

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1351 Construction Contracting  
**SPONSOR(S):** Reagan and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1894

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston	Liepshutz
2) Commerce Council			
3) _____			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Contractors must either be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only).

Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are "owners of property....when building one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings [under certain circumstances]..."

Various unlicensed activity provisions and penalties apply to construction contracting.

The provisions of the bill are designed to allow a contractor to be exempt from certain construction licensure requirements, and therefore, would not be considered unlicensed, when contracting with an owner of property and the owner is acting in the capacity of the lawful [statutorily allowed] supervisor of the project.

**Current law provides** "a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered"....**the bill adds** "or under the supervision of the owner of the property who is acting as his or her own contractor."

**Current law provides** "a person "may perform specialty contracting services for the construction, remodeling, repair, or improvement of single-family residences without obtaining a local professional license if such person is under the supervision of a certified or registered general, building, or residential contractor"....**the bill adds** "or is under the supervision of the owner of the property who is acting as his or her own contractor."

The bill is not anticipated to have a significant fiscal impact on state or local government.

The effective date of the bill is July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Promote personal responsibilities - The bill expands opportunities for property owners to improve their facilities under certain circumstances.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Construction contracting is regulated under part I of chapter 489, F.S. Construction contractors are regulated by the CILB within the DBPR. With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified by or registered with the CILB. Certification allows an individual to practice contracting in any jurisdiction in the state. A "certificate" may be issued to a person who makes application, shows appropriate education and experience and passes a state examination. "Registration" allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. The registration is issued by the DBPR upon proof of local licensure. Proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists.

The CILB is statutorily divided into two divisions, I and II. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II contractors under the CILB, include roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, underground utility, and specialty contractors.

The "scope of work" for which licensure is required is specified in statute by definition. Each definition of the various professions is known as the "practice act" for that profession and establishes the guidelines for the individual practitioners.

Construction contracting essentially means building or altering a structure, for compensation. Section 489.115, F.S., provides that no person may engage in the business of contracting in the state without first being certified or registered in one or more of the defined contracting categories. The reference to the term license is often statutorily used interchangeably with the terms certificate or registration.

Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are

owners of property....when building one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$25,000, on such property for the occupancy or use of such owner and not offered for sale or lease....

The residential exemption allows an unlimited cost of construction for residential property and the commercial exemption caps commercial costs at \$25,000.

Unlicensed construction contracting, as generally understood, is actually a set of specific violations set forth as paragraphs under s. 489.127(1), F.S., that provides, in part, that no person shall:

- engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority; and

- commence or perform work for which a building permit is required pursuant to part VII of chapter 553, F.S., without such building permit being in effect; or
- willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Among these powers is the authority to enforce unlicensed activity.

The provisions of s. 489.128, F.S., also address unlicensed activity. It provides, in part, that a construction contract may be rendered unenforceable for construction performed by an unlicensed person. A claim against a lien or bond would not exist for the unlicensed contractor for any labor, services, or materials that may have been provided under the contract.

Additionally, s. 713.02, F.S., relating to liens generally, specifies that a lien shall not exist against a contractor, subcontractor, or sub-subcontractor who is unlicensed pursuant to the provisions of s. 489.128, F.S.

#### Effect of proposed changes

The provisions of the bill are designed to allow a contractor to be exempt from certain construction licensure requirements, and therefore, would not be considered unlicensed, when contracting with an owner of property and the owner is acting in the capacity of the lawful [statutorily allowed] supervisor of the project.

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#### C. SECTION DIRECTORY:

Section 1. Amends s. 489.113, F.S., to specify certain conditions under which a person may engage in the business of contracting without certification or registration.

Section 2. Amends s. 489.117, F.S., to specify certain conditions under which a person may provide certain specialty contracting services without a license.

Section 3. Effective date - July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Not anticipated to be significant

**D. FISCAL COMMENTS:**

There is not anticipated to be a significant fiscal impact on the DBPR and, therefore, any additional workload is expected to be absorbed within current staffing.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**