

By the Committee on Regulated Industries; and Senators
Constantine and Baker

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1 A bill to be entitled

2 An act relating to construction contracting; amending
3 s. 489.103, F.S.; requiring that owners of property
4 acting as their own contractor and providing direct,
5 onsite supervision of all work not performed by
6 licensed contractors read and sign a disclosure
7 statement before a permit is issued; requiring that
8 the disclosure statement contain certain statements
9 and provisions; amending ss. 489.128 and 489.532,
10 F.S.; providing that certain individuals or business
11 organizations may not be considered unlicensed for
12 failure to have a required local jurisdiction license;
13 providing for retroactive application; providing an
14 effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (7) of section 489.103, Florida
19 Statutes, is amended to read:

20 489.103 Exemptions.—This part does not apply to:

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

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

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30 brought under this part, proof of the sale or lease, or offering
31 for sale or lease, of any such structure by the owner-builder
32 within 1 year after completion of same creates a presumption
33 that the construction was undertaken for purposes of sale or
34 lease.

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

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

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59 as specified in the disclosure statement in this section. If any
60 person violates the requirements of this subsection, the local
61 permitting agency shall withhold final approval, revoke the
62 permit, or pursue any action or remedy for unlicensed activity
63 against the owner and any person performing work that requires
64 licensure under the permit issued. The local permitting agency
65 shall provide the person with a disclosure statement, which
66 shall be read and signed by the property owner or owner-builder,
67 in substantially the following form:

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

74
75 2. I understand that building permits are not required to
76 be signed by a property owner unless the owner is responsible
77 for the construction and is not hiring a licensed contractor to
78 assume this responsibility.

79
80 3. I understand that as an owner-builder, I am the
81 responsible party of record on the permit. I understand that I
82 may protect myself from potential financial risk by hiring a
83 licensed contractor and having the permit filed in his or her
84 name instead of my own. I also understand that contractors are
85 required by law to be licensed in Florida and to list their
86 license numbers on permits and contracts.

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88 4. I understand that I may build or improve a one-family or
89 two-family residence or a farm outbuilding. I may also build or
90 improve a commercial building if costs do not exceed \$75,000.
91 The commercial building or residence that I improve must be for
92 my own occupancy. I understand that I may not build or
93 substantially improve a building for sale or lease. If a
94 building I have built or substantially improved myself is sold
95 or leased within 1 year after the date on which construction is
96 complete, the law will presume that I built or substantially
97 improved it for sale or lease, which is a violation of this
98 exemption. I may repair or replace wood shakes or asphalt or
99 fiberglass shingles on a one-family, two-family, or three-family
100 residence for myself or my tenant's occupancy or use only if the
101 property has been damaged by natural causes from an event
102 recognized as an emergency situation in an executive order
103 issued by the Governor declaring a state of emergency.

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

107
108 6. I understand that I may not hire an unlicensed person to
109 act as my contractor or to supervise people working on my
110 building. It is my responsibility to make certain that people I
111 employ have the licenses required by state law or by county or
112 municipal licensing ordinances.

113
114 7. I understand that a frequent practice of unlicensed
115 persons is to have the property owner obtain an owner-builder
116 permit that erroneously implies that the property owner is

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117 providing his or her own labor and materials. I, as an owner-
118 builder, may be held liable and subject to serious financial
119 risk for any injuries sustained by an unlicensed person and his
120 or her employees while working on my property. My homeowner's or
121 business insurance may not provide coverage for those injuries.
122 I am willfully acting as an owner-builder and am aware of the
123 limits of my insurance coverage for injuries to workers on my
124 property.

125
126 8. I understand that I may not delegate the responsibility
127 for supervising work to a licensed contractor who is not
128 licensed to perform the work being done. Any person working on
129 my residence or building who is not licensed must work under my
130 direct supervision and must be employed by me, which means that
131 I must deduct FICA contributions and withholding tax and provide
132 workers' compensation for that employee, all as prescribed by
133 law. I understand my failure to abide by these laws may subject
134 me to serious financial risk.

135
136 9. I agree that, as the party legally and financially
137 responsible for this proposed construction activity, I will
138 abide by all applicable laws and requirements that govern owner-
139 builders as well as employers. I also understand that the
140 construction must comply with all applicable laws, ordinances,
141 building codes, and zoning regulations.

142
143 10. I understand that I may obtain more information
144 regarding my obligations as an employer from the Internal
145 Revenue Service, the United States Small Business

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146 Administration, the Florida Department of Financial Services,
147 and the Florida Department of Revenue. I also understand I may
148 contact the Florida Construction Industry Licensing Board (CILB)
149 at 850-487-1395 or www.myflorida.com/dbpr/pro/cilb/index.html
150 for more information about licensed contractors.

151
152 11. I am aware of and consent to an owner-builder building
153 permit applied for in my name, and understand that I am the
154 party legally and financially responsible for proposed
155 construction activity at the following address:

156
157 ...(Address of location of construction activity)...
158

159 12. I agree to notify the issuer of this form immediately
160 of any additions, deletions, or changes to any of the
161 information I have provided on this form.

162
163 Licensed contractors are regulated by laws designed to
164 protect the public. If you contract with someone who does not
165 have a license, the Construction Industry Licensing Board and
166 Department of Business and Professional Regulation may be unable
167 to assist you with any financial loss you may sustain as a
168 result of a complaint. Your only remedy against unlicensed
169 contractors may be in civil court. It is also important for you
170 to understand that if an unlicensed contractor, or the
171 unlicensed contractor's employee, is injured while working on
172 your property, you may be held liable for damages. If you obtain
173 an owner-builder permit and wish to hire licensed contractors,
174 you will be responsible for verifying that the contractors are

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175 properly licensed and have the required workers' compensation
176 insurance coverage.

177

178 Before a building permit is issued, this form must be
179 completed and signed by the property owner and returned to the
180 local permitting agency responsible for issuing the permit. A
181 copy of the property owner's driver's license, form
182 notarization, or other verification acceptable to the local
183 permitting agency is required to be presented when the permit is
184 issued to verify the property owner's signature.

185

186 ...(Signature of property owner)...

187

188 ...(Name of property owner)...

189

190 ...(Date)...

191

Disclosure Statement

192

193 ~~State law requires construction to be done by licensed~~
194 ~~contractors. You have applied for a permit under an exemption to~~
195 ~~that law. The exemption allows you, as the owner of your~~
196 ~~property, to act as your own contractor with certain~~
197 ~~restrictions even though you do not have a license. You must~~
198 ~~provide direct, onsite supervision of the construction yourself.~~
199 ~~You may build or improve a one-family or two-family residence or~~
200 ~~a farm outbuilding. You may also build or improve a commercial~~
201 ~~building, provided your costs do not exceed \$75,000. The~~
202 ~~building or residence must be for your own use or occupancy. It~~
203 ~~may not be built or substantially improved for sale or lease. If~~

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204 ~~you sell or lease a building you have built or substantially~~
205 ~~improved yourself within 1 year after the construction is~~
206 ~~complete, the law will presume that you built or substantially~~
207 ~~improved it for sale or lease, which is a violation of this~~
208 ~~exemption. You may not hire an unlicensed person to act as your~~
209 ~~contractor or to supervise people working on your building. It~~
210 ~~is your responsibility to make sure that people employed by you~~
211 ~~have licenses required by state law and by county or municipal~~
212 ~~licensing ordinances. You may not delegate the responsibility~~
213 ~~for supervising work to a licensed contractor who is not~~
214 ~~licensed to perform the work being done. Any person working on~~
215 ~~your building who is not licensed must work under your direct~~
216 ~~supervision and must be employed by you, which means that you~~
217 ~~must deduct F.I.C.A. and withholding tax and provide workers'~~
218 ~~compensation for that employee, all as prescribed by law. Your~~
219 ~~construction must comply with all applicable laws, ordinances,~~
220 ~~building codes, and zoning regulations.~~

221 Section 2. Paragraph (a) of subsection (1) of section
222 489.128, Florida Statutes, is amended to read:

223 489.128 Contracts entered into by unlicensed contractors
224 unenforceable.—

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

228 (a) For purposes of this section, an individual is
229 unlicensed if the individual does not have a license required by
230 this part concerning the scope of the work to be performed under
231 the contract. A business organization is unlicensed if the
232 business organization does not have a primary or secondary

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233 qualifying agent in accordance with this part concerning the
234 scope of the work to be performed under the contract. For
235 purposes of this section, if no state ~~or local~~ license is
236 required for the scope of work to be performed under the
237 contract, the individual performing that work shall not be
238 considered unlicensed.

239 Section 3. Paragraph (a) of subsection (1) of section
240 489.532, Florida Statutes, is amended to read:

241 489.532 Contracts entered into by unlicensed contractors
242 unenforceable.—

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

246 (a) For purposes of this section, an individual is
247 unlicensed if the individual does not have a license required by
248 this part concerning the scope of the work to be performed under
249 the contract. A business organization is unlicensed if the
250 business organization does not have a primary or secondary
251 qualifying agent in accordance with this part concerning the
252 scope of the work to be performed under the contract. For
253 purposes of this section, if no state ~~or local~~ license is
254 required for the scope of work to be performed under the
255 contract, the individual performing that work shall not be
256 considered unlicensed.

257 Section 4. The amendments made by this act to ss. 489.128
258 and 489.532, Florida Statutes, apply retroactively to contracts
259 entered into on or after October 1, 2000, and apply to all
260 actions that are pending on or are filed on or after the
261 effective date of this act.

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Section 5. This act shall take effect upon becoming a law.