
19 ~~checks, drafts, or payments, regardless of the form of~~  
20 ~~payment, made by the entity and that the applicant has~~  
21 ~~authority to act for the business organization in all~~  
22 ~~financial matters.~~

23 ~~3. The application for secondary qualifying agent must~~  
24 ~~include an affidavit on a form provided by the board attesting~~  
25 ~~that the applicant has authority to supervise all construction~~  
26 ~~work performed by the entity as provided in s. 489.1195(2).~~

27 ~~(b) The applicant must furnish evidence of statutory~~  
28 ~~compliance if a fictitious name is used, the provisions of s.~~  
29 ~~865.09(7) notwithstanding.~~

30 ~~(c) A joint venture, including a joint venture~~  
31 ~~composed of qualified business organizations, is itself a~~

1 ~~separate and distinct organization that must be qualified and~~  
2 ~~obtain a certificate of authority in accordance with board~~  
3 ~~rules.~~

4 ~~(d) A certificate of authority must be renewed every 2~~  
5 ~~years. If there is a change in any information that is~~  
6 ~~required to be stated on the application, the business~~  
7 ~~organization shall, within 45 days after such change occurs,~~  
8 ~~mail the correct information to the department.~~

9 ~~(3)(a) The qualifying agent shall be certified or~~  
10 ~~registered under this part in order for the business~~  
11 ~~organization to be issued a certificate of authority in the~~  
12 ~~category of the business conducted for which the qualifying~~  
13 ~~agent is certified or registered. If any qualifying agent~~  
14 ~~ceases to be affiliated with such business organization, he or~~  
15 ~~she shall so inform the department. In addition, if such~~  
16 ~~qualifying agent is the only certified or registered~~  
17 ~~contractor affiliated with the business organization, the~~  
18 ~~business organization shall notify the department of the~~  
19 ~~termination of the qualifying agent and shall have 60 days~~  
20 ~~from the termination of the qualifying agent's affiliation~~  
21 ~~with the business organization in which to employ another~~  
22 ~~qualifying agent. The business organization may not engage in~~  
23 ~~contracting until a qualifying agent is employed, unless the~~  
24 ~~executive director or chair of the board has granted a~~  
25 ~~temporary nonrenewable certificate or registration to the~~  
26 ~~financially responsible officer, the president, a partner, or,~~  
27 ~~in the case of a limited partnership, the general partner, who~~  
28 ~~assumes all responsibilities of a primary qualifying agent for~~  
29 ~~the entity. This temporary certificate or registration shall~~  
30 ~~only allow the entity to proceed with incomplete contracts.~~  
31 ~~For the purposes of this paragraph, an incomplete contract is~~

1 ~~one which has been awarded to, or entered into by, the~~  
2 ~~business organization prior to the cessation of affiliation of~~  
3 ~~the qualifying agent with the business organization or one on~~  
4 ~~which the business organization was the low bidder and the~~  
5 ~~contract is subsequently awarded, regardless of whether any~~  
6 ~~actual work has commenced under the contract prior to the~~  
7 ~~qualifying agent ceasing to be affiliated with the business~~  
8 ~~organization.~~

9       ~~(b) The qualifying agent shall inform the department~~  
10 ~~in writing when he or she proposes to engage in contracting in~~  
11 ~~his or her own name or in affiliation with another business~~  
12 ~~organization, and he or she or such new business organization~~  
13 ~~shall supply the same information to the department as~~  
14 ~~required of applicants under this part.~~

15       ~~(c) Upon a favorable determination by the board, after~~  
16 ~~investigation of the financial responsibility, credit, and~~  
17 ~~business reputation of the qualifying agent and the new~~  
18 ~~business organization, the department shall issue, without an~~  
19 ~~examination, a new certificate of authority in the business~~  
20 ~~organization's name.~~

21       ~~(4) Disciplinary action against a business~~  
22 ~~organization holding a certificate of authority shall be~~  
23 ~~administered in the same manner and on the same grounds as~~  
24 ~~disciplinary action against a contractor. The board may deny~~  
25 ~~the certification of any person cited in subsection (2) if the~~  
26 ~~person has been involved in past disciplinary actions or on~~  
27 ~~any grounds for which individual certification can be denied.~~

28       ~~(5) When a certified qualifying agent, on behalf of a~~  
29 ~~business organization, makes application for an occupational~~  
30 ~~license in any municipality or county of this state, the~~  
31 ~~application shall be made with the tax collector in the name~~

1 ~~of the business organization and the qualifying agent; and the~~  
2 ~~license, when issued, shall be issued to the business~~  
3 ~~organization, upon payment of the appropriate licensing fee~~  
4 ~~and exhibition to the tax collector of a valid certificate for~~  
5 ~~the qualifying agent and a valid certificate of authority for~~  
6 ~~the business organization issued by the department, and the~~  
7 ~~state license numbers shall be noted thereon.~~

8 ~~(6)(a) Each registered or certified contractor shall~~  
9 ~~affix the number of his or her registration or certification~~  
10 ~~to each application for a building permit and on each building~~  
11 ~~permit issued and recorded. Each city or county building~~  
12 ~~department shall require, as a precondition for the issuance~~  
13 ~~of the building permit, that the contractor taking out the~~  
14 ~~permit must provide verification giving his or her~~  
15 ~~Construction Industry Licensing Board registration or~~  
16 ~~certification number.~~

17 ~~(b) The registration or certification number of each~~  
18 ~~contractor or certificate of authority number for each~~  
19 ~~business organization shall appear in each offer of services,~~  
20 ~~business proposal, bid, contract, or advertisement, regardless~~  
21 ~~of medium, as defined by board rule, used by that contractor~~  
22 ~~or business organization in the practice of contracting.~~

23 ~~(c) If a vehicle bears the name of a contractor or~~  
24 ~~business organization, or any text or artwork which would lead~~  
25 ~~a reasonable person to believe that the vehicle is used for~~  
26 ~~contracting, the registration or certification number of the~~  
27 ~~contractor or certificate of authority number of the business~~  
28 ~~organization must be conspicuously and legibly displayed with~~  
29 ~~the name, text, or artwork. Local governments may also~~  
30 ~~require that locally licensed contractors must also display~~  
31 ~~their certificate of competency or license numbers. Nothing~~

1 ~~in this paragraph shall be construed to create a mandatory~~  
2 ~~vehicle signage requirement.~~

3 ~~(d) For the purposes of this part, the term~~  
4 ~~"advertisement" does not include business stationery or any~~  
5 ~~promotional novelties such as balloons, pencils, trinkets, or~~  
6 ~~articles of clothing.~~

7 ~~(e) The board shall issue a notice of noncompliance~~  
8 ~~for the first offense, and may assess a fine or issue a~~  
9 ~~citation for failure to correct the offense within 30 days or~~  
10 ~~for any subsequent offense, to any contractor or business~~  
11 ~~organization that fails to include the certification,~~  
12 ~~registration, or certificate of authority number as required~~  
13 ~~by this part when submitting an advertisement for publication,~~  
14 ~~broadcast, or printing or fails to display the certification,~~  
15 ~~registration, or certificate of authority number as required~~  
16 ~~by this part.~~

17 ~~(7) Each qualifying agent shall pay the department an~~  
18 ~~amount equal to the original fee for a certificate of~~  
19 ~~authority of a new business organization. If the qualifying~~  
20 ~~agent for a business organization desires to qualify~~  
21 ~~additional business organizations, the board shall require him~~  
22 ~~or her to present evidence of ability and financial~~  
23 ~~responsibility of each such organization. The issuance of~~  
24 ~~such certificate of authority is discretionary with the board.~~

25 Section 2. Paragraph (h) of subsection (2) of section  
26 287.055, Florida Statutes, is amended to read:

27 287.055 Acquisition of professional architectural,  
28 engineering, landscape architectural, or surveying and mapping  
29 services; definitions; procedures; contingent fees prohibited;  
30 penalties.--

31 (2) DEFINITIONS.--For purposes of this section:

1 (h) A "design-build firm" means a partnership,  
2 corporation, or other legal entity that+

3 ~~1. Is certified under s. 489.119 to engage in~~  
4 ~~contracting through a certified or registered general~~  
5 ~~contractor or a certified or registered building contractor as~~  
6 ~~the qualifying agent; or~~

7 ~~2.~~ is certified under s. 471.023 to practice or to  
8 offer to practice engineering; certified under s. 481.219 to  
9 practice or to offer to practice architecture; or certified  
10 under s. 481.319 to practice or to offer to practice landscape  
11 architecture.

12 Section 3. Paragraph (g) of subsection (1) of section  
13 489.127, Florida Statutes, is amended to read:

14 489.127 Prohibitions; penalties.--

15 (1) No person shall:

16 (g) Operate a business organization engaged in  
17 contracting after 60 days following the termination of its  
18 only qualifying agent without designating another primary  
19 qualifying agent, except as provided in s. ss. 489.119 and  
20 489.1195;

21  
22 For purposes of this subsection, a person or business  
23 organization operating on an inactive or suspended  
24 certificate, registration, or certificate of authority is not  
25 duly certified or registered and is considered unlicensed. An  
26 occupational license certificate issued under the authority of  
27 chapter 205 is not a license for purposes of this part.

28 Section 4. This act shall take effect upon becoming a  
29 law.

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HOUSE SUMMARY

Deletes provisions relating to obtaining a certificate of authority to engage in contracting as a business organization through a qualifying agent.