

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1466

INTRODUCER: Senator Aronberg

SUBJECT: Construction Contracting

DATE: March 7, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Bedford | Imhof | RI | Pre-meeting |
| 2. | | | CA | |
| 3. | | | GA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill provides that certified or registered contractors, or a contractor authorized by a local construction licensing board may not perform work for which he or she is not properly licensed. He or she is also prohibited from subcontracting to unlicensed persons work that requires a license or the failure to obtain required permits or required inspections.

The bill allows a local jurisdiction to issue civil citations to state certified construction contractors for the following violations:

- Failure to obtain a required building permit or required inspection;
- Aiding and abetting unlicensed activity;
- Fraud or willful building code violations;
- Failure to use a license number in marketing or advertising; and
- Abandonment of a building project. Sixty days without job progress constitutes abandonment.

This bill amends section 489.127 of the Florida Statutes.

II. Present Situation:

A registered contractor is any contractor who has registered with the Department of Business and Professional Regulation (department) pursuant to fulfilling the competency requirements in the

jurisdiction where the registration is issued.¹ Registered contractors may contract only in such jurisdictions.

A certified contractor is a contractor who possesses a certificate of competency issued by the department and may contract in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.²

Certified and registered construction contractors are subject to administrative discipline for the following violations of ch. 489.129, F.S.:

- Performing any act that assists a person in engaging in uncertified and unregistered contracting;
- Knowingly combining and conspiring with an uncertified or unregistered person by allowing his or her certificate, registration, or certificate of authority to be used by the uncertified or unregistered person with the intent to evade s. 489.129, F.S.;
- Failing to comply with the provisions of s. 489.129, F.S., or violating a rule or lawful order of the board; and
- Proceeding on any job without obtaining applicable local building department permits and inspections.

The penalties for these violations include probation, suspension, revocation, restitution, or fines up to \$10,000 per violation.

A local construction regulation board (board) may deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit the authority to obtain a permit with specific conditions if the contractor has been found guilty of fraud or a willful building code violation.³

A local government can deny issuance of, or may suspend, any outstanding building permit when a contractor fails or refuses to provide proof of public liability and property damage insurance coverage and workers' compensation insurance coverage.⁴

Local jurisdiction agencies that enforce the regulatory laws must issue a notice of noncompliance as its first response to a minor violation of a regulatory law. Minor violations are those that do not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of harm.⁵

Each county or municipality may designate a code enforcement officer to issue citations to registered contractors for the following violations found in s. 489.127(1), F.S.:

¹ Section 489.105(10), F.S.

² Section 489.105(8), F.S.

³ Section 489.113(4)(b), F.S.

⁴ Section 489.113(4)(c), F.S.

⁵ Section 489.113(4)(d), F.S.

- Falsely holding himself or herself or a business organization out as a licensee, certificate holder, or registrant;
- Falsely impersonating a certificate holder or registrant;
- Presenting as his or her own the certificate, registration, or certificate of authority of another;
- Knowingly give false or forged evidence to the board or a member thereof;
- Use or attempt to use a certificate, registration, or certificate of authority which has been suspended or revoked;
- Engaging in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority;
- Operating a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in ss. 489.119 and 489.115, F.S.;
- Commencing or performing work for which a building permit is required pursuant to part VII of chapter 553, F.S. without such building permit being in effect; or
- Willfully or deliberately disregarding or violating any municipal or county ordinance relating to uncertified or unregistered contractors;⁶

Citations may also be issued to uncertified or unregistered persons associated with a contracting firm qualified by the licensee under this chapter who:

- Concealing or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;
- Excluding or facilitating the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;
- Knowingly causing any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision; or
- Assisting or participating with any certificate holder or registrant in the violation of any provision of this ch. 489, F.S.⁷

The violator can either correct the violation and pay the civil penalty or within 10 days of receipt of the citation request an administrative hearing before the enforcement or licensing board or designated special magistrate to appeal the issuance of the citation by the code enforcement officer. Willfully refusing to sign and accept a citation is a second degree misdemeanor.⁸

Any person who violates the provisions of s. 489.127(4)(d), F.S., commits a misdemeanor of the first degree for the first offense and a felony of the third degree for subsequent violations.

Section 489.127(5), F.S., provides, in part, that:

⁶ Section 489.127(5), F.S.

⁷ Section 489.132, F.S.

⁸ Section 489.127(4)(d), F.S.

Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

The code enforcement officer may issue a citation upon personal investigation for a violation of ss. 489.127(1) and 489.132(1), F.S. Procedures for the form, issuance, and hearing on the citations are also included in s. 489.127(5), F.S.

III. Effect of Proposed Changes:

The bill amends s. 489.127(4), F.S., to provide that a certified or registered contractor, or a contractor authorized by a local construction licensing board may not perform work for which he or she is not properly licensed. He or she is also prohibited from subcontracting to unlicensed persons work that requires a license or failure to obtain required permits or required inspections.

The bill amends s. 489.127(5)(o), F.S., providing that a local jurisdiction may issue civil citations to certified contractors for the following violations:

- Failure to obtain a required building permit or required inspection;
- Aiding and abetting unlicensed activity;
- Fraud or willful building code violations;
- Failure to use a license number in marketing or advertising; and
- Abandonment of a building project. Sixty days without job progress constitutes abandonment.

It maintains the current provisions that the procedure for issuing a civil citation does not authorize a local jurisdiction to exercise disciplinary authority against a state-certified contractor.

The bill will take effect on July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other

The Department of Business and Professional Regulation has raised concerns about this bill being a prohibited special law or general law of local application violating Article III, section 11, of the Florida Constitution. This section requires state-wide uniformity for laws affecting numerous subjects. A general law of local application applies to a distinct region or set of subdivisions within the state. Its classification scheme is based on population or some other reasonable characteristic which distinguishes one locality from another. *City of Miami Beach v. Frankel*, 363 So.2d 555 (Fla. 1978). On the other hand laws which distinguish on the basis of population may be classified as special laws if their objectives bear no reasonable relationship to differences in population. *State ex rel. Utilities Operating Co. v. Macon*, 172 So.2d 225 (Fla. 1964).

A special law, or “local law,” as it is sometimes referred to, does not apply with geographic uniformity across the state. It operates only upon designated persons or discrete regions, and bears no reasonable relationship to differences in population or other legitimate criteria. See *Housing Authority v. City of St. Petersburg*, 287 So.2d 307, 310 (Fla. 1973)(defining a special law). Laws which arbitrarily affect one subdivision of the state, but which fail to encompass other similarly situated subdivisions, may be classified as special laws. *Department of Business Regulation v. Classic Mile, Inc.* 541 So.2d 1155 (Fla. 1989).

This bill applies to all local jurisdictions the same, therefore, having geographic uniformity across the state.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By expanding the citation authority of local governments over certified contractors, the local governments may receive additional revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
