

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to contracting exemptions; amending ss.
7 489.103 and 489.503, F.S.; revising exemptions for certain
8 owners of property from certain contracting provisions;
9 increasing maximum construction costs allowed for
10 exemption; requiring owners of property to satisfy certain
11 local permitting agency requirements; providing for
12 penalties; providing an exemption for owners of property
13 damaged by certain natural causes; amending s. 489.128,
14 F.S.; providing that a business organization entering into
15 a construction contract is not deemed unlicensed under
16 certain conditions; providing for retroactive application;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (7) of section 489.103, Florida
22 Statutes, is amended to read:

23 489.103 Exemptions.--This part does not apply to:

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24 (7) Owners of property when acting as their own contractor
 25 and providing direct, onsite supervision themselves of all work
 26 not performed by licensed contractors:—

27 (a) When building or improving farm outbuildings or one-
 28 family or two-family residences on such property for the
 29 occupancy or use of such owners and not offered for sale or
 30 lease, or building or improving commercial buildings, at a cost
 31 not to exceed \$75,000 ~~\$25,000~~, on such property for the
 32 occupancy or use of such owners and not offered for sale or
 33 lease. In an action brought under this part, proof of the sale
 34 or lease, or offering for sale or lease, of any such structure
 35 by the owner-builder within 1 year after completion of same
 36 creates a presumption that the construction was undertaken for
 37 purposes of sale or lease.

38 (b) When repairing or replacing wood shakes or asphalt or
 39 fiberglass shingles on one-family, two-family, or three-family
 40 residences for the occupancy or use of such owner or tenant of
 41 the owner and not offered for sale within 1 year after
 42 completion of the work and when the property has been damaged by
 43 natural causes from an event recognized as an emergency
 44 situation designated by executive order issued by the Governor
 45 declaring the existence of a state of emergency as a result and
 46 consequence of a serious threat posed to the public health,
 47 safety, and property in this state.

48
 49 This subsection does not exempt any person who is employed by or
 50 has a contract with such owner and who acts in the capacity of a
 51 contractor. The owner may not delegate the owner's

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80 | a farm outbuilding. You may also build or improve a commercial
81 | building, provided your costs do not exceed \$75,000 ~~\$25,000~~. The
82 | building or residence must be for your own use or occupancy. It
83 | may not be built or substantially improved for sale or lease. If
84 | you sell or lease a building you have built or substantially
85 | improved yourself within 1 year after the construction is
86 | complete, the law will presume that you built or substantially
87 | improved it for sale or lease, which is a violation of this
88 | exemption. You may not hire an unlicensed person to act as your
89 | contractor or to supervise people working on your building. It
90 | is your responsibility to make sure that people employed by you
91 | have licenses required by state law and by county or municipal
92 | licensing ordinances. You may not delegate the responsibility
93 | for supervising work to a licensed contractor who is not
94 | licensed to perform the work being done. Any person working on
95 | your building who is not licensed must work under your direct
96 | supervision and must be employed by you, which means that you
97 | must deduct F.I.C.A. and withholding tax and provide workers'
98 | compensation for that employee, all as prescribed by law. Your
99 | construction must comply with all applicable laws, ordinances,
100 | building codes, and zoning regulations.

101 | Section 2. Subsection (6) of section 489.503, Florida
102 | Statutes, is amended to read:

103 | 489.503 Exemptions.--This part does not apply to:

104 | (6) An owner of property making application for permit,
105 | supervising, and doing the work in connection with the
106 | construction, maintenance, repair, and alteration of and
107 | addition to a single-family or duplex residence for his or her

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108 | own use and occupancy and not intended for sale or an owner of
109 | property when acting as his or her own electrical contractor and
110 | providing all material supervision himself or herself, when
111 | building or improving a farm outbuilding or a single-family or
112 | duplex residence on such property for the occupancy or use of
113 | such owner and not offered for sale or lease, or building or
114 | improving a commercial building with aggregate construction
115 | costs of under \$75,000 ~~\$25,000~~ on such property for the
116 | occupancy or use of such owner and not offered for sale or
117 | lease. In an action brought under this subsection, proof of the
118 | sale or lease, or offering for sale or lease, of more than one
119 | such structure by the owner-builder within 1 year after
120 | completion of same is prima facie evidence that the construction
121 | was undertaken for purposes of sale or lease. This subsection
122 | does not exempt any person who is employed by such owner and who
123 | acts in the capacity of a contractor. For the purpose of this
124 | subsection, the term "owner of property" includes the owner of a
125 | mobile home situated on a leased lot. To qualify for exemption
126 | under this subsection, an owner shall personally appear and sign
127 | the building permit application and must satisfy local
128 | permitting agency requirements, if any, proving that the owner
129 | has a complete understanding of the owner's obligations under
130 | the law as specified in the disclosure statement in this
131 | section. If any person violates the requirements of this
132 | subsection, the local permitting agency shall withhold final
133 | approval, revoke the permit, or pursue any action or remedy for
134 | unlicensed activity against the owner and any person performing
135 | work that requires licensure under the permit issued. The local

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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164 (1) As a matter of public policy, contracts entered into
165 on or after October 1, 1990, by an unlicensed contractor shall
166 be unenforceable in law or in equity by the unlicensed
167 contractor.

168 (b) For purposes of this section, an individual or
169 business organization may ~~shall~~ not be considered unlicensed for
170 failing to have an occupational license certificate issued under
171 the authority of chapter 205. A business organization may ~~shall~~
172 not be considered unlicensed for failing to have a certificate
173 of authority as required by ss. 489.119 and 489.127. For
174 purposes of this section, a business organization entering into
175 the contract may not be considered unlicensed if, before the
176 date established by paragraph (c), an individual possessing a
177 license required by this part concerning the scope of the work
178 to be performed under the contract had submitted an application
179 for a certificate of authority designating that individual as a
180 qualifying agent for the business organization entering into the
181 contract, and the application was not acted upon by the
182 department or applicable board within the applicable time
183 limitations imposed by s. 120.60.

184 Section 4. Section 3 is intended to be remedial in nature
185 and to clarify existing law. Section 3 applies retroactively to
186 all actions, including any action on a lien or bond claim,
187 initiated on or after, or pending as of, July 1, 2006. If the
188 retroactivity of any provision of section 3 or its retroactive
189 application to any person or circumstance is held invalid, the
190 invalidity does not affect the retroactivity or retroactive
191 application of other provisions of section 3.

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Section 5. This act shall take effect July 1, 2006.