

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423

Building Code Enforcement Officials

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston	Liepshutz
2) Local Government Council			
3) Transportation & Economic Development Appropriations Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the Florida Building Code Administrators and Inspectors Board and administered by the Department of Business and Professional Regulation (DBPR). Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the DBPR.

The bill addresses building code administrators, inspectors and plans examiners to:

- exempt building code licensees from the building code bill of rights when they are subject to disciplinary action for offenses that occur outside of the scope of their employment; authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials by changing the standard of practice from a willful standard to a negligence standard;
- prohibit an enforcement official from accepting labor, services, or materials for free or at a reduced rate from any person who performs work that may be under the enforcement authority of the enforcement official;
- increase the maximum per violation administrative fine from \$5,000 to \$10,000; and
- provide that a violation of a local or state permitting or licensing requirement is prima facie evidence that the official acted with reckless disregard or deliberate ignorance;

The bill addresses construction contractors to:

- provide that local construction regulation boards may take action against a state certified contractor's authority to obtain a local building permit for any building code violation, not just willful violations;
- provide that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding;
- provide that a state certified or registered contractor, or a locally licensed contractor, may not: 1) perform work for which he/she is not properly licensed; 2) subcontract work to an unlicensed person when the work requires a license; or 3) fail to obtain required local permits; and
- provide that local jurisdictions may issue civil citations against state certified contractors and such citations are not considered discipline.

The bill is not anticipated to have a significant fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill raises administrative fines from \$5,000 to \$10,000 for each separate offense.

B. EFFECT OF PROPOSED CHANGES:

Building code administrators, inspectors, and plans examiners

Present Situation

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the Florida Building Code Administrators and Inspectors Board and administered by the DBPR. 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 administrator supervises building code activities, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner 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 (e.g., building inspector, commercial or residential electrical inspector, mechanical inspector, building plans examiner, plumbing plans examiner, etc.). Part XII sets forth the requirements for licensure for the various types and categories of certificate holders, including credentials from specified private organizations or specified experience (or a combination of education and experience) and an examination.

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 enforcement officials' bill of rights. This section provides controls relating to reasonable times, places, and procedures for DBPR when questioning building enforcement officials against whom a complaint has been filed; and establishing time frames for keeping DBPR from having "open ended" investigations and prosecutions. Specific provisions include requiring the department to:

- 1) Inform the licensee of any complaint within 10 days;
- 2) Reach a preliminary conclusion about "where the case is going" after 60 days, and notify the enforcement official of the preliminary conclusion;
- 3) Complete its investigation and be prepared to send it to probable cause within six months of the receipt of the complaint; and
- 4) Allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and letting him or her submit explanatory or mitigating material to the panel for their consideration.

The DBPR is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 455.225, F.S. which is a part of the "general powers" of the DBPR. The determination of legal sufficiency is made upon initial receipt of a complaint received from the public or other source. A complaint is legally sufficient when the allegation, if true, amounts to a licensure violation.

The DBPR complaint, investigatory, and prosecutorial processes are as follows. Once the complaint is received, it must be forwarded to the proper office. Complaints against regulated professionals are received by the Bureau of Consumer Services in Tallahassee, processed, and referred to a complaint analyst for review. Legal sufficiency is determined, if possible, from the description of the alleged violation. Sometimes, additional information, such as copies of documents, may be required. In some cases this can be done quickly, but in others it can take a much longer period of time and require the cooperation of sources outside the control of the department.

If legal sufficiency is determined, the case is sent to the investigative office in the area where the alleged violation occurred. This can take several days to get the complaint to the proper office and assigned to an investigator. The investigator must rely on the cooperation of others to conduct the investigation. Sometimes subpoenas must be issued to get information. As an investigation progresses, new leads and sources of information are revealed and must be pursued. Sometimes, especially in a technical area such as building code matters, experts must be retained to perform expert analysis.

Once an investigation of a legally sufficient complaint is completed, it is forwarded to the Office of General Counsel for review and presentation to the probable cause panel of the board. The panel, which consists of at least two board members, determines whether there is probable cause to support prosecution of the matter. The complaint, the investigation, and the panel's deliberations are confidential until ten days after probable cause is found by the panel. If probable cause is not found, the case remains confidential and may be closed or sent back for further investigation. However, this exemption from s.119.07(1) does not apply to actions against unlicensed persons.

When probable cause is found, the department files an administrative complaint and pursues prosecution of the matter. Each prosecuted case eventually ends up before the board. The board is the agency head for purposes of taking final agency action in each case.

Appeals may be taken to the District Courts of Appeal pursuant to section 120.68, F.S. The rights of licensees are protected during the disciplinary process by chapter 120, F.S., and the uniform rules adopted by the Administration Commission pursuant thereto, s. 455.225, F.S., and the Florida and United States Constitutions.

