

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 CS
Professional Regulation
SPONSOR(S): Gibson
TIED BILLS:

Professional Regulation by the Department of Business and
Professional Regulation
IDEN./SIM. BILLS: SB 552

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Business Regulation Committee, 16 Y, 0 N, w/CS, Livingston, Liepshutz. Row 2: Local Government Council, Smith, Hamby. Row 3: Transportation & Economic Development Appropriations Committee. Row 4: Commerce Council. Row 5: (blank).

SUMMARY ANALYSIS

Auctioneers are licensed and regulated pursuant to part VI of chapter 468, F.S., by the Florida Board of Auctioneers under the Department of Business and Professional Regulation (DBPR). Auctioneers are required to meet certain statutory qualifications and pass a written examination. This part provides for disciplinary actions, including disciplinary actions for failure to account for money that has come into an auctioneer's control through an auction. 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. 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) under the DBPR.

The bill addresses auctioneers to require fingerprints to be submitted and processed for licensure.

The bill addresses building code administrators, inspectors and plans examiners to: provide for additional options to qualify to take the licensing examination to be a building code inspector or plans examiner; allow a licensee within a statutorily defined small county to provide services to another jurisdiction; 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 discipline of when the licensee fails to enforce the Florida Building Code or permitting requirements, even if the violation occurs outside their official jurisdiction or duties; require education study in ethics and professional standards; and prohibit 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.

The bill addresses construction contractors to: authorize the CILB to conduct a criminal records background check on applicants for licensure to determine moral character and to deny licensure for felons who have not had their civil rights restored; 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 perform work for which he or she is not properly licensed, subcontract work to an unlicensed person when the work requires a license, or 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:

Provide limited government/promote personal responsibility - The bill authorizes the board, by rule, to adopt guidelines for the determination of financial stability, which may include minimum requirements for net worth, cash, and bonding.

The bill provides for the submittal and processing of fingerprints for background checks of applicants for licensure as an auctioneer, and requires the applicant to bear the cost of processing fingerprints and conducting the background check. The bill provides for the application of the building code enforcement officials' bill of rights to certain disciplinary investigations and proceedings. The bill provides for disciplinary proceedings for violations involving failure to follow building code, licensing, or permit requirements, obstructing an investigation, and accepting services at a noncompetitive rate from any person whose work may be under the enforcement authority of the official, under certain circumstances. The bill requires applicants for initial issuance of a certificate or registration as a contractor to submit to criminal history records checks, and requires certain applicants for a certificate or registration to provide documentation regarding the status of civil rights.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Auctioneers

Auctioneers are licensed and regulated pursuant to part VI of chapter 468, F.S., by the Florida Board of Auctioneers under the DBPR. Auctioneers are required to pass a written exam prepared and administered by the DBPR. This part provides for disciplinary actions, including disciplinary action for failure to account for money that has come into an auctioneer's control through an auction. The Auctioneer Recovery Fund was established to allow persons to recover losses when they otherwise could not collect a court judgment against an auctioneer.

Building code administrators, inspectors, and plans examiners

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 of chapter 468, F.S., 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 establishes time frames for keeping DBPR from having "open ended" investigations and prosecutions. Specific provisions include requiring DBPR 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.

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.

DBPR complaint, investigatory, and prosecutorial processes are as follows: first the complaint is received; it then 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. Next 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 DBPR.

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 section 119.07(1), F.S., does not apply to actions against unlicensed persons.

When probable cause is found, DBPR 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, section 455.225, F.S., and the Florida and United States Constitutions.

Construction – Contractors scope of work

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. 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, section 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 section 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.

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.

Effect of Proposed Changes

Fingerprints

The bill amends section 468.385(4), F.S., to require fingerprints for a criminal history record check, to be submitted and processed for licensure of an auctioneer.

Definitions

The bill adds to section 468.603, F.S., relating to building code administrators, inspectors and plans examiners, and to section 489.105, F.S, relating to contracting, the following definitions:

- "Willful" means the mental state in which a person commits an act knowing that, or showing reckless disregard for whether, the act is prohibited under this part or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this part. A person knows that an act is prohibited or required if the person is aware of the provision of this part that prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. "Willful" does not include specific intent to defraud.
- "Knowing" or "knowingly" means the mental state in which a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the information. "Knowing" or "knowingly" does not include specific intent to defraud.
- "Reckless disregard" means the mental state in which a person commits an act despite the act's being prohibited or required under this part and wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of this part. "Reckless disregard" does not include specific intent to defraud.

