

1 A bill to be entitled
 2 An act relating to construction contracting; amending s.
 3 489.103, F.S.; revising a disclosure statement that a
 4 local permitting agency must provide to property owners
 5 who apply for building permits and claim certain
 6 exemptions from provisions regulating construction
 7 contracting; requiring an owner claiming an exemption to
 8 read and sign the disclosure statement; amending s.
 9 489.128, F.S.; providing that an individual or business
 10 organization may not be considered unlicensed for failure
 11 to have a required local jurisdiction license; providing
 12 for retroactive application; providing effective dates.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

16 Section 1. Effective July 1, 2009, subsection (7) of
 17 section 489.103, Florida Statutes, is amended to read:

18 489.103 Exemptions.--This part does not apply to:

19 (7) Owners of property when acting as their own contractor
 20 and providing direct, onsite supervision themselves of all work
 21 not performed by licensed contractors:

22 (a) When building or improving farm outbuildings or one-
 23 family or two-family residences on such property for the
 24 occupancy or use of such owners and not offered for sale or
 25 lease, or building or improving commercial buildings, at a cost
 26 not to exceed \$75,000, on such property for the occupancy or use
 27 of such owners and not offered for sale or lease. In an action
 28 brought under this part, proof of the sale or lease, or offering

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29 | for sale or lease, of any such structure by the owner-builder
30 | within 1 year after completion of same creates a presumption
31 | that the construction was undertaken for purposes of sale or
32 | lease.

33 | (b) When repairing or replacing wood shakes or asphalt or
34 | fiberglass shingles on one-family, two-family, or three-family
35 | residences for the occupancy or use of such owner or tenant of
36 | the owner and not offered for sale within 1 year after
37 | completion of the work and when the property has been damaged by
38 | natural causes from an event recognized as an emergency
39 | situation designated by executive order issued by the Governor
40 | declaring the existence of a state of emergency as a result and
41 | consequence of a serious threat posed to the public health,
42 | safety, and property in this state.

43 |
44 | This subsection does not exempt any person who is employed by or
45 | has a contract with such owner and who acts in the capacity of a
46 | contractor. The owner may not delegate the owner's
47 | responsibility to directly supervise all work to any other
48 | person unless that person is registered or certified under this
49 | part and the work being performed is within the scope of that
50 | person's license. For the purposes of this subsection, the term
51 | "owners of property" includes the owner of a mobile home
52 | situated on a leased lot. To qualify for exemption under this
53 | subsection, an owner must personally appear and sign the
54 | building permit application, ~~and~~ must satisfy local permitting
55 | agency requirements, if any, and must read and sign the
56 | disclosure statement required under this subsection to

57 demonstrate ~~proving~~ that the owner has a complete understanding
58 of the owner's obligations under the law ~~as specified in the~~
59 ~~disclosure statement in this section~~. If any person violates the
60 requirements of this subsection, the local permitting agency
61 shall withhold final approval, revoke the permit, or pursue any
62 action or remedy for unlicensed activity against the owner and
63 any person performing work that requires licensure under the
64 permit issued. The local permitting agency shall provide the
65 person with the ~~a~~ disclosure statement in substantially the
66 following form:

67
68 DISCLOSURE STATEMENT
69

70 1. I understand that state law requires construction to
71 be done by a licensed contractor and have applied for an
72 owner-builder permit under an exemption from the law. The
73 exemption specifies that I, as the owner of the property
74 listed, may act as my own contractor with certain
75 restrictions even though I do not have a license.
76

77 2. I understand that building permits are not required to
78 be signed by a property owner unless he or she is
79 responsible for the construction and is not hiring a
80 licensed contractor to assume responsibility.
81

82 3. I understand that, as an owner-builder, I am the
83 responsible party of record on a permit. I understand that
84 I may protect myself from potential financial risk by

85 hiring a licensed contractor and having the permit filed
86 in his or her name instead of my own name. I also
87 understand that a contractor is required by law to be
88 licensed and bonded in Florida and to list his or her
89 license numbers on permits and contracts.

90
91 4. I understand that I may build or improve a one-family
92 or two-family residence or a farm outbuilding. I may also
93 build or improve a commercial building if the costs do not
94 exceed \$75,000. The building or residence must be for my
95 own use or occupancy. It may not be built or substantially
96 improved for sale or lease. If a building or residence
97 that I have built or substantially improved myself is sold
98 or leased within 1 year after the construction is
99 complete, the law will presume that I built or
100 substantially improved it for sale or lease, which
101 violates the exemption.

102
103 5. I understand that, as the owner-builder, I must
104 provide direct, onsite supervision of the construction.

105
106 6. I understand that I may not hire an unlicensed person
107 to act as my contractor or to supervise persons working on
108 my building or residence. It is my responsibility to
109 ensure that the persons whom I employ have the licenses
110 required by law and by county or municipal ordinance.

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112 7. I understand that it is a frequent practice of
113 unlicensed persons to have the property owner obtain an
114 owner-builder permit that erroneously implies that the
115 property owner is providing his or her own labor and
116 materials. I, as an owner-builder, may be held liable and
117 subjected to serious financial risk for any injuries
118 sustained by an unlicensed person or his or her employees
119 while working on my property. My homeowner's insurance may
120 not provide coverage for those injuries. I am willfully
121 acting as an owner-builder and am aware of the limits of
122 my insurance coverage for injuries to workers on my
123 property.

124
125 8. I understand that I may not delegate the
126 responsibility for supervising work to a licensed
127 contractor who is not licensed to perform the work being
128 done. Any person working on my building who is not
129 licensed must work under my direct supervision and must be
130 employed by me, which means that I must comply with laws
131 requiring the withholding of federal income tax and social
132 security contributions under the Federal Insurance
133 Contributions Act (FICA) and must provide workers'
134 compensation for the employee. I understand that my
135 failure to follow these laws may subject me to serious
136 financial risk.

137
138 9. I agree that, as the party legally and financially
139 responsible for this proposed construction activity, I

140 will abide by all applicable laws and requirements that
141 govern owner-builders as well as employers. I also
142 understand that the construction must comply with all
143 applicable laws, ordinances, building codes, and zoning
144 regulations.

145
146 10. I understand that I may obtain more information
147 regarding my obligations as an employer from the Internal
148 Revenue Service, the United States Small Business
149 Administration, the Florida Department of Financial
150 Services, and the Florida Department of Revenue. I also
151 understand that I may contact the Florida Construction
152 Industry Licensing Board at ...(telephone number)... or
153 ...(Internet website address)... for more information
154 about licensed contractors.

155
156 11. I am aware of, and consent to, an owner-builder
157 building permit applied for in my name and understand that
158 I am the party legally and financially responsible for the
159 proposed construction activity at the following address:
160 ...(address of property)....

161
162 12. I agree to notify ...(issuer of disclosure
163 statements)... immediately of any additions, deletions, or
164 changes to any of the information that I have provided on
165 this disclosure.

166

167 Licensed contractors are regulated by laws designed to
168 protect the public. If you contract with a person who does
169 not have a license, the Construction Industry Licensing
170 Board and Department of Business and Professional
171 Regulation may be unable to assist you with any financial
172 loss that you sustain as a result of a complaint. Your
173 only remedy against an unlicensed contractor may be in
174 civil court. It is also important for you to understand
175 that, if an unlicensed contractor or employee of an
176 individual or firm is injured while working on your
177 property, you may be held liable for damages. If you
178 obtain an owner-builder permit and wish to hire a licensed
179 contractor, you will be responsible for verifying whether
180 the contractor is properly licensed and the status of the
181 contractor's workers' compensation coverage.

182
183 Before a building permit can be issued, this disclosure
184 statement must be completed and signed by the property
185 owner and returned to the local permitting agency
186 responsible for issuing the permit. A copy of the property
187 owner's driver license, the notarized signature of the
188 property owner, or other type of verification acceptable
189 to the local permitting agency is required when the permit
190 is issued.

191
192 Signature: ... (signature of property owner) ...

193 Date: ... (date) ...
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195 ~~State law requires construction to be done by licensed~~
196 ~~contractors. You have applied for a permit under an exemption to~~
197 ~~that law. The exemption allows you, as the owner of your~~
198 ~~property, to act as your own contractor with certain~~
199 ~~restrictions even though you do not have a license. You must~~
200 ~~provide direct, onsite supervision of the construction yourself.~~
201 ~~You may build or improve a one-family or two-family residence or~~
202 ~~a farm outbuilding. You may also build or improve a commercial~~
203 ~~building, provided your costs do not exceed \$75,000. The~~
204 ~~building or residence must be for your own use or occupancy. It~~
205 ~~may not be built or substantially improved for sale or lease. If~~
206 ~~you sell or lease a building you have built or substantially~~
207 ~~improved yourself within 1 year after the construction is~~
208 ~~complete, the law will presume that you built or substantially~~
209 ~~improved it for sale or lease, which is a violation of this~~
210 ~~exemption. You may not hire an unlicensed person to act as your~~
211 ~~contractor or to supervise people working on your building. It~~
212 ~~is your responsibility to make sure that people employed by you~~
213 ~~have licenses required by state law and by county or municipal~~
214 ~~licensing ordinances. You may not delegate the responsibility~~
215 ~~for supervising work to a licensed contractor who is not~~
216 ~~licensed to perform the work being done. Any person working on~~
217 ~~your building who is not licensed must work under your direct~~
218 ~~supervision and must be employed by you, which means that you~~
219 ~~must deduct F.I.C.A. and withholding tax and provide workers'~~
220 ~~compensation for that employee, all as prescribed by law. Your~~
221 ~~construction must comply with all applicable laws, ordinances,~~
222 ~~building codes, and zoning regulations.~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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223 Section 2. Subsection (1) of section 489.128, Florida
 224 Statutes, is amended to read:

225 489.128 Contracts entered into by unlicensed contractors
 226 unenforceable.--

227 (1) As a matter of public policy, contracts entered into
 228 on or after October 1, 1990, by an unlicensed contractor shall
 229 be unenforceable in law or in equity by the unlicensed
 230 contractor.

231 (a) For purposes of this section, an individual is
 232 unlicensed if the individual does not have a license required by
 233 this part concerning the scope of the work to be performed under
 234 the contract. A business organization is unlicensed if the
 235 business organization does not have a primary or secondary
 236 qualifying agent in accordance with this part concerning the
 237 scope of the work to be performed under the contract. For
 238 purposes of this section, if no state ~~or local~~ license is
 239 required for the scope of work to be performed under the
 240 contract, the individual performing that work shall not be
 241 considered unlicensed.

242 (b) For purposes of this section, an individual or
 243 business organization may not be considered unlicensed for
 244 failing to have a business tax receipt issued under the
 245 authority of chapter 205. For purposes of this section, an
 246 individual or business organization may not be considered
 247 unlicensed for failing to have a license required by a local
 248 jurisdiction. A business organization may not be considered
 249 unlicensed for failing to have a certificate of authority as
 250 required by ss. 489.119 and 489.127. For purposes of this

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251 section, a business organization entering into the contract may
252 not be considered unlicensed if, before the date established by
253 paragraph (c), an individual possessing a license required by
254 this part concerning the scope of the work to be performed under
255 the contract has submitted an application for a certificate of
256 authority designating that individual as a qualifying agent for
257 the business organization entering into the contract, and the
258 application was not acted upon by the department or applicable
259 board within the time limitations imposed by s. 120.60.

260 (c) For purposes of this section, a contractor shall be
261 considered unlicensed only if the contractor was unlicensed on
262 the effective date of the original contract for the work, if
263 stated therein, or, if not stated, the date the last party to
264 the contract executed it, if stated therein. If the contract
265 does not establish such a date, the contractor shall be
266 considered unlicensed only if the contractor was unlicensed on
267 the first date upon which the contractor provided labor,
268 services, or materials under the contract.

269 Section 3. The amendments made by this act to s. 489.128,
270 Florida Statutes, apply retroactively to contracts entered into
271 on or after October 1, 2000, and apply to all actions that are
272 pending on or are filed on or after the effective date of this
273 act.

274 Section 4. Except as otherwise expressly provided in this
275 act, this act shall take effect upon becoming a law.