

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.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 1894

INTRODUCER: Regulated Industries Committee and Senator Baker

SUBJECT: Professional Regulation

DATE: April 26, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Construction contracting and electrical/alarm system contracting. The bill provides that a business organization shall not be considered unlicensed if an individual has a license for the scope of the work to be performed under a contract, and has submitted an application for a certificate of authority as a qualifying agent for the business organization entering into the contract, and the application was not acted upon within the applicable time frame under the Administrative Procedure Act.

With regard to both construction contractors and electrical/alarm system contractors, the bill also provides that if no state or local license is required for the scope of work to be performed under the contract, the individual performing the work shall not be considered unlicensed.

The bill provides an exemption from the regulatory provisions governing electrical/alarm system contractors (part II of ch. 489, F.S.) for inspections, audits, or quality-assurance services that are performed by a nationally recognized testing laboratory recognized by the Occupational Safety and Health Administration as meeting certain federal regulatory requirements.

The bill exempts certain certified or registered electrical or alarm system contractors from any local law, ordinance, or code that requires a contractor to be listed or placarded by a nationally recognized certification organization.

Auctioneers. The bill requires that applicants for licensure as auctioneers must file a complete set of fingerprints for submittal to the Florida Department of Law Enforcement and the Federal Bureau of Investigation, and pay the cost of processing.

The bill requires that a license application identify the owner, and furnish evidence of compliance with fictitious name provisions if the business is a sole proprietorship and uses a fictitious name.

The bill requires that business applicants provide to the Florida Board of Auctioneers the name of the partnership and its partners, the name of the corporation and its officers, directors, and stockholders who are also officers or directors, the name of the business trust and its trustees.

The bill provides a five-year disqualification from licensure as an auctioneer or apprentice, or person holding an ownership interest in an auction business, for any person whose license has been revoked. The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department.

The bill provides that the department may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense in any jurisdiction that would constitute a basis for discipline of a licensed auctioneer.

Building Code Inspectors and Plans Examiners. The bill permits an applicant to qualify for licensure as a building code inspector or plans examiner if he or she demonstrates a combination of technical education in the field of building code inspection or plans review and experience which totals two years with at least one year of the experience in construction, building code inspection, or plans review with no fewer than 20 hours of technical education in ethics and professional standards.

The bill requires that the certification examinations for building code enforcement officials must be substantially similar to the examinations administered by the International Code Council. The bill permits building code enforcement officials employed by small counties to provide building code services to another small county.

The bill amends the building code enforcement official's bill of rights to limit the application of the bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., and to disciplinary investigations and proceedings relating to the official duties of an enforcement official. The bill specifies that the bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official may hold.

The bill authorizes the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements that the licensee knew were applicable, and for obstructing an investigation or provides forged documents or false evidence or testimony in an investigation.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person, except immediate family members, who performs work that may be under his or her official enforcement authority. It also requires a minimum of two hours continuing education in ethics.

This bill substantially amends the following section of the Florida Statutes: 489.128, 489.503, 489.505, 489.516, 489.532, 468.385, 468.609, 468.617, 468.619, 468.621, 489.113, 489.117, 468.627, and 489.115.

II. Present Situation:

Licensure and regulation of construction contractors is governed by part I of ch. 489, F.S. The Construction Industry Licensing Board (CILB) is responsible for licensing and regulation of state construction contractors. 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.

Section 489.105(3)(a)-(c), F.S., requires licensure for general contractors, building contractors, and residential contractors. Section 489.105(3)(d)-(o), F.S., requires licensure for persons who perform the following categories of construction: sheet metal, roofing, air-conditioning, mechanical, swimming pool/spa, plumbing, underground utility and excavation, and solar contracting.

Section 489.105(3), F.S., defines the term “contractor” to mean the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others.

Section 489.116, F.S., prohibits a licensee from engaging in contracting unless the status of his or her license is “active.” The statute provides that if a licensee fails to renew his or her license, it becomes delinquent. A delinquent status licensee must apply with the Department of Business and Professional Regulation for active status in order to engage in contracting.

