

By the Committees on Judiciary; Regulated Industries; and
Senator Bennett

590-2345-06

1 A bill to be entitled

2 An act relating to contracting; amending ss.

3 489.128 and 489.532, F.S.; providing that a

4 business organization or an individual entering

5 into a construction contract is not deemed

6 unlicensed under certain conditions; providing

7 for retroactive application; amending s.

8 489.503, F.S.; revising exemptions for certain

9 owners of property from certain contracting

10 provisions; increasing maximum construction

11 costs allowed for exemption; requiring owners

12 of property to satisfy certain local permitting

13 agency requirements; providing for penalties;

14 providing an exemption for owners of property

15 damaged by certain natural causes; amending s.

16 489.505; defining a term; amending s. 489.516,

17 F.S.; providing that certain specified

18 contractors are exempt from any local law,

19 ordinance, or code that requires a contractor

20 to be either listed or placarded by a

21 nationally recognized testing laboratory or

22 certified by any regionally or nationally

23 recognized certification organization;

24 providing that a contract for the purchase of

25 goods or services may not contain a clause that

26 conditions payment for the goods or services on

27 the receipt of payment from another person;

28 providing an effective date.

30 Be It Enacted by the Legislature of the State of Florida:

31

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

3 489.128 Contracts entered into by unlicensed
4 contractors unenforceable.--

5 (1) As a matter of public policy, contracts entered
6 into on or after October 1, 1990, by an unlicensed contractor
7 shall be unenforceable in law or in equity by the unlicensed
8 contractor.

9 (a) For purposes of this section, an individual is
10 unlicensed if the individual does not have a license required
11 by this part concerning the scope of the work to be performed
12 under the contract. A business organization is unlicensed if
13 the business organization does not have a primary or secondary
14 qualifying agent in accordance with this part concerning the
15 scope of the work to be performed under the contract. For
16 purposes of this section, if no state or local license is
17 required for the scope of work to be performed under the
18 contract, the individual performing that work shall not be
19 considered unlicensed.

20 (b) For purposes of this section, an individual or
21 business organization ~~may shall~~ not be considered unlicensed
22 for failing to have an occupational license certificate issued
23 under the authority of chapter 205. A business organization
24 ~~may shall~~ not be considered unlicensed for failing to have a
25 certificate of authority as required by ss. 489.119 and
26 489.127. For purposes of this section, a business organization
27 entering into the contract may not be considered unlicensed
28 if, before the date established by paragraph (c), an
29 individual possessing a license required by this part
30 concerning the scope of the work to be performed under the
31 contract had submitted an application for a certificate of

1 authority designating that individual as a qualifying agent
2 for the business organization entering into the contract, and
3 the application was not acted upon by the department or
4 applicable board within the applicable time limitations
5 imposed by s. 120.60.

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

9 489.503 Exemptions.--This part does not apply to:

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

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

15
16 Disclosure Statement
17

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

1 hire an unlicensed person as your electrical contractor. Your
2 construction shall be done according to building codes and
3 zoning regulations. It is your responsibility to make sure
4 that people employed by you have licenses required by state
5 law and by county or municipal licensing ordinances.

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

11 Section 3. Subsection (29) is added to section
12 489.505, Florida Statutes, to read:

13 489.505 Definitions.--As used in this part:

14 (29) "Nationally recognized testing laboratory" means
15 an organization that the Occupational Safety and Health
16 Administration has legally recognized to be in compliance with
17 29 C.F.R. s. 1910.7 and that provides quality assurance,
18 product testing, or certification services.

19 Section 4. Paragraph (a) of subsection (1) of section
20 489.532, Florida Statutes, is amended to read:

21 489.532 Contracts entered into by unlicensed
22 contractors unenforceable.--

23 (1) As a matter of public policy, contracts entered
24 into on or after October 1, 1990, by an unlicensed contractor
25 shall be unenforceable in law or in equity by the unlicensed
26 contractor.

27 (a) For purposes of this section, an individual is
28 unlicensed if the individual does not have a license required
29 by this part concerning the scope of the work to be performed
30 under the contract. A business organization is unlicensed if
31 the business organization does not have a primary or secondary

1 qualifying agent in accordance with this part concerning the
2 scope of the work to be performed under the contract. For
3 purposes of this section, if no state or local license is
4 required for the scope of work to be performed under the
5 contract, the individual performing that work shall not be
6 considered unlicensed.

7 Section 5. Sections 1 and 4 of this act are intended
8 to be remedial in nature and to clarify existing law. Those
9 sections apply retroactively to all actions, including any
10 action on a lien or bond claim, initiated on or after, or
11 pending as of, July 1, 2006. If the retroactivity of any
12 provision of section 1 or section 4 or the retroactive
13 application of any provision of section 1 or section 4 is held
14 invalid, the invalidity does not affect the retroactivity or
15 the retroactive application of other provisions of section 1
16 or section 4.

17 Section 6. Subsection (5) is added to section 489.516,
18 Florida Statutes, to read:

19 489.516 Qualifications to practice; restrictions;
20 prerequisites.--

21 (5) Notwithstanding any provision to the contrary, a
22 Certified Electrical Contractor, Certified Alarm System
23 Contractor I, Certified Alarm System Contractor II, Registered
24 Alarm System Contractor I, or Registered Alarm System
25 Contractor II, certified or registered under this part, for
26 the purpose of permitting, installing, modifying, maintaining,
27 or monitoring alarm systems, is exempt from any local law,
28 ordinance, or code that requires a contractor to be listed or
29 placarded by a nationally recognized testing laboratory or
30 certified by any regionally or nationally recognized
31 certification organization. Any person performing work within

1 the scope of work of the contractors referenced in this
2 subsection must be certified or registered under this part.

3 Section 7. A contract for the purchase of goods or
4 services may not contain a clause that conditions payment for
5 the goods or services on the receipt of payment from any other
6 person. Any such conditional payment clause is void as a
7 violation of the public policy of this state.

8 Section 8. This act shall take effect July 1, 2006.

9
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 CS for Senate Bill 2590

13 The committee substitute:

- 14 -- Increases the construction ceiling from \$25,000 to
15 \$75,000 for exemption from licensure as an
16 electrical/alarm system contractor for persons who are
17 owners of property and are building or improving
18 commercial buildings on the property for the occupancy or
19 use of the owner and not offered for sale or lease;
20 -- Provides an exemption from the regulatory provisions
21 governing electrical/alarm system contractors for
22 inspections, audits, or quality-assurance services that
23 are performed by certain nationally recognized testing
24 laboratories;
25 -- With regard to both construction contractors and
26 electrical/alarm system contractors, provides that if no
27 state or local license is required for the scope of work
28 to be performed under the contract, the individual
29 performing the work shall not be considered unlicensed;
30 -- Exempts certain certified or registered electrical or
31 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; and
-- Prohibits conditional payment clauses in contracts for
the purchase of goods or services.