

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1351 CS Contracts entered into by unlicensed contractors  
**SPONSOR(S):** Reagan and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1894

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Commerce Council</u>	<u>12 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Randle</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the Department of Business and Professional Regulation (DBPR). Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR. With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified (i.e., licensed by the state to contract statewide) by 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) with the CILB or ECLB, as appropriate.

Various unlicensed activity provisions and penalties apply to construction contracting. One provision provides, in part, that a contract may be rendered unenforceable for work 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.

**Current law provides** "an individual is unlicensed if the individual does not have a license required by this part [construction, electrical, alarm system] concerning the scope of the work to be performed under the contract."

**The bill adds** "if no state or local license is required for the scope of work to be performed under the contract, the individual performing that work shall not be considered unlicensed."

The bill specifies that a business organization entering into a construction contract may not be considered an unlicensed business organization if the construction contractor is licensed for the scope of the work to be performed under the contract, the licensed contractor had submitted an application for a certificate of authority designating the contractor as a qualifying agent for the business organization, and the application was not acted upon by the DBPR or CILB within the applicable time limitations imposed by the APA, chapter 120, F.S. The bill has retroactive application to actions pending as of July 1, 2006, the effective date of the bill.

The bill exempts national testing laboratories that OSHA has recognized as in compliance with federal law from state electrical and alarm system licensure requirements.

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 responsibility - The bill is designed to clarify work opportunities that are outside licensure requirements when contracting to provide construction, electrical, or alarm system services.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present situation

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the DBPR. Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR.

Construction contracting essentially means building or altering a structure, for compensation. Several specific varieties of contracting are set forth in the chapter, each with a license that may be obtained for that activity, such as for roofing, plumbing, etc. 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. Similar regulatory provisions apply to electrical contracting.

With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified by or registered with the CILB or ECLB, as appropriate. 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 "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.

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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.

Similar provisions apply to electrical and alarm system contracting.

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 ss. 489.128 and 489.532, F.S., also address unlicensed activity. It provides, in part, that a contract may be rendered unenforceable for work 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

**Current law provides** “an individual is unlicensed if the individual does not have a license required by this part [construction, electrical, alarm system] concerning the scope of the work to be performed under the contract.”

**The bill adds** “if no state or local license is required for the scope of work to be performed under the contract, the individual performing that work shall not be considered unlicensed.”

The bill specifies that a business organization entering into a construction contract may not be considered an unlicensed business organization if the construction contractor is licensed for the scope of the work to be performed under the contract, the licensed contractor had submitted an application for a certificate of authority designating the contractor as a qualifying agent for the business organization, and the application was not acted upon by the DBPR or CILB within the applicable time limitations imposed by the APA, chapter 120, F.S. The bill has retroactive application to actions pending as of July 1, 2006, the effective date of the bill.

The bill exempts national testing laboratories that OSHA has recognized as in compliance with federal law from state electrical and alarm system licensure requirements.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 489.128, F.S., to specify certain conditions under which a person or entity may engage in the business of construction contracting without certification or registration.

Section 2. Amends s. 489.503, F.S., to create a licensure exemption for certain testing entities.

Section 3. Amends s. 489.505, F.S., define the term “nationally recognized testing laboratory.”

Section 4. Amends s. 489.532, F.S., to specify certain conditions under which a person may provide certain electrical and alarm system contracting services without a license.

Section 5. Is a statement of retroactive application to actions, including any action on a lien or bond claim, pending as of July 1, 2006, the effective date of the bill. There is also a retroactive severability statement.

Section 6. 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:

None.

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

On March 30, 2006, the Business Regulation Committee considered the bill, adopted a strike all amendment, and reported the bill favorably with CS. The changes in the CS are reflected below.

- Removes licensure exemption language in the original bill that provided an exemption for a person who is under the supervision of the owner of the property who is acting as his or her own contractor.
- Expands the application of the bill to electrical and alarm system contractors.
- Specifies that if no state or local license is required for the scope of work to be performed under contract, the individual performing that work shall not be considered unlicensed.

On April 20, 2006, the Commerce Council considered the bill, adopted a strike all amendment, and reported the bill favorably with CS. The changes in the CS are reflected below.

The strike all amendment includes new language to exempt national testing laboratories that OSHA has recognized as in compliance with federal law from state electrical and alarm system licensure requirements.

The strike all adds language to say that a “business organization” entering into a construction contract may not be considered an unlicensed business organization if:

- the construction contractor is licensed for the scope of the work to be performed under the contract and
- the licensed contractor had submitted an application for a certificate of authority designating the contractor as a qualifying agent for the business organization and
- the application was not acted upon by the DBPR or CILB within the applicable time limitations imposed by the APA, chapter 120, F.S.

The strike all provisions addressing unlicensed activity have a statement of retroactive application to actions, including any action on a lien or bond claim, pending as of July 1, 2006, the effective date of the bill. There is also a retroactive severability statement.