Section 489.117, F.S., provides that a contractor may not bid or offer to perform construction services without being licensed.

Section 489.119(2), F.S., provides that an applicant who proposes to engage in contracting as a business organization, including any partnership, corporation, business trust, or other legal entity, or in any name other than the applicant’s legal name or a fictitious name where the applicant is doing business as a sole proprietorship, 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 department as a “qualified business license.”

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.

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.

Section 489.128(1)(b), F.S., provides that an individual or business organization shall not be considered unlicensed for failing to have an occupational license certificate issued under the authority of ch. 205, F.S. A business organization shall not be considered unlicensed for failing to have a certificate of authority as required by ss. 489.119 and 489.127, F.S.

Section 489.128(1)(c), F.S., provides that a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated in the contract, or, if not stated, the date the last party to the contract executed it, if that is stated in the contract. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.

Electrical and Alarm System Contracting

The licensure and regulation of electrical contractors is governed by Part II of ch. 489, F.S. Section 489.503, F.S., provides certain licensure exemptions. Section 489.503(6), F.S., exempts owners of property making application for permits, supervising, and performing electrical work in connection with the construction, maintenance, repair, and alteration of and addition to a single-family or duplex residence for his or her own use and occupancy and not intended for sale, or building or improving a commercial building with aggregate construction costs of under \$25,000 on such property for the occupancy or use of such owner and not offered for sale or lease. The statute also provides that the owner may not hire unlicensed contractors to work on the project.

To engage in electrical or alarm system contracting on a statewide basis, a person must establish his or her competency and qualifications to be certified under part II of ch. 489, F.S. To establish competency, a person shall pass the appropriate exam administered by the department. A person who wants to engage in such contracting on other than a statewide basis shall be registered. A person who is not certified or registered shall not engage in the business of contracting in Florida.¹

In addition, when a certificate holder want to engage in contracting in any area of the state, he or she must exhibit evidence of holding a current certificate and pay the fees for local occupational licenses and building or electrical permits.²

Auctioneers

Part VI of ch. 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers within the Department of Business and Professional Regulation.

Section 468.382(1), F.S., defines an “auction business” to mean:

¹ Section 489.516(1) and (2), F.S.

² Section 489.516(3), F.S.

a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.

Section 468.382(2), F.S., defines an “auctioneer” to mean “any person licensed pursuant to this part who holds a valid Florida auctioneer license.”

Section 468.385, F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act. To qualify for licensure as an auctioneer or apprentice a person must:

- Be 18 years of age or older;
- Not have committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.

A person cannot be licensed as an auctioneer unless he or she:

- Has held an apprentice license and has served as an apprentice for one year or more, or has completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- Has passed the required examination; and
- Is approved by the board.

An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required by the board to be maintained, to determine if such records are accurate and current.

Section 468.385(7)(b), F.S., provides that no business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under this act. The application for licensure must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. The owner of an auction business must also report to the board within 30 days of any change in this required information.

Section 468.383, F.S., provides that the following activities are exempt from the licensure requirement:

- (1) Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell.
- (2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.
- (3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.
- (4) Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental

agency, or an owner of the livestock. The act does not apply to the auction of agricultural products as defined in s. 618.01(1), F.S., or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products.

(5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.

(6) Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods.

(7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a), F.S.

(8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.

(9) Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.

Fictitious Name Act

The Fictitious Name Act in s. 865.09, F.S., provides that a person may not engage in business under a fictitious name unless the person first registers the name with the Division of Corporations of the Department of State.

Section 865.09(2)(a), F.S., defines a "fictitious name" as "any name under which a person transacts business in this state, other than the person's legal name."

A person registers a fictitious name by filing a sworn statement listing the following information:

- The name to be registered.
- The mailing address of the business.
- The name and address of each owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number.
- Certification by the applicant that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county where the principal place of business of the applicant will be located.
- Any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

The statement must be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

Building Code Inspectors and Plans Examiners

Part XII of ch. 468, F.S., provides for the regulation of building code administrators, inspectors

and plans examiners by the Florida Building Code Administrators and Inspectors Board within the Department of Business and Professional Regulation (department). The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

A building code administrator³ administers direct regulatory administration or supervision building code activities, including plans review, enforcement, and inspection. A building code inspector⁴ inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner⁵ reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform. A building inspector⁶ inspects and determines that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws. Sections 468.607 and 468.609, F.S., sets forth the requirements for licensure for the various types and categories of certificate holders.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S.

Section 468.619, F.S., establishes the building code enforcement officials' bill of rights. It provides procedures for the department to question building enforcement officials against whom a complaint has been filed; and establishes time frames to complete any investigation of an enforcement building official and to initiate an administrative action against an enforcement building official. The department must submit an investigation, whether complete or not, to the probable cause panel for review within 180 days from the date of the receipt of the complaint. If the investigation is not complete, the probable cause panel must review and instruct the department to complete the investigation within a time certain and, in no event, greater than 90 days or dismiss the complaint with prejudice.

The building code enforcement officials' bill of rights also provides that:

- The department must inform the licensee of any complaint within 10 days;
- The enforcement official under investigation has the right to be represented by counsel or by any other representative of his or her choice, who shall be present at such time as the enforcement official wishes during the interview; and
- The department must allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and must be permitted to submit explanatory or mitigating material to the panel for their consideration.

³ See s. 468.603(1), F.S.

⁴ See s. 468.603(2), F.S.

⁵ See s. 468.603(7), F.S.

⁶ See s. 468.603(6)(a), F.S.

The department is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 455.225, F.S.

Continuing education

Section 468.627(5), F.S., provides that a building official must provide proof that at least 14 classroom hours of continuing education courses have been completed during each biennium since the issuance or renewal of the license.

Construction Contractors

Construction contracting is regulated under part I of ch. 489, F.S. Construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation. 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.

Section 489.140, F.S., creates the “Florida Homeowners' Construction Recovery Fund” (FHCRF) to provide a remedy for consumers who suffer monetary damages because of improper actions by contractors. The FHCRF is a separate account within the Professional Regulation Trust Fund. The FHCRF is funded through a one-half cent per square foot surcharge on building permits collected and distributed pursuant to s.468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 468.631, F.S., provides for the assessment of the surcharge by the appropriate local government, which may retain up to 10 percent of the money to fund projects intended to improve building code enforcement. Additional amounts must be used to fund the regulation of building code administrators and inspectors by the Florida Building Code Administrators and Inspectors Board. Excess monies are transferred to the FHCRF. Any money remaining after the FHCRF is sufficiently funded is applied to the costs of regulating contractors by the CILB.

Section 489.141, F.S., provides that a person may recover from the FHCRF based on a civil judgment against a contractor arising from a contract or based on a board order of restitution for a violation of part I of ch. 489, F.S., relating to building code violations, financial mismanagement, abandonment of a project, or certain false representations.

Section 489.143, F.S., provides the mechanism for and limitations on payment from the fund. The maximum permitted individual claim is \$50,000 and the aggregate amount that may be paid as a result of the actions of any one contractor is \$500,000.

III. Effect of Proposed Changes:

Determination as Unlicensed

The bill amends s. 489.128(1), F.S., and s. 489.532, F.S., prescribing conditions under which certain business organizations will not be deemed to be unlicensed under the construction contracting law and the electrical/alarm system contracting law.

Construction Contracting

Under existing statutory provisions, s. 489.128(1), F.S., as a matter of public policy, contracts entered into on or after October 1, 1990, by unlicensed construction contractors shall be unenforceable in law or in equity by the unlicensed contractor. An individual is unlicensed if he or she does not have a license required concerning the scope of work to be performed. A business is unlicensed if it does not have a primary or secondary qualifying agent concerning the scope of work to be performed under the contract.

