

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 Committee on Community Affairs

BILL: SB 1212

INTRODUCER: Senators Rodriguez and Hutson

SUBJECT: Construction Contracting Exemptions

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1212 exempts members of the Miccosukee Tribe of Indians of Florida (Miccosukee Tribe) and members of the Seminole Tribe of Florida (Seminole Tribe) from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee. A chickee is an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Regulation of Construction Activities; Exemptions

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”¹ and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting.²

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;
- Employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge;

¹ See s. 489.101, F.S.

² See parts I, II, and III, respectively, of ch. 489, F.S.

- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.;
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements.³

Construction Contracting

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁴ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.⁵

The Electrical Contractors’ Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.⁶

³ See s. 489.103, F.S., for additional exemptions.

⁴ See s. 489.107, F.S.

⁵ Section 489.105(3), F.S.

⁶ Section 489.507, F.S.

Master septic tank contractors and septic tank contractors are regulated by the Department of Health under part III of ch. 489, F.S.⁷

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁸ The CILB and ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁹

A "specialty contractor" is a contractor whose scope of practice is limited to:

- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.¹⁰

For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tubs, and decorative or interactive water displays.¹¹ Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.¹²

Certification and Registration of Contractors

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.¹³

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.¹⁴

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the

⁷ See ss. 489.551-489.558, F.S.

⁸ See ss. 489.113 and 489.516, F.S., respectively.

⁹ Section 455.227(2), F.S.

¹⁰ Section 489.105(3)(q), F.S.

¹¹ See Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2021).

¹² See Fla. Admin. Code R. 61G4-15.032 (2021).

¹³ Sections 489.105(8) and 489.113(1), F.S.

¹⁴ Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed \$200.¹⁵ The initial application fee and the renewal fee is \$50 for an application to certify or register a business.¹⁶

Fees must be adequate to ensure the continued operation of the CILB, and must be based on DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.¹⁷

All certificate holders and registrants must pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.¹⁸

Subcontractors

In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.¹⁹

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,²⁰ a septic tank contractor,²¹ a sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor.²²

Licensure Exemption in s. 489.117(4)(d), F.S.

Section 489.117(4)(d), F.S., commonly referred to as the "Jim Walter" exemption, was enacted in 1993²³ and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses²⁴ without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or

¹⁵ Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 489.109(3), F.S.

¹⁹ Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.

²⁰ See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.

²¹ See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

²² Section 489.113(2), F.S.

²³ See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

²⁴ The term "townhouses" was added to the exemption in 2003. See ch. 2003-257, s. 5, Laws of Fla.

underground utility and excavation.²⁵ The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida's Fifth District Court of Appeals has addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.²⁶ In this case, the court found that under s. 489.117(4)(d), F.S., the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.²⁷

Another example of this exemption's applicability is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., "the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or residential contractor."²⁸ Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction.

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.²⁹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.³⁰ The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.³¹ The Florida Building Commission (commission), housed within the DBPR, adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.³²

The Seminole Tribe of Florida

The Seminole Tribe became a federally recognized Native American tribe in 1957.³³ There are six Seminole Tribe reservations in the state, located in Big Cypress, Brighton, Ft. Pierce, Hollywood, Immokalee, and Tampa. As explained on the tribal website:

²⁵ Section 489.117(4)(d), F.S.

²⁶ See *Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).

²⁷ *Id.* at 1037

²⁸ See Op. Att'y. Gen. Fla. 2001-25 (2001), available at

<http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac> (last visited Feb. 23, 2021).

²⁹ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Feb. 23, 2021).

³⁰ See s. 553.72(1), F.S.

³¹ See s. 553.72(3), F.S.

³² S. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

³³ See Timeline, available at <https://www.semtribe.com/stof/history/timeline> (last visited Feb. 23, 2021).

“Chickee” is the word Seminoles use for “house.” The first Seminoles to live in North Florida are known to have constructed log cabin-type homes, some two stories tall, with sleeping quarters upstairs. The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the early 1800s when Seminole Indians, pursued by U.S. troops, needed fast, disposable shelter while on the run. Though indigenous peoples in other parts of North and South America have developed similar dwellings, it is generally agreed that the Seminole Indian technique and product are far superior.

So popular, efficient and functional is the chickee that such Seminole architecture can be seen all over South Florida. The chickee structure should last about ten years and needs to be re-thatched every five years. Several Seminole Tribal members make a living building custom chickees for both commercial and private interests.

In order to apply for membership in the Seminole Tribe, a person must meet these requirements:³⁴

- Have a minimum of one-quarter Florida Seminole blood; i.e., one grandparent must have been a full-blooded Florida Seminole;
- Be able to prove in writing a direct relationship with a Florida Seminole who was listed on the 1957 Tribal Roll (the Base Roll of the Seminole Tribe); and
- Be sponsored for enrollment by a current Seminole Tribe member.

The Miccosukee Tribe of Indians of Florida

The Miccosukee Tribe was originally part of the Creek Nation.³⁵ Its members migrated to Florida before it became a state.³⁶ The Miccosukee Tribe became a federally recognized Native American tribe in 1962.³⁷

Members of the Miccosukee Tribe, in which the mother’s clan is paramount, must have at least one-half Miccosukee ancestry through their mother, who may not be enrolled in any other tribe.³⁸

Young Miccosukee Tribe members are taught to build chickees by experienced elders, and a list of expert builders is maintained by the Miccosukee Business Council, which consists of five elected members of the Miccosukee Tribe.³⁹ The council monitors the qualifications of those listed; when the tribal administration wants a chickee to be constructed, or when members of the public contact the Miccosukee Tribe about building a chickee, references are made to those on the list.⁴⁰

³⁴ Seminole Tribe of Florida, *Frequently Asked Questions*, <https://www.semtribe.com/stof/helpful-linksmain/helpful-links> (last visited on Feb. 23, 2021).

³⁵ See <https://tribe.miccosukee.com/> (last visited Feb. 23, 2021).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Email from J. Bennett, In-House General Counsel for Miccosukee Tribe of Indians of Florida, to staff (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).

⁴⁰ *Id.*

Definition and Exemption in Building Code for Certain Chickees

Under the building code, the term “chickee” means “an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.”⁴¹ Chickees constructed by the Seminole Tribe or the Miccosukee Tribe are exempt from the requirements of the building code.⁴² While the commission has determined that such chickees may have nonwood items underneath them, such as aluminum or plastic chairs and tables, countertops, or food and beverages, adding elements such as sinks, electrical outlets, or other nonwood items to a chickee means the chickee is not compliant with the building code and is no longer an exempt structure.⁴³

Construction of chickees, which are not now used for housing, is now possible in a matter of hours, not days, because of new technology and equipment.⁴⁴ Nails, chainsaws and four wheelers are now used to haul heavy logs, replacing the old method of using manpower or awaiting flooding from a thunderstorm in a location where logs had been cut down, so the logs could be moved more easily.⁴⁵

Construction Contracting Issues related to Chickees

There is no exemption from the contractor licensing requirements in current law for construction of chickees by members of the Seminole Tribe or the Miccosukee Tribe. In 2013, the CILB issued its Final Order concluding members of the Miccosukee Tribe and the Seminole Tribe must be properly licensed as contractors for building chickees outside the boundaries of a reservation.⁴⁶

Various local governments require chickee builders to be licensed contractors or employees of a licensed contractors, and require permits and that the structures comply with zoning and environmental regulations, local ordinances and regulations, and Department of Health drainage requirements.⁴⁷ Some local governments require tribal members seeking to build a chickee to be

⁴¹ Section 553.73(10)(i), F.S.

⁴² *Id.*

⁴³ See Declaratory Statement in the Matter of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Comm’n) (filed Apr. 20, 2018), at pp. 3-4, available at https://www.doah.state.fl.us/flaid/dpr/2018/dpr_0_04242018_020723.pdf (last visited Feb. 23, 2021) and Declaratory Statement in the Matter of Broward County Board of Rules and Appeals, Case No. 2013-031 (Fla. Building Comm’n) (filed Dec. 17, 2013), at pp. 2-3, available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_12302013_040040.pdf (last visited Feb. 23, 2021).

⁴⁴ See Ernie Tiger, *Chickees Provided Early Housing*, available at <https://www.semtribe.com/stof/culture/chickee> (last visited Feb. 23, 2021).

⁴⁵ *Id.*

⁴⁶ See Final Order in re: Petition for Declaratory Statement of City of Port St. Lucie Building Dep’t, Case No. 2013-08017, (Fla. DBPR DS 2013-091) (filed Dec. 26, 2013), available at https://www.doah.state.fl.us/flaid/dpr/2013/dpr_0_01072014_023857.pdf (last visited Feb. 23, 2021).

⁴⁷ See Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017), available at <https://www.scgov.net/Home/ShowDocument?id=33926> last visited Feb. 23, 2021); Chickee Structures Notice, issued by Charlotte County (Apr. 17, 2020), available at <https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml> (last visited Feb. 23, 2021); Article by Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly, available at <https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/> (last visited Feb. 23, 2021); Miami-Dade County, File Contractor Complaints, Chickee Construction Only Allowed by Licensed Contractors, available at <https://www.miamidade.gov/building/contractor-complaints.asp> (last visited

a licensed contractor or a direct employee of a licensed Division I contractor applying for the building permit.⁴⁸

III. Effect of Proposed Changes:

The bill exempts members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida from the contractor licensing requirements in ch. 489, F.S., when constructing a chickee that meets the definition in s. 553.73(1)(i), F.S., which states:

[T]he term “chickee” means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

Feb. 23, 2021); and Miami-Dade County, Permit Exemptions, available at <https://www.miamidade.gov/permits/exemptions.asp> (last visited Feb. 23, 2021).

⁴⁸ See e.g., Bulletin #2017-001, issued by Sarasota County Building Official (Feb. 7, 2017) available at <https://www.scgov.net/Home/ShowDocument?id=33926> (last visited Feb. 23, 2021).

B. Private Sector Impact:

Members of the Miccosukee Tribe or the Seminole Tribe will be exempt from compliance with contractor licensing requirements set forth in Florida law, when constructing chickees that meet the definition in the building code.

C. Government Sector Impact:

Fees collected by local governments for registration of contractors in their jurisdictions may be impacted by the exemption created under the bill for members of the Miccosukee Tribe or the Seminole Tribe, when constructing chickees that meet the definition in the building code.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 489.103 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.