

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 727

Regulation of the Construction Industry

SPONSOR(S): Gibson

TIED BILLS:

IDEN./SIM. BILLS: SB 404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>8 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u>Livingston</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

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 (board) and administered by the Department of Business and Professional Regulation (DBPR). 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.

The bill: allows an additional option for an applicant to qualify for licensure as a building code inspector or plans examiner if he or she demonstrates a combination of completion of an approved training program in the field of building code inspection or plans review and a minimum of two years experience in the field; requires certification examinations to be substantially similar to those administered by the International Code Council; allows building code enforcement officials employed by small counties having a population of 150,000 or less to provide services to another county; limits the building code enforcement official's bill of rights to official duties only; and authorizes the board to take disciplinary action if the licensee fails to enforce requirements that the licensee knows are applicable, obstructs an investigation, or provides false evidence information.

Construction Contractors - 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 Industries Licensing Board (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, such as, roofing, plumbing, air-conditioning, etc.

The bill: authorizes the CILB to conduct a criminal records background check on applicants for licensure to determine moral character. The bill provides that the CILB rules pertaining to financial stability may include minimum monetary requirements for net worth, cash, and bonding. Fifty percent of the monetary requirement may be met by completing a 14-hour financial responsibility course.

Per the Department of Business and Professional Regulation, one additional full-time equivalent (FTE) position will be needed to handle the workload resulting from the anticipated increase in applications for licensure. The DBPR is also expecting additional costs associated with the background check component of the proposed legislation.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/promote personal responsibility - The bill authorizes the CILB, 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 application of the building code enforcement officials' bill of rights to certain disciplinary investigations and proceedings; provides for disciplinary proceedings for violations involving failure to follow building code, or permit requirements, obstructing an investigation, and accepting services at a noncompetitive rate under certain circumstances; requires applicants for initial issuance of a certificate or registration as a contractor to submit to criminal history records checks.

B. EFFECT OF PROPOSED CHANGES:

Building code administrators, inspectors, and plans examiners

Education options

Present situation

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the board and administered by the DBPR. 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 553.73(6)(a), F.S., requires the Building Code Commission to update the Florida Building Code every three years. When updating the code the commission is required to select "the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are adopted by the International Code Council."

Effect of proposed changes

Section 1. The bill amends s. 468.609, F.S., to provide an additional 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 an approved training program in the field of building code inspection or plans review and experience which totals two years. The educational component must be a training program of at least 300 hours in the chosen category of building code inspection or

plans review. The education must include at least 20 hours of study in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities.

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.

Small county reciprocity

Present situation

Currently, s. 468.604(1), F.S., provides in part:

It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems **within the boundaries of their governmental jurisdiction**...[emphasis supplied]

Effect of proposed changes

Section 2. The bill amends s. 468.617(4), F.S., to authorize 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 another county. The bill references the term "small county" as defined in s. 339.2818, F.S., which relates to the Small County Outreach Program and defines the term as a county having a population of 150,000 or less.

Protections under the "bill of rights"/ disciplinary proceedings

Present situation

Section 468.619, F.S., establishes the enforcement officials' bill of rights. This section provides controls relating to reasonable times, places, and procedures for the 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. Specific provisions include requiring the 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.

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.

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 determines whether there is probable cause to support prosecution of the matter. When probable cause is found, the 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.

Effect of proposed changes

Section 3. 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 chapter 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.

Section 4. The bill amends s. 468.621, F.S., to authorize the 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 knows are 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.

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 and relatives.

Continuing education

Present situation

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.

Section 468.609(6), F.S., requires each certificateholder to submit proof of completion of the core curriculum courses **or** of passing an equivalency test for the training program approved by the Florida Building Commission under s. 553.841, F.S.

Effect of proposed changes

Section 5. The bill amends s. 468.627(5), F.S., to require that a minimum of three hours of the required 14-hour classroom continuing education must be in state laws, rules, and 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.

Construction Contractors

Financial stability/Net worth

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. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors, often referred to as subcontractors, under the CILB, 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.

Currently, s. 489.111, F.S., requires an applicant be of “good moral character,” among other qualifications. Subsection (3) further provides the board may deny an applicant based on moral character if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor and the finding by the board of a lack of good moral character is supported by clear and convincing evidence.

When an applicant is found to be unqualified because of a lack of moral character, the board must furnish a statement to the applicant containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

Additionally, s. 489.115 requires that an initial applicant or certificateholder or registrant requesting a change of status to submit a credit report from a nationally recognized credit agency to the board. The board is required by rule to adopt guidelines for determining financial stability.

Effect of proposed changes

Section 6. The bill amends s. 489.115, F.S., to authorize the CILB to conduct a criminal records background check on applicants for licensure to determine moral character. The bill provides standards for denial of a license based upon moral character, including the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The board may not deny licensure based solely on a felony conviction, or for felons who have had their civil rights restored, or who have failed to provide proof of restoration of civil rights.

The bill further amends s. 489.115, F.S., to provide that the CILB rules pertaining to financial stability may include minimum 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 CILB.

The bill provides that the minimum bonding requirement for Division I certificateholders may be no more than \$20,000 and no more than \$10,000 for Division II certificateholders.

Effective date

Section 7. The effective date of the bill is July 1, 2007.

C. SECTION DIRECTORY:

See B., above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR anticipates revenues of \$10,500 annually, based on increased application/exam fees and license fees.

2. Expenditures:

The DBPR anticipates expenditures of \$80,308 during FY 2007-08 and \$75,582 in subsequent years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

The DBPR is requesting one new FTE position to handle the anticipated increase in the number of applications for licensure. Additionally, the DBPR expects new costs associated with background checks that will be required on all initial licensure applications. This added component could create longer board meetings by requiring more applicants to go before the Construction Industry Licensing Board, as some applicants with criminal histories would still be eligible for licensure.

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 bill may necessitate amendments to the board's disciplinary guideline rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill references the term "**small county**" as defined in s. 339.2818, F.S., which relates to the Small County Outreach Program and defines the term as a county having a population of 150,000 or less.

Section 2 of the bill, lines 105-110, authorizes 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 reciprocity services to another jurisdiction within another **county**. The reference to county is without population limits.

The Senate companion bill, SB 404, similarly allows for reciprocity of services but only between a **small county** and another jurisdiction within another **small county**, page 4, lines 24-30. [see IV. below]

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 22, 2007, the Committee on Business Regulation adopted three amendments and passed the bill out of committee by unanimous vote.

Amendment 1. Deletes the reference to a determination of "moral character" when evaluating a criminal history records check.

Amendment 2. Inserts the word "small" before the word "county" to clarify the reference when allowing reciprocity between "small counties."

Amendment 3. Prohibits building code enforcement officials from engaging in contracting while employed by a state or local government agency.