

Bill No. CS for SB 2590

Barcode 083764

CHAMBER ACTION

Senate

House

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Comm: WD  
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The Committee on Judiciary (Baker) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

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

(a) 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~~ \$75,000, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure

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1 by the owner-builder within 1 year after completion of same  
2 creates a presumption that the construction was undertaken for  
3 purposes of sale or lease.

4 (b) When repairing or replacing wood shakes or asphalt  
5 or fiberglass shingles on one-family, two-family, or  
6 three-family residences for the occupancy or use of such owner  
7 or tenant of the owner and not offered for sale within 1 year  
8 after completion of the work and when the property has been  
9 damaged by natural causes from an event recognized as an  
10 emergency situation designated by executive order issued by  
11 the Governor declaring the existence of a state of emergency  
12 as a result and consequence of a serious threat posed to the  
13 public health, safety, and property in this state.

14  
15 This subsection does not exempt any person who is  
16 employed by or has a contract with such owner and who acts in  
17 the capacity of a contractor. The owner may not delegate the  
18 owner's responsibility to directly supervise all work to any  
19 other person unless that person is registered or certified  
20 under this part and the work being performed is within the  
21 scope of that person's license. For the purposes of this  
22 subsection, the term "owners of property" includes the owner  
23 of a mobile home situated on a leased lot. To qualify for  
24 exemption under this subsection, an owner must personally  
25 appear and sign the building permit application and must  
26 satisfy local permitting agency requirements, if any, proving  
27 that the owner has a complete understanding of the owner's  
28 obligations under the law as specified in the disclosure  
29 statement in this section. If any person violates the  
30 requirements of this subsection, the local permitting agency  
31 shall withhold final approval, revoke the permit, or pursue

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1 any action or remedy for unlicensed activity against the owner  
 2 and any person performing work that requires licensure under  
 3 the permit issued. The local permitting agency shall provide  
 4 the person with a disclosure statement in substantially the  
 5 following form:

7 Disclosure Statement

9 State law requires construction to be done by licensed  
 10 contractors. You have applied for a permit under an exemption  
 11 to that law. The exemption allows you, as the owner of your  
 12 property, to act as your own contractor with certain  
 13 restrictions even though you do not have a license. You must  
 14 provide direct, onsite supervision of the construction  
 15 yourself. You may build or improve a one-family or two-family  
 16 residence or a farm outbuilding. You may also build or improve  
 17 a commercial building, provided your costs do not exceed  
 18 ~~\$75,000~~ ~~\$25,000~~. The building or residence must be for your  
 19 own use or occupancy. It may not be built or substantially  
 20 improved for sale or lease. If you sell or lease a building  
 21 you have built or substantially improved yourself within 1  
 22 year after the construction is complete, the law will presume  
 23 that you built or substantially improved it for sale or lease,  
 24 which is a violation of this exemption. You may not hire an  
 25 unlicensed person to act as your contractor or to supervise  
 26 people working on your building. It is your responsibility to  
 27 make sure that people employed by you have licenses required  
 28 by state law and by county or municipal licensing ordinances.  
 29 You may not delegate the responsibility for supervising work  
 30 to a licensed contractor who is not licensed to perform the  
 31 work being done. Any person working on your building who is

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1 not licensed must work under your direct supervision and must  
 2 be employed by you, which means that you must deduct F.I.C.A.  
 3 and withholding tax and provide workers' compensation for that  
 4 employee, all as prescribed by law. Your construction must  
 5 comply with all applicable laws, ordinances, building codes,  
 6 and zoning regulations.

7 Section 2. Subsection (6) of section 489.503, Florida  
 8 Statutes, is amended, and subsection (21) is added to that  
 9 section, to read:

10 489.503 Exemptions.--This part does not apply to:

11 (6) An owner of property making application for  
 12 permit, supervising, and doing the work in connection with the  
 13 construction, maintenance, repair, and alteration of and  
 14 addition to a single-family or duplex residence for his or her  
 15 own use and occupancy and not intended for sale or an owner of  
 16 property when acting as his or her own electrical contractor  
 17 and providing all material supervision himself or herself,  
 18 when building or improving a farm outbuilding or a  
 19 single-family or duplex residence on such property for the  
 20 occupancy or use of such owner and not offered for sale or  
 21 lease, or building or improving a commercial building with  
 22 aggregate construction costs of under ~~\$75,000~~ ~~\$25,000~~ on such  
 23 property for the occupancy or use of such owner and not  
 24 offered for sale or lease. In an action brought under this  
 25 subsection, proof of the sale or lease, or offering for sale  
 26 or lease, of more than one such structure by the owner-builder  
 27 within 1 year after completion of same is prima facie evidence  
 28 that the construction was undertaken for purposes of sale or  
 29 lease. This subsection does not exempt any person who is  
 30 employed by such owner and who acts in the capacity of a  
 31 contractor. For the purpose of this subsection, the term

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1 "owner of property" includes the owner of a mobile home  
 2 situated on a leased lot. To qualify for exemption under this  
 3 subsection, an owner shall personally appear and sign the  
 4 building permit application and must satisfy local permitting  
 5 agency requirements, if any, proving that the owner has a  
 6 complete understanding of the owner's obligations under the  
 7 law as specified in the disclosure statement in this section.  
 8 If any person violates the requirements of this subsection,  
 9 the local permitting agency shall withhold final approval,  
 10 revoke the permit, or pursue any action or remedy for  
 11 unlicensed activity against the owner and any person  
 12 performing work that requires licensure under the permit  
 13 issued. The local permitting agency shall provide the owner  
 14 with a disclosure statement in substantially the following  
 15 form:

17 Disclosure Statement

18  
 19 State law requires electrical contracting to be done by  
 20 licensed electrical contractors. You have applied for a permit  
 21 under an exemption to that law. The exemption allows you, as  
 22 the owner of your property, to act as your own electrical  
 23 contractor even though you do not have a license. You may  
 24 install electrical wiring for a farm outbuilding or a  
 25 single-family or duplex residence. You may install electrical  
 26 wiring in a commercial building the aggregate construction  
 27 costs of which are under \$75,000 ~~\$25,000~~. The home or building  
 28 must be for your own use and occupancy. It may not be built  
 29 for sale or lease. If you sell or lease more than one building  
 30 you have wired yourself within 1 year after the construction  
 31 is complete, the law will presume that you built it for sale

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1 or lease, which is a violation of this exemption. You may not  
 2 hire an unlicensed person as your electrical contractor. Your  
 3 construction shall be done according to building codes and  
 4 zoning regulations. It is your responsibility to make sure  
 5 that people employed by you have licenses required by state  
 6 law and by county or municipal licensing ordinances.

7 (21) Inspections, audits, or quality-assurance  
 8 services performed by a nationally recognized testing  
 9 laboratory that the Occupational Safety and Health  
 10 Administration has recognized as meeting the requirements of  
 11 29 C.F.R. s. 1910.7.

12 Section 3. Paragraphs (a) and (b) of subsection (1) of  
 13 section 489.128, Florida Statutes, is amended to read:

14 489.128 Contracts entered into by unlicensed  
 15 contractors unenforceable.--

16 (1) As a matter of public policy, contracts entered  
 17 into on or after October 1, 1990, by an unlicensed contractor  
 18 shall be unenforceable in law or in equity by the unlicensed  
 19 contractor.

20 (a) For purposes of this section, an individual is  
 21 unlicensed if the individual does not have a license required  
 22 by this part concerning the scope of the work to be performed  
 23 under the contract. A business organization is unlicensed if  
 24 the business organization does not have a primary or secondary  
 25 qualifying agent in accordance with this part concerning the  
 26 scope of the work to be performed under the contract. For  
 27 purposes of this section, if no state or local license is  
 28 required for the scope of work to be performed under the  
 29 contract, the individual performing that work shall not be  
 30 considered unlicensed.

31 (b) For purposes of this section, an individual or

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1 business organization may ~~shall~~ not be considered unlicensed  
2 for failing to have an occupational license certificate issued  
3 under the authority of chapter 205. A business organization  
4 may ~~shall~~ not be considered unlicensed for failing to have a  
5 certificate of authority as required by ss. 489.119 and  
6 489.127. For purposes of this section, a business organization  
7 entering into the contract may not be considered unlicensed  
8 if, before the date established by paragraph (c), an  
9 individual possessing a license required by this part  
10 concerning the scope of the work to be performed under the  
11 contract had submitted an application for a certificate of  
12 authority designating that individual as a qualifying agent  
13 for the business organization entering into the contract, and  
14 the application was not acted upon by the department or  
15 applicable board within the applicable time limitations  
16 imposed by s. 120.60.

17 Section 4. Subsection (29) is added to section  
18 489.505, Florida Statutes, to read:

19 489.505 Definitions.--As used in this part:

20 (29) "Nationally recognized testing laboratory" means  
21 an organization that the Occupational Safety and Health  
22 Administration has legally recognized to be in compliance with  
23 29 C.F.R. s. 1910.7 and that provides quality assurance,  
24 product testing, or certification services.

25 Section 5. Paragraph (a) of subsection (1) of section  
26 489.532, Florida Statutes, is amended to read:

27 489.532 Contracts entered into by unlicensed  
28 contractors unenforceable.--

29 (1) As a matter of public policy, contracts entered  
30 into on or after October 1, 1990, by an unlicensed contractor  
31 shall be unenforceable in law or in equity by the unlicensed

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1 contractor.

2 (a) For purposes of this section, an individual is  
 3 unlicensed if the individual does not have a license required  
 4 by this part concerning the scope of the work to be performed  
 5 under the contract. A business organization is unlicensed if  
 6 the business organization does not have a primary or secondary  
 7 qualifying agent in accordance with this part concerning the  
 8 scope of the work to be performed under the contract. For  
 9 purposes of this section, if no state or local license is  
 10 required for the scope of work to be performed under the  
 11 contract, the individual performing that work shall not be  
 12 considered unlicensed.

13 Section 6. Sections 3 and 5 of this act are intended  
 14 to be remedial in nature and to clarify existing law. Those  
 15 sections apply retroactively to all actions, including any  
 16 action on a lien or bond claim, initiated on or after, or  
 17 pending as of, July 1, 2006. If the retroactivity of any  
 18 provision of section 3 or section 5 or the retroactive  
 19 application of any provision of section 3 or section 5 is held  
 20 invalid, the invalidity does not affect the retroactivity or  
 21 the retroactive application of other provisions of section 3  
 22 or section 5.

23 Section 7. This act shall take effect July 1, 2006.

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26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete everything before the enacting clause

29

30 and insert:

31 A bill to be entitled



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1 An act relating to contracting; amending ss.  
2 489.103 and 489.503, F.S.; revising exemptions  
3 for certain owners of property from certain  
4 contracting provisions; increasing maximum  
5 construction costs allowed for exemption;  
6 requiring owners of property to satisfy certain  
7 local permitting agency requirements; providing  
8 for penalties; providing an exemption for  
9 owners of property damaged by certain natural  
10 causes; amending s. 489.505; defining a term;  
11 amending ss. 489.128 and 489.532, F.S.;  
12 providing that a business organization or an  
13 individual entering into a construction  
14 contract is not deemed unlicensed under certain  
15 conditions; providing for retroactive  
16 application; providing an effective date.

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