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LEGISLATIVE ACTION

Senate

House

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Floor: 1/RS/2R

03/08/2012 05:16 PM

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Senator Smith moved the following:

**Senate Amendment (with title amendment)**

Delete lines 18 - 181

and insert:

Section 1. Effective July 1, 2013, subsection (9) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(9) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as permitted or



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14 required by chapter 607. ~~As to persons engaged in the~~  
15 ~~construction industry,~~ The term "officer of a corporation"  
16 includes a member owning at least 10 percent of a limited  
17 liability company created and approved under chapter 608.

18 Section 2. Paragraph (b) of subsection (15) of section  
19 440.02, Florida Statutes, is amended to read:

20 440.02 Definitions.—When used in this chapter, unless the  
21 context clearly requires otherwise, the following terms shall  
22 have the following meanings:

23 (15)

24 (b) "Employee" includes any person who is an officer of a  
25 corporation and who performs services for remuneration for such  
26 corporation within this state, whether or not such services are  
27 continuous.

28 1. Any officer of a corporation may elect to be exempt from  
29 this chapter by filing ~~written~~ notice of the election with the  
30 department as provided in s. 440.05.

31 2. As to officers of a corporation who are engaged in the  
32 construction industry, no more than three officers of a  
33 corporation or of any group of affiliated corporations may elect  
34 to be exempt from this chapter by filing ~~written~~ notice of the  
35 election with the department as provided in s. 440.05. Officers  
36 must be shareholders, each owning at least 10 percent of the  
37 stock of such corporation and listed as an officer of such  
38 corporation with the Division of Corporations of the Department  
39 of State, in order to elect exemptions under this chapter. For  
40 purposes of this subparagraph, the term "affiliated" means and  
41 includes one or more corporations or entities, any one of which  
42 is a corporation engaged in the construction industry, under the



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43 same or substantially the same control of a group of business  
44 entities which are connected or associated so that one entity  
45 controls or has the power to control each of the other business  
46 entities. The term "affiliated" includes, but is not limited to,  
47 the officers, directors, executives, shareholders active in  
48 management, employees, and agents of the affiliated corporation.  
49 The ownership by one business entity of a controlling interest  
50 in another business entity or a pooling of equipment or income  
51 among business entities shall be prima facie evidence that one  
52 business is affiliated with the other.

53 3. An officer of a corporation who elects to be exempt from  
54 this chapter by filing a ~~written~~ notice of the election with the  
55 department as provided in s. 440.05 is not an employee.

56  
57 Services are presumed to have been rendered to the corporation  
58 if the officer is compensated by other than dividends upon  
59 shares of stock of the corporation which the officer owns.

60 Section 3. Subsections (3) and (6) of section 440.05,  
61 Florida Statutes, are amended to read:

62 440.05 Election of exemption; revocation of election;  
63 notice; certification.-

64 (3) Each officer of a corporation who is engaged in the  
65 construction industry and who elects an exemption from this  
66 chapter or who, after electing such exemption, revokes that  
67 exemption, must submit ~~mail~~ a ~~written~~ notice to such effect to  
68 the department on a form prescribed by the department. ~~The~~  
69 ~~notice of election to be exempt from the provisions of this~~  
70 ~~chapter must be notarized and under oath.~~ The notice of election  
71 to be exempt which is electronically submitted to the department



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72 by the officer of a corporation who is allowed to claim an  
73 exemption as provided by this chapter must list the name,  
74 federal tax identification number, date of birth, Florida driver  
75 license number or Florida identification card number ~~social~~  
76 ~~security number~~, all certified or registered licenses issued  
77 pursuant to chapter 489 held by the person seeking the  
78 exemption, ~~a copy of relevant documentation as to employment~~  
79 ~~status filed with the Internal Revenue Service as specified by~~  
80 ~~the department, a copy of the relevant occupational license in~~  
81 ~~the primary jurisdiction of the business, and the registration~~  
82 number of the corporation filed with the Division of  
83 Corporations of the Department of State, and the percentage of  
84 ownership ~~along with a copy of the stock certificate~~ evidencing  
85 the required ownership under this chapter. The notice of  
86 election to be exempt must identify each corporation that  
87 employs the person electing the exemption and must list the  
88 social security number or federal tax identification number of  
89 each such employer and the additional documentation required by  
90 this section. In addition, the notice of election to be exempt  
91 must provide that the officer electing an exemption is not  
92 entitled to benefits under this chapter, must provide that the  
93 election does not exceed exemption limits for officers provided  
94 in s. 440.02, and must certify that any employees of the  
95 corporation whose officer elects an exemption are covered by  
96 workers' compensation insurance. Upon receipt of the notice of  
97 the election to be exempt, receipt of all application fees, and  
98 a determination by the department that the notice meets the  
99 requirements of this subsection, the department shall issue a  
100 certification of the election to the officer, unless the



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101 department determines that the information contained in the  
102 notice is invalid. The department shall revoke a certificate of  
103 election to be exempt from coverage upon a determination by the  
104 department that the person does not meet the requirements for  
105 exemption or that the information contained in the notice of  
106 election to be exempt is invalid. The certificate of election  
107 must list the name of the corporation listed in the request for  
108 exemption. A new certificate of election must be obtained each  
109 time the person is employed by a new or different corporation  
110 that is not listed on the certificate of election. A copy of the  
111 certificate of election must be sent to each workers'  
112 compensation carrier identified in the request for exemption.  
113 Upon filing a notice of revocation of election, an officer who  
114 is a subcontractor or an officer of a corporate subcontractor  
115 must notify her or his contractor. Upon revocation of a  
116 certificate of election of exemption by the department, the  
117 department shall notify the workers' compensation carriers  
118 identified in the request for exemption.

119 (6) A construction industry certificate of election to be  
120 exempt which is issued in accordance with this section shall be  
121 valid for 2 years after the effective date stated thereon. Both  
122 the effective date and the expiration date must be listed on the  
123 face of the certificate by the department. The construction  
124 industry certificate must expire at midnight, 2 years from its  
125 issue date, as noted on the face of the exemption certificate. A  
126 construction industry certificate of election to be exempt may  
127 be revoked before its expiration by the officer for whom it was  
128 issued or by the department for the reasons stated in this  
129 section. At least 60 days before ~~prior to~~ the expiration date of



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130 a construction industry certificate of exemption ~~issued after~~  
131 ~~December 1, 1998~~, the department shall send notice of the  
132 expiration date ~~and an application for renewal~~ to the  
133 certificateholder at the address on the certificate or to the e-  
134 mail address on file with the department.

135 Section 4. Effective January 1, 2013, subsection (6) of  
136 section 440.05, Florida Statutes, as amended by this act, is  
137 amended to read:

138 440.05 Election of exemption; revocation of election;  
139 notice; certification.-

140 (6) A ~~construction industry~~ certificate of election to be  
141 exempt which is issued on or after January 1, 2013, in  
142 accordance with this section shall be valid for 2 years after  
143 the effective date stated thereon. Both the effective date and  
144 the expiration date must be listed on the face of the  
145 certificate by the department. The ~~construction industry~~  
146 certificate must expire at midnight, 2 years from its issue  
147 date, as noted on the face of the exemption certificate. A  
148 ~~construction industry~~ certificate of election to be exempt may  
149 be revoked before its expiration by the officer for whom it was  
150 issued or by the department for the reasons stated in this  
151 section. At least 60 days before the expiration date of a  
152 ~~construction industry~~ certificate of exemption, the department  
153 shall send notice of the expiration date to the  
154 certificateholder at the address on the certificate or to the e-  
155 mail address on file with the department.

156 Section 5. Subsection (15) is added to section 440.107,  
157 Florida Statutes, to read:

158 440.107 Department powers to enforce employer compliance



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159 with coverage requirements.-

160 (15) A limited liability company that is not engaged in the  
161 construction industry and that meets the definition of  
162 "employment" at any time between July 1, 2013, and December 31,  
163 2013, shall not be issued a penalty pursuant to this section for  
164 failing to secure the payment of workers' compensation.

165 Section 6. Except as otherwise expressly provided in this  
166 act, this act shall take effect July 1. 2012.

167  
168 ===== T I T L E A M E N D M E N T =====

169 And the title is amended as follows:

170 Delete lines 4 - 13

171 and insert:

172 F.S.; redefining the terms "corporate officer" and  
173 "employee" for purposes of workers' compensation;  
174 amending s. 440.05, F.S.; revising requirements for  
175 submitting a notice of election of exemption; revising  
176 duties of the Department of Financial Services  
177 relating to the expiration of certificates of  
178 exemption; expanding applicability of requirements  
179 relating to certificates of exemption; amending s.  
180 440.107, F.S.; exempting certain limited liability  
181 companies from penalties for failure to secure the  
182 payment of workers' compensation;