

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1367 CS Contracting Exemptions  
**SPONSOR(S):** Evers  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2472

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>15 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Local Government Council</u>	<u>7 Y, 0 N</u>	<u>Smith</u>	<u>Hamby</u>
3) <u>Commerce Council</u>	<u>13 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Randle</u>
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.

The bill increases the construction ceiling from \$25,000 to \$75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties.

The bill creates a construction licensure exemption for owners of one-family, two-family or three-family residences for occupancy by the owner or used as rental property. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

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 is not anticipated to have a significant fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1367e.CC.doc  
**DATE:** 4/12/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Promote personal responsibilities – The bill increases the construction ceiling from \$25,000 to \$75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for occupancy or use of the owner and not offered for sale or lease. The bill also increases the owner licensure exemption ceiling for electrical work on commercial buildings from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties in the same manner as for the property owner construction exemption. Additionally, the bill provides an exemption from licensure for certain roofing and reroofing activities under specific circumstances. The bill expands opportunities for property owners to improve their facilities under certain circumstances.

#### 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.

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 or improving farm outbuildings or 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.

Statutory regulation of construction contracting has existed for some time.

Authority for issuance of state and local licenses has been provided by chapter 205, Florida Statutes, for all types of contractors from 1937. This law does not require competency assurance, but is primarily a revenue source which identifies the contractor through a required license. However, many local occupational licensing operations have included examination for competency as a prerequisite to issuance of licenses.<sup>1</sup>

State regulation of general contractors, building contractors, and residential building contractors was initiated in 1967 by chapter 67-110, L.O.F., codified as part II, chapter 468, F.S. This act created the CILB, provided its duties and responsibilities, and, with statutorily specified exemptions, established mandatory statewide certification or locally restricted registration. One of the exemptions, with restrictions, applied to residential property owners when working on their own homes.

The residential exemption language was amended in 1972 and the changes added the provision that owners of commercial property are exempt from licensure when "...building or improving commercial buildings at a cost of under twenty-five thousand dollars (\$25,000) on such property..." An additional limitation was also added to restrict the exemption if the residential or commercial property is offered for "lease" in addition to the sale of the property.

Construction activity pursuant to ss. 489.103 (7) and 489.503, F.S., by an owner of the property, must be conducted in accordance with the same standards as a licensed practitioner, such as compliance with appropriate building codes, providing workers' compensation coverage, etc.

Currently, the CILB and ECLB have sole authority to discipline state certified contractors. Local jurisdictions can discipline contractors holding locally issued licenses. In theory, the discipline is then reported to the CILB, who may act against the state registration.

Unlicensed construction contracting, as generally understood, is actually a set of specific violations set forth as paragraphs under s. 489.127(1), F.S., (and similar provisions in s. 489.531, F.S., relating to electrical contracting). This section 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.

Section 489.119(2), F.S., provides that an applicant who proposes to engage in contracting as a business organization must be the "qualifying agent" for the business organization. The name of the business organization must appear on the contractor's license, and the business organization must obtain from the board a certificate of authority, which is also known by the DBPR as a "qualified business license."

Section 489.128 (1)(a), F.S., provides that contracts entered into by unlicensed contractors are unenforceable in law or equity. The statute also provides that a business organization is unlicensed if it does not have a primary or secondary qualifying agent in accordance with this section concerning the scope of the work to be performed under the contract.

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<sup>1</sup> See Fla. S. Comm. on Govtl. Ops., A Review of Chapter 468, Part II, F.S., Licensing of Construction Industry, (November 1978) (Prepared Pursuant to the Regulatory Reform Act, Chapter 76-168, L.O.F.) (on file with the Business Regulation Committee).

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 provisions pursuant to s. 455.228, F.S. The DBPR may impose administrative penalties including fines in an amount not to exceed \$5,000 against any person not licensed by the DBPR or a regulatory Board within the DBPR and who violates a regulatory statute.

Section 489.127, F.S., [and s. 489.531, F.S., for electrical contracting] also provides criminal penalties for unlicensed activity. An unlicensed person who violates applicable prohibitions commits a first degree misdemeanor for a first offense and a felony for subsequent offenses. Any unlicensed person who commits a violation of one of the above provisions during the existence of a state of emergency declared by executive order of the Governor commits a third degree felony.

#### Effect of proposed changes

The bill increases the construction ceiling from \$25,000 to \$75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties in the same manner as for the property owner construction exemption.

The bill creates a construction licensure exemption for owners of residential rental property relating to roofing and reroofing after the issuance of an Executive Order by the Governor declaring the existence of a state of emergency. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

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 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 bill has 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. It has a retroactive severability statement.

C. SECTION DIRECTORY:

Section 1. Amends s. 489.103, F.S., to increase the construction ceiling from \$25,000 to 75,000 and imposes ownership responsibilities and potential penalties; creates an additional construction licensure exemption for owners of property relating to roofing and reroofing contracts.

Section 2. Amends s. 489.503, F.S., to increase the construction ceiling from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties.

Section 3. Amends s. 489.128, F.S., to specify when a business organization may not be considered an unlicensed business organization.

Section 4. Retroactively applies the provisions of section 3.

Section 5. Effective date - July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands opportunities for property owners to improve their facilities under certain circumstances.

D. FISCAL COMMENTS:

According to DBPR, "There is no fiscal impact on the department as the bill merely expands the parameters of certain existing licensure exemptions."

**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, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The bill has retroactive application to actions pending as of July 1, 2006, the effective date of the bill. Retroactive application of a law is constitutionally permissible if there is clear evidence that the Legislature intended to apply the statute retroactively. Retroactive application of a civil statute ordinarily transgresses constitutional limitations on legislative power if vested rights are impaired, new obligations are created or new penalties are imposed. *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So. 2d 1210 (2d DCA 2004)

B. RULE-MAKING AUTHORITY:

None.

DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On April 11, 2006, the Commerce Council adopted one amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

The amendment 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 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 amendment has 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.

It has a retroactive severability statement.