Education options

The bill amends section 468.609(2) and (5)(a), F.S., to provide for a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner. One program is 400 hours of technical education and 2 years, with at least 1 year of experience in construction, building code inspection, or plans review experience. The education must include at least 20 hours of study in ethics and professional standards. The other option is an associate degree program or higher from an accredited institution in construction management with a major in building code administration.

Small county reciprocity

The bill amends section 468.617(4), F.S., to allow building officials, building code inspectors or plans examiners who hold a limited certificate and are employed by a jurisdiction within a statutorily defined small county (75,000 populations) to provide building code inspection, plans review, or building code administration services to another jurisdiction within a statutorily defined small county.

Protections under the bill of rights

The bill amends section 468.619(10), 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.

Disciplinary proceedings

The bill amends section 468.621(1), 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, even if the violation occurs outside their official jurisdiction or duties. The bill creates a potential violation if a building official obstructs 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 who performs work that may be under the enforcement authority of the enforcement official. It creates an exemption for immediate family members.

Ethics study

The bill amends sections 468.627(5) and (6), F.S., to require a minimum of 2 of the required 14 classroom hours be on ethics relating to professional standards of practice, duties, and responsibilities.

Construction contractors – financial responsibility

The bill amends section 489.115, F.S., to authorize the CILB to conduct a criminal records background check on applicants for licensure to determine moral character and to deny licensure for felons who have not had their civil rights restored.

The bill also provides that the CILB rules pertaining to financial stability may include requirements for net worth, cash, and bonding. The bill provides that fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

Unlicensed activity/local civil citations against state certified contractors

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

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

C. SECTION DIRECTORY:

- Section 1. Amends subsection (4) of section 468.385, F.S., relating to licenses required, qualifications, examination.
- Section 2. Adds subsections (9), (10), and (11), to section 468.603, F.S., relating to definitions.
- Section 3. Amends subsection (2) and paragraph (a) of subsection (5) of section 468.609, F.S., relating to administration, standards for certification, additional categories of certification.
- Section 4. Adds subsection (4) to section 468.617, F.S., relating to joint building code inspection department, other arrangements.
- Section 5. Adds subsection (10) to section 468.619, F.S., to restrict application of the building code enforcement officials' bill of rights.
- Section 6. Amends subsection (1) of section 468.621, F.S., relating to disciplinary proceedings.
- Section 7. Amends subsections (5) and (6) of section 468.627, F.S., relating to application, examination, renewal, fees.
- Section 8. Adds subsections (20), (21), and (22) to section 489.105, F.S., relating to definitions.
- Section 9. Adds subsection (6) and amends subsection (7) to section 489.115, F.S., relating to certification and registration, endorsement, reciprocity, renewals, continuing education [*renumbers subsections*].

Section 10. Adds paragraph (d) to subsection (4) of section 489.127, F.S., and amends paragraph (o) of subsection (5) of section 489.127, F.S., relating to prohibitions, penalties.

Section 11. Provides that the bill takes effect on July 1, 2006.

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:

Not anticipated to be significant.

D. FISCAL COMMENTS:

According to DBPR, the 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.

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.

According to DBPR, "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

According to DBPR, the bill “amends section 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 section 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 bill 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

The Business Regulation Committee adopted one strike-all amendment on March 16, 2006. The amendment provides the following:

- Requires fingerprints to be submitted and processed for licensure of an auctioneer;
- Provides statutory definitions for willful, knowing, and reckless disregard;
- Provides for a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner and includes training in ethics and professional standards and requires ethics training as a part of the currently required continuing education courses;
- Allows for reciprocity by contract between small counties for staffing shortages of inspectors and examiners; and
- Authorizes the CILB to conduct a criminal records background check on applicants for licensure to determine moral character.

The bill, as amended, was reported favorably with committee substitute