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

The bill further amends s. 489.128(1)(b), F.S., to provide that for purposes of this section, a business organization entering into a contract may not be considered unlicensed if, before the date established by paragraph (c)⁷, an individual possessing a license required by the construction contracting statute (part I of ch. 489, F.S.), concerning the scope of the work to be performed under the contract, had submitted an application for a certificate of authority designating that individual as a qualifying agent for the business organization entering into the contract, and the application was not acted upon by the Department of Business and Professional Regulation or the applicable board within the time limitations imposed by s.120.60, F.S., of the Administrative Procedure Act.

Electrical/Alarm System Contracting

With regard to electrical and alarm system contractors, the bill similarly provides that if no state or local license is required for the scope of work to be performed under the contract, the individual performing the work shall not be considered unlicensed.⁸

The bill creates s. 489.516(5), F.S., to provide that counties, municipalities or special districts can require an electrical or alarm system contractor to provide documentation that the alarm system has been inspected by a national recognized testing lab as required under the National Fire Alarm Code (NFPA No. 72). It provides that a county, municipality, or special district is not

⁷ Section 489.128(1)(c), F.S., provides “For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.”

⁸ The bill amends s. 489.532(1)(a), F.S.

Prohibited from requiring compliance with NFPA 72.

The bill provides an exemption to licensure as an electrical or alarm system contractor for alarm system inspections, audits, or quality assurance services performed by a nationally recognized testing laboratory.

It defines “nationally recognized testing laboratory” as an organization that the Occupational Safety and Health Administration has recognized under 29 C.F.R. 1910.7 and provides quality assurance, product testing, or certification services.

Retroactive Application

The bill specifies that the provisions of the bill concerning unlicensed contracting are intended to be remedial in nature and to clarify existing law. It provides that these provisions shall apply retroactively to all actions, including any action on a lien or a bond claim, initiated on or after, or pending as of, July 1, 2006. If the retroactivity of any provision of the bill or its retroactive application to any person or circumstance is held invalid, the invalidity does not affect the retroactivity or retroactive application of other provisions of the bill.

Auctioneers - Fingerprinting Requirement

The bill amends s. 468.385(4), F.S., to require that auctioneer applicants file a complete set of fingerprints taken by an authorized law enforcement officer. The fingerprints must be submitted by the department to the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The applicant must bear the cost of processing.

Auctioneers - Disclosure of Fictitious Name and Ownership

The bill amends s. 468.385(7)(b), F.S., to delete the requirement that the application for licensure as an auction business must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. It also deletes the requirement that the owner of an auction business must report to the board within 30 days of any change in this required information.

The bill requires that, if the auction business is a sole proprietorship, the license application must identify the owner. It also provides that, if the business uses a fictitious name, the applicant must furnish evidence of compliance with fictitious name provisions in s. 865.09, F.S.

The bill requires that if an applicant is a partnership, corporation, business trust, or other legal entity other than a sole proprietorship, the application must provide the following information:

- The name of the partnership and its partners;
- The name of the corporation and its officers, directors, and stockholders who are also officers or directors;
- The name of the business trust and its trustees; or
- The name of any other form of legal entity and its members.

If the partnership, corporation, business trust, or other legal entity other than a sole proprietorship uses a fictitious name, the applicant must also furnish evidence of compliance with fictitious-name provisions. Within 45 days after any change relating to information required to be disclosed under this section, the applicant must mail the correct information to the department.

Auctioneers - Disqualification Based on Prior Revocations

The bill requires that any person licensed as an auctioneer or apprentice whose license has been revoked may not be an owner, partner, officer, director, or trustee of an auction business for five years after such revocation. The person may not reapply for licensure for five years following such revocation.

Auctioneers - Statement of Financial Responsibility

The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department. The bill authorizes the department to adopt rules that specify the financial-responsibility grounds upon which the board may deny licensure. The rules must also define financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy, insolvency proceedings, or assignment of receivers.

Auctioneers - Denial of Applications based on Prior Offenses

The bill provides that the department may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense that would constitute a basis for disciplinary action under s. 468.389, F.S., which provides the disciplinary grounds for persons licensed under part VI of ch. 468, F.S. The bill permits the department to deny an application for any acts or offenses that occur in Florida or out-of-state.

Building Code Inspectors and Plans Examiners - Qualifications

The bill amends s. 468.609, F.S., to provide a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner.

The bill permits an applicant to qualify if he or she demonstrates a combination of technical education in the field of building code inspection or plans review and experience which totals two years. At least one year of the total experience must be in construction, building code inspection, or plans review experience. The educational component must be a program of at least 400 hours of technical education in the chosen category of building code inspection or plans review. The education must include at least 20 hours of study in ethics and professional standards.

The bill also permits an applicant to qualify for licensure if he or she has completed an associate degree program with a major in building code administration from an accredited institution in construction management.

The bill deletes s. 468.609(2)(d), F.S., which requires that an applicant for certification as a building inspector or plans examiner successfully complete the core curriculum in the building code training program.

The bill requires that the certification examinations must be substantially similar to the examinations administered by the International Code Council. It deletes the requirement that the examinations must be substantially similar to the examinations administered by the Southern Building Code Congress and the Council of American Building Officials.

Building Code Inspectors in Small Counties

The bill amends s. 468.617(4), F.S., to permit building code inspectors, plans examiners, and building code administrators who hold a limited certificate and are employed by a jurisdiction within a statutorily defined small county to provide building code inspections, plans review, or building code administration services to another jurisdiction within a statutorily defined small county. The bill does not specify the statute in which the term “small county” is defined. There are several different definitions for the term “small counties” in the Florida Statutes ranging from counties having a population of less than 50,000 to less than 150,000.⁹

Building Code Enforcement Official’s Bill of Rights

The bill amends the building code enforcement official’s bill of rights in s. 468.619, F.S., to limit the application of the bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., and to disciplinary investigations and proceedings relating to the official duties of an enforcement official. The bill specifies that the bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official holds.

Building Code Enforcement Official - Disciplinary Proceedings

The bill amends s. 468.621, F.S., to authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements within Florida that the certificateholder knew were applicable. The bill provides a violation for a building official who obstructs an investigation or provides forged documents or false evidence or testimony in an investigation.

⁹ The Florida Statutes provide different definitions for the term “small county.” The term “small county” is defined in s. 339.2818, F.S., relating to the Small County Outreach Program, as a county having a population of 150,000 or less. The term “small county” is defined in s. 163.03, F.S., relating to the small county technical assistance program, to as a county with a population of 75,000 or less. The Florida Administrative Procedures Act defines a small county as any county with an unincarcerated population of 75,000 or less according to the most recent decennial census. *See* s. 120.52(17), F.S. Section 125.271, F.S., relating to emergency medical services, defines a small county as having a population of 75,000 or fewer. *See also* ss. 154.506, 163.05, 163.3177, and 339.2816, F.S. However, s. 110.1228(1)(c), F.S., relating to state group health insurance programs and small county municipalities and school boards, provides that a small county has a population of 100,000 or fewer according to the most recent decennial census. Section 403.7095, F.S., relating to the solid waste management grant program, also defines a small county as having a population of 100,000 or fewer. *See also* s. 403.7095, F.S. Section 212.055, F.S., relating to discretionary sales surtaxes, defines a small county as having a population of 50,000 or less.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official. It creates an exemption for immediate family members, who are defined as including:

a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse, or any person who resides in the primary residence of the enforcement official.

Building Code Enforcement Officials - Continuing Education

The bill amends s. 468.627(5), F.S., to require that a minimum of two hours of the required 14-hour classroom continuing education must be on ethics relating to professional standards of practice, duties, and responsibilities.

The bill amends s. 468.627(6), F.S., to delete the certificateholder's option to provide proof of passing the equivalency test of the Building Code Program within two years after commencement of the program in lieu of taking the core curriculum courses. The bill would require the certificateholder to provide proof of completion of the core curriculum courses.

Sections 489.113(2) and 489.117(4)(e), F.S., are amended to provide that unlicensed persons may perform work under the supervision of a property owner who is acting as his or her own contractor under s. 489.103(7), F.S., if the work performed does not specifically require registration or certification under s. 489.105(3)(d)-(o), F.S.

According to the department, this bill would have the effect of excusing property owners from having to deduct F.I.C.A. and withholding tax and having to provide workers' compensation for unlicensed persons. It would eliminate the necessity of a direct contract between the property owner and the unlicensed person for projects involving single-family residences, which would potentially eliminate the owner's obligation to supervise the projects.

Effective Date

The bill provides an effective date of July 1, 2006.

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:

This bill has retroactive application to all actions, including any action on a lien or bond claim, initiated on or after, or pending as of, July 1, 2006.

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 (Fla. 2d DCA 2004).

With regard to causes of action, the court in *R.A.M. of South Florida* stated that:

[u]nder the case law, once a cause of action has accrued, the right to pursue that cause of action is generally considered a vested right. When a cause of action has accrued, a statute that becomes effective subsequently may not be applied to eliminate or curtail the cause of action.¹⁰

Section 10, Art. I, Fla. Const., provides in relevant part that “[n]o . . . law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that “[n]o state shall . . . pass any . . . law impairing the obligation of contracts.”

In *Pompano v. Coleridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979), the court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that, if there is minimal alteration of contractual obligations, the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.¹¹

¹⁰ *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So. 2d 1210, 1220 (Fla. 2d DCA 2004).

¹¹ *Pompano*, 378 So. 2d at 779.

The court in *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984), also adopted the method used in *Pompano*. The court stated that the method required a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power.

Adopting the method of analysis used by the U.S. Supreme Court, the court outlined the main factors to be considered in applying this balancing test.

- The threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”¹² The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.¹³
- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.¹⁴
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.¹⁵

Single Subject

Article III, s. 6 of the State Constitution requires that a bill must pertain to a single subject that is briefly stated in the bill's title. Courts have interpreted this to mean that all provisions of a bill must be “properly connected” to the subject of the bill in a “natural or logical” way.¹⁶

The bill contains provisions dealing with the regulation of auctioneers, the regulation of building code officials, and requirements for contractors under the auspices of the Construction Industry Licensing Board. The relating to clause does provide that the bill relates to “professional regulation by the Department of Business and Professional Regulation.” The single subject clause may be implicated as to whether the regulation of these professions has a “natural and logical” connection.

¹² *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spanners*, 438 U.S. 234, 244 (1978)).

¹³ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

¹⁴ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

¹⁵ *Id.*

¹⁶ See, e.g., *Franklin v. State*, 887 So. 2d 1063, 1078-79 (Fla. 2004); *Env'tl. Confed. of Sw. Fla. v. State*, 886 So. 2d 1013, 1018-19 (Fla. 1st DCA 2004).

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

None.

B. Private Sector Impact:

The provisions of the bill appear to insulate certain business organizations from being deemed unlicensed. The bill also attempts to apply retroactively to pending legal actions on certain lien or bond claims, and thus may affect the financial interests of parties to such legal actions.

The bill makes void a provision within a contract for goods or services which conditions payment for the goods or services on receipt of payment from any other person.

Applicants for an auctioneer license would be required to bear the costs of processing the fingerprints required under this bill to be submitted with the application. According to the Department of Business and Professional Regulation, the Florida Board of Auctioneers will need to adopt a rule to set a fee of \$50.75 per fingerprint check to cover the costs of processing each fingerprint submittal.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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