Construction – Contractors scope of work

Present Situation

Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the CILB within the DBPR. 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).

The CILB is statutorily divided into two divisions, I and II. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors under the CILB, including plumbing contractors, air conditioning contractors and mechanical contractors. Construction contractors include general, building, and residential contractors, and several categories of subcontractors, including roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors.

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.

To provide recourse for consumers who suffer monetary damages because of improper actions by contractors, s. 489.140, F.S., creates the “Florida Homeowners' Construction Recovery Fund” (FHCRF) as 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% of the money to fund projects intended to improve building code enforcement. Additional amounts are to be used to fund the regulation of building code administrators and inspectors by the Florida Building Code Administrators and Inspectors Board. After adequately funding this regulation, excess monies are transferred to the FHCRF. Any money remaining after the FHCRF is sufficiently funded is applied to the costs of the regulation of 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 chapter 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 cap for 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.

Effect of proposed changes

Remove protections under the bill of rights

Section 1. The bill amends 468.619, F.S., to exempt building code enforcement officials licensed under chapter 468, F.S., who are under investigation or the subject of disciplinary proceedings for actions that occur outside the scope of their employment as an enforcement official, from the rights and privileges as specified in the building code enforcement officials' bill of rights. As a result, the time limitations for investigations would not be applicable.

Change of disciplinary standards/expand disciplinary authority

Section 2. The bill amends 468.621, F.S., to authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee files, or causes another to file, a report that they knew was false or when the licensee fails to follow or properly enforce the building code that they “knew or should have known” was applicable. This changes the standard of practice from a willful standard to a negligence standard.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a reduced rate from any person who performs work that may be under the enforcement authority of the enforcement official. It increases the maximum amount assessable against an individual disciplined by the Florida Building Code Administrators and Inspectors Board from \$5,000 to \$10,000 per count.

The bill provides that violating a provision of the local or state permitting or licensing requirements is prima facie evidence that the official acted with reckless disregard or deliberate ignorance.

Section 3. The bill amends 489.113, F.S., to provide that local construction regulation boards may take action against a state certified contractor's authority to obtain a local building permit, for any building code violation, not just willful violations.

Construction contractors – financial responsibility

Section 4. The bill amends 489.115, F.S., to provide that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding.

Unlicensed activity/local civil citations against state certified contractors

Section 5. The bill amends 489.127, F.S., to provide that a state certified or registered contractor, or a locally licensed contractor, may not: 1) perform work for which he/she is not properly licensed; 2) subcontract work to an unlicensed person when the work requires a license; or 3) fail to obtain required local permits.

The bill also provides that local jurisdictions may issue civil citations against state certified contractors and such citations are not considered discipline.

Section 6. Effective date - July 1, 2006.

C. SECTION DIRECTORY:

See B., above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR states that the bill “will greatly increase the exposure of build code officials to litigation and discipline by changing the standard of review from a knowing standard to knew or should have known standard. This will result in building officials being strictly liable for the negligent actions of their subordinates.”

D. FISCAL COMMENTS:

The DBPR fiscal estimate states, “There is no significant fiscal impact on state government.”

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, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill allows the rule authority of the CILB relating to financial stability to "include minimum requirements for net worth, cash, and bonding" for construction contractors.

The DBPR notes, "The bill may necessitate amendments to the Florida Building Code Administrators and Inspectors Board's disciplinary guideline rules."

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The subject matter of the bill appears to be in conflict with the "relating to" clause in the title of the bill. The bill addresses the scope of work and discipline of building code administrators and inspectors pursuant to chapter 468, F.S. It also amends provisions of chapter 489, F.S., providing for the scope of work, licensure, and discipline of construction contractors by the CILB. The "relating to" clause states "An act relating to building code enforcement officials." The provisions of the bill relating to chapter 489, F.S., and the licensure and discipline of construction contractors by the CILB do not appear to be within the scope of "building code enforcement officials" and the authority of the Florida Building Code Administrators and Inspectors Board over enforcement officials. It may be clarifying to amend the "relating to" clause to correct this possible defect.

The DBPR points out, "Section 5 amends s. 489.127(4)(d), F.S., to prohibit certified and registered contractors from subcontracting to unlicensed persons work that requires a license. This may conflict with s. 489.117(4)(e), F.S., which authorizes individuals who perform work that does not specifically require a state contractor's license to perform work under the supervision of a licensed residential, building or general contractor on a single-family residence without having to obtain a local license."

The DBPR further notes, "Section 5 also amends s. 489.127(5)(o), F.S., to provide that local jurisdictions may issue civil citations against certified contractors, and such citations are not considered discipline. The amendment conflicts with s. 489.113, F.S., which limits local jurisdictions to taking action against certified contractors' permit privileges."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES