

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 Regulated Industries

BILL: SB 1142

INTRODUCER: Senator Hooper

SUBJECT: Occupational Licensing

DATE: January 19, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | Favorable |
| 2. | _____ | _____ | <u>FP</u> | _____ |

I. Summary:

SB 1142 amends s. 489.117, F.S., relating to the registration of specialty contractors, to authorize registered contractors in good standing who have been registered with a local jurisdiction during calendar years 2021, 2022, or 2023, to qualify for a registration when the local jurisdiction has determined not to continue issuing local licenses or exercising disciplinary oversight over such licensees. The bill requires the Construction Industry Licensing Board to issue licenses to eligible applicants in the circumstances specified in the bill.

To be eligible for registration under these circumstances, an applicant must provide:

- Evidence of the prior local registration during 2021, 2022, or 2023;
- Evidence that the local jurisdiction does not require a license for the category of work for which the applicant was issued a certification of registration or local license during 2021, 2022, or 2023, which may include a notification on the website of the local jurisdiction or an email or letter from the local building department;
- The required application fee; and
- Compliance with the insurance and financial responsibility requirements for contractors under current law.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

State Preemption Relating to Certain Occupational Licensing

Current law expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of

occupations authorized by general law or occupational licenses imposed by a local government before January 1, 2021.¹ Local government occupational licensing requirements imposed by that date may not be increased or modified, meaning that local governments are not authorized to increase existing occupational license fees, and the authority of local governments to license occupations and collect license fees expires on July 1, 2024.²

Section 489.117(4)(a), F.S., specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor licensed by the Construction Industry Licensing Board within the Department of Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

According to representatives from local government licensing agencies, many individuals and small businesses have faced issues due to local governments advising local licenses would no longer be issued after July 1, 2023, the initial date the local government exception was to expire.

Construction Professional Licenses

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the DBPR.³ The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.⁴ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁵

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by the DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.⁶

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.⁷

¹ See s. 163.211(2), F.S., as enacted by ch. 2021-214, Laws of Fla., popularly known as “HB 735,” and amended by ch. 2023-271, Laws of Florida. The exception for local government licensing expires July 1, 2024.

² *Id.*

³ See ss. 489.105, 489.107, and 489.113, F.S.

⁴ Section 489.107(1), F.S.

⁵ Section 489.107, F.S.

⁶ See ss. 489.105(6)-(8) and (11), F.S.

⁷ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

“Registered contractors” are individuals who have paid the required fee, taken and passed a local competency examination and licensing requirements, if any, and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.⁸

In the local jurisdictions that are eliminating local licensing requirements, registered contractors will not be able to meet the current requirements to remain registered with the state, and under current law, they will be required to meet the statewide certification requirements, including an examination, to be able to continue to work in their trade category. Many registered contractors have been in business for many years and have successfully met either the examination or experience requirements, or both, for licensing in their local jurisdictions.

The following table provides examples of CILB licenses for contractors.⁹

| Statutory Licenses |
|---|
| <ul style="list-style-type: none"> • Air Conditioning- Classes A, B, and C • Building • General • Mechanical • Plumbing • Pool/Spa- Classes A, B, and C • Residential • Roofing • Sheet Metal • Solar • Underground Excavation |

Current law provides that local governments may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.¹⁰

However, under current law, a local government, as defined in s. 163.211, F.S., may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q), F.S., or authorized in s. 489.1455(1), F.S. Job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.¹¹

Further, effective July 1, 2024, local governments are prohibited from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified

⁸ Section 489.117, F.S. *See also* s. 489.105(3)(a)-(o), F.S.

⁹ *See* s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).

¹⁰ Sections 489.117 and 489.131, F.S.

¹¹ *See* ch. 2021-214, Laws of Fla. (HB 735) (Reg. Sess. 2021).

specialty contractor.¹² Local governments may only collect licensing fees that cover the cost of regulation.¹³

Locally registered contractors who are required to hold a contracting license to practice their profession in accordance with state law must register with the DBPR after obtaining a local license.

However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with the DBPR.¹⁴

Contractor Licensing Exemptions; Handyman Exemption

More than 20 categories of persons are exempt¹⁵ from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning the work 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.¹⁶

Contractor Licensing Exemption for Eligible Specialty Contracting Services

In 2022, an exemption from local and state licensing was established by the Legislature for all persons performing certain specialty contracting services under the supervision of a certified or registered commercial pool/spa contractor, a residential pool/spa contractor, or a swimming pool/spa servicing contractor (a licensed pool contractor).¹⁷ A contractual relationship between the supervising contractor and those performing the specialty contracting services is not required (i.e., the performance of such contracting services is outside the business of contracting and need not be undertaken through a contractor/subcontractor relationship).

¹² *Id.*

¹³ See State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020*, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Jan. 13, 2024).

¹⁴ Sections 489.105 and 489.117(4), F.S.

¹⁵ Exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the CILB 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; 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.; 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. See s. 489.103, F.S., for additional exemptions.

¹⁶ See s. 489.103(9), F.S., and Fla. Admin. Code R. 61G-12.011(2).

¹⁷ See s. 489.117(4)(e), F.S., as enacted by ch. 2022-90, Laws of Florida.

The services that may be performed by unlicensed persons under the supervision of a licensed pool contractor include the construction, remodeling, repair, or improvement of swimming pools, hot tubs, spas, and interactive water features, as defined in the Florida Building Code (building code).¹⁸ The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in s. 489.105(3), F.S.,¹⁹ or those in s. 489.505, F.S., relating to electrical and alarm system contracting.

Journeyman Licenses

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate or issue a license to a journeyman.²⁰

Counties and municipalities are expressly authorized by s. 489.1455(1), F.S., to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as this authority is not preempted to the state. A tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality).²¹ If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;²² or
- Electrical and alarm system trades.²³

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:²⁴

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating four years of verifiable practical experience in the particular trade, or alternatively demonstrating six years of such experience in the particular trade;

¹⁸ The term “swimming pool” is defined as “[a]ny structure basin, chamber or tank containing an artificial body of water for swimming, diving or recreational bathing located in a residential area serving four or fewer living units having a depth of 2 feet (610mm) or more at any point as defined in Section 515.25, Florida Statutes, or the body of water is a public pool as defined in Section 514.011, Florida Statutes” (italics omitted). *See* ch. 2 of the 2020 Florida Building Code (7th Edition), available at <https://codes.iccsafe.org/content/FLBC2020P1/chapter-2-definitions> (last visited Jan. 13, 2024). The current code does not appear to define “interactive water features.” However, the described scope of work for certification as a “swimming pool piping specialty contractor” includes construction of “decorative or interactive water displays or areas.” *See* Fla. Admin. Code R. 61G4-15.032, relating to the certification requirements of swimming pool piping specialty contractors.

¹⁹ *See* ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

²⁰ Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

²¹ Section 489.1455(2), F.S.

²² Section 489.1455, F.S.

²³ Section 489.5335, F.S.

²⁴ Sections 489.1455 and 489.5335, F.S.

- Completing coursework approved by the Florida Building Commission specific to the discipline within the required time frame; and
- Not having a license suspended or revoked within the last five years.

A local government may charge up to \$25 as a registration fee for reciprocity.²⁵

Contractor Grandfathering Provision

Section 489.118, F.S., authorizes the CILB to grandfather, or certify registered contractors with valid local licenses, in one of the contractor categories defined in s. 489.105(3)(a)-(p), F.S., in certain circumstances.²⁶ However, the CILB does not have the authority to “grandfather” a specialty contractor, defined in s. 489.105(3)(q) F.S., who is a “contractor whose scope of work and responsibility is limited to a particular phase of construction.”²⁷

III. Effect of Proposed Changes:

The bill revises the registration requirements for registered contractors, to require the CILB to issue a registration to an eligible applicant to engage in the business of a contractor in a specified local jurisdiction, provided each of the following conditions are satisfied:

- The applicant held, in any local jurisdiction in Florida during 2021, 2022, or 2023, a certificate of registration issued by the state, or a local license issued by a local jurisdiction, to perform work in a contractor trade category defined in s. 489.105(3)(a)-(o), F.S.²⁸
- The applicant submits all of the following to the CILB:
 - Evidence of the certificate of registration or local license held by the applicant during 2021, 2022, or 2023.
 - Evidence that the specified local jurisdiction does not require a license for the category of work for which the applicant was issued a certification of registration or local license during 2021, 2022, or 2023, such as a notification on the website of the local jurisdiction or an email or letter from the office of the local building official or local building department stating that such licensing is not required or available in that local jurisdiction.
 - Evidence that the applicant has submitted the required fee.
 - Evidence of compliance with the insurance and financial responsibility requirements of s. 489.115(5), F.S.

Under the bill, an examination is not required for an applicant seeking a registration by supplying the above evidence to the CILB).

²⁵ See ss. 489.1455, F.S. and 489.5335, F.S.

²⁶ The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial and residential pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, solar contractor, and pollutant storage systems contractor.

²⁷ See s. 489.118(1), F.S.

²⁸ The specified scopes of work for the eligible contractor trade categories are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial and residential pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

The CILB is responsible for disciplining a licensee issued a registration pursuant to the requirements set forth in the bill. The CILB must make such licensure and disciplinary information available through the automated information system provided by the Department of Business and Professional Regulation as required by s. 455.2286, F.S., which provides instant notification to local building departments and other interested parties regarding the status of a certification or registration.

Under the bill, the fees for an applicant seeking a registration and renewal of such registration every two years are the same as the fees established by the CILB as set forth in s. 489.109, F.S., relating to applications, registration and renewal, and record making and recordkeeping. The department shall mail each registrant an application for renewal.

The bill takes effect July 1, 2024.

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. There is no new fee payable by registered contractors who may choose to apