

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 945 Construction Contractors  
**SPONSOR(S):** Chestnut  
**TIED BILLS:** **IDEN./SIM. BILLS:**

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>(ref. removed)</u>	<u></u>	<u></u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u></u>	<u>Livingston</u>	<u>Thorn</u>
3) <u></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

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 Department of Business and Professional Regulation (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 bill addresses construction contractors 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; 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:

The bill does not appear to implicate the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### 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.

Current provisions of s. 489.117(4)(e), F.S., specify , in part, “any person who is not required to obtain registration or certification...may perform specialty contracting services for the construction, remodeling, repair, or improvement of single-family residences...without obtaining a local professional license if such person is under the supervision of a certified or registered general, building, or residential contractor.”

Local jurisdictions are currently authorized to suspend the ability of certified contractors to obtain permits within their county or city pursuant to s. 489.113(4)(b), F.S. The local construction regulation board must first find the certified contractor guilty, through the public hearing process, of fraud or a willful building code violation. The local jurisdiction may then refer the contractor to the DBPR for further disciplinary action pursuant to s. 489.129(1)(h), F.S. Section 489.127, F.S., also authorizes local jurisdictions to issue civil citations to registered contractors for violation of local codes and ordinances.

The DBPR currently issues citations to certified contractors for specified violations of s. 489.129(1), F.S. The citations are considered disciplinary action.

##### Effect of proposed changes

#### **Unlicensed activity/local civil citations against state certified contractors**

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.

C. SECTION DIRECTORY:

Section 1. Amends 489.127, F.S., to prohibit activities for certain contractors relating to unlicensed or unpermitted activity and to provide that local jurisdictions may issue civil citations against state certified contractors.

Section 2. Effective date - July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

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:

None.

## 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:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes that

“Although the bill provides that the citations do not constitute discipline, judicial review may determine that the issuance of civil citations constitutes de facto discipline. Depending upon the nature of the violation, issuance of citations could present a double jeopardy bar to any substantive discipline that the Construction Industry Licensing Board may undertake, including restitution. Absent a board order of restitution, injured consumers would only be able to access the Florida Homeowners’ Construction Recovery Fund by pursuing a civil judgment, which could result in expensive legal fees.”

D. STATEMENT OF THE SPONSOR

No Statement of the Sponsor submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**