

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Regulated Industries Committee

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BILL: SB 1212

SPONSOR: Senator Bennett

SUBJECT: Construction Contracting

DATE: March 16, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	<b>Pre-meeting</b>
2.			GA	
3.				
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5.				
6.				

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## I. Summary:

This bill amends s. 489.113, F.S., to provide that a general contractor shall not be required to subcontract the construction of the main sanitary sewer collection system, the storm collection system, and the water distribution system on new site development work, site redevelopment work, mobile home parks, and commercial properties. It deletes the provision that permitted general contractors to perform any services, on public or private property, that an underground utility and excavation contractor was licensed to perform.

The bill provides a grandfathering section that permits business organizations qualified as a certified general contractor to designate a certified general contractor as a qualifying agent to perform underground utility and excavation contracting if they:

- have at least 5 years experience in sewer, water, and storm sewer systems, at least 2 years of which must have been in a supervisory capacity with qualified business entity;
- are 18 years of age; and
- are employees of, or have an ownership interest in that business entity.

This bill substantially amends section 489.113 of the Florida Statutes and creates section 489.1185 of the Florida Statutes.

## II. Present Situation:

The Construction Industry Licensing Board (CILB) is responsible for licensing and regulation of state construction contractors, as governed by ch. 489, F.S. The Department of Business and Professional Regulation (department) provides support functions to the CILB, including

processing of licensure applications, investigation of disciplinary cases, and prosecution of disciplinary matters.

The categories of contractors are defined under s. 489.105, F.S. A general contractor is defined as a contractor whose services are unlimited, except as otherwise expressly provided in s. 489.113, F.S. Prior to 2003, s. 489.113(3)(d), F.S., provided that a general contractor was not required to subcontract the construction of the main sanitary sewer collection system, the storm collection system, and the water distribution system on new site development work, site redevelopment work, mobile home parks, and commercial properties. Continuation of utility lines from the mains to the buildings was excluded.

The Office of the Attorney General, as counsel to the Constructing Industry Licensing Board, issued an informal opinion letter to attendees at a CILB meeting who questioned the ability of the general contractor to perform underground utility work on a public works project along a public right-of-way. The opinion stated that work that is on the public-right-of-way, was beyond the scope of work of a general contractor and it had to be subcontracted to an underground utility contractor.<sup>1</sup>

In 2003, s. 489.113, F.S., was amended to provide that a general contractor could perform any of the services, on public or private property, for which an underground utility and excavation contractor's license was required.<sup>2</sup>

"Underground utility and excavation contractor" is defined as a contractor whose scope of work includes the installation and repair, on public or private property, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems.<sup>3</sup>

Section 489.119, F.S., provides that any business organization other than an individual licensee doing business in his/her own name or as a sole proprietorship doing business under a fictitious name, must apply for a certificate of authority through a licensed qualifying agent. The qualifying agent is the person who holds a contractor's license and is responsible for the actions of the business organization.

### **III. Effect of Proposed Changes:**

Section 489.113(3)(d), F.S., is amended to reflect the wording of the section prior to the changes made in the 2003 Legislative Session. The bill provides that a general contractor shall not be required to subcontract the construction of the main sanitary sewer collection system, the storm collection system, and the water distribution system on new site development work, site redevelopment work, mobile home parks, and commercial properties.

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<sup>1</sup> Letter to Jimmy and Stacey Worth, July 29, 2002, Office of the Attorney General.

<sup>2</sup> Chapter 2003-257 L.O.F.

<sup>3</sup> Section 489.105(3)(n), F.S.

The bill creates a s. 489.1185, F.S., that allows business organizations with a valid certificate of authority, that is not qualified by a certified underground utility and excavation contractor, but is qualified by a certified general contractor as of January 1, 2005, to designate one qualifying agent for certification as an underground utility and excavation contractor if that person:

- is certified as a general contractor pursuant to this part.
- has at least 5 years experience in sewer, water, and storm sewer systems, at least 2 years of which must have been in a supervisory capacity with qualified business entity.
- is at least 18 years of age.
- is an employee of, or has an ownership interest in that business entity.

The board is required to issue, a certificate, without examination, in the category of underground utility and excavation contractor if the applicant has completed, prior to April 1, 2006, a completed application with the \$100 fee, a certification fee of \$100, and unlicensed activity fee of \$5 and a \$4 renewal fee as required under s. 489.109, F.S., provided the applicant:

- has been properly designated as a qualifying agent under this section and;
- has not had a registration or certificate that was issued by the board suspended, revoked, or relinquished in lieu of further disciplinary action;
- does not have a disciplinary case pending before the board; or
- has not been convicted of a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.

According to representatives for the Associated General Contractors, this bill will limit competition on public works projects for work done in the public right-of-way. For smaller general contractors, this will also mean additional costs on small projects which will require that the general contractor hire an underground contractor whereas previously, a plumbing subcontractor, or an electrician or general contractor could perform the work.

According to representatives from the Underground Utility Contractors, the tests given by the CILB to general contractors and underground utility contractors are significantly different in the area of testing for underground utility work and therefore the scope of work for general contractors should be limited to the scope that was provided in this bill.

According to representatives from the Associated Builders and Contractors, before contractors became specialized, general contractors did underground utility work. The representative stated that this bill will decrease competition in the industry because there will be fewer people to do the work.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

According to the department, the bill raises a concern regarding the Equal Protection clause in that it draws a distinction between certified licensees who qualify a business and licensees operating as individuals or sole proprietorships.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the department, there are approximately 1,740 certified general contractors licensed as of January 1, 2005, who are qualifying agents for construction companies. If all the current eligible licensees apply for the underground utility license during the nine month period, the revenue generated for the first two fiscal years will be \$363,660, per year. The same revenue is anticipated to be received in FY 2005-06 since the renewal period will occur in FY 2006-07.

The fees are based on the following:

Application/License Fee	\$200.00
Unlicensed Activity Fee	\$ 5.00
Building Code Fee	\$ 4.00
<b>Total</b>	<b>\$209.00<sup>4</sup></b>

The department states that the estimated operating costs of \$70,044 during FY 2005-06 would be non-recurring to handle the initial general contractor licensees. This will provide two OPS staff in the Central Intake Unit at a cost of \$30,989, and one OPS staff in the Central Contact Center of \$15, 494 for nine months. License system modification costs of \$15,000 and system license maintenance costs of \$8,561.

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<sup>4</sup> The department notes that under current department fee structure and s. 489.109, F.S., any other category of certified license would cost \$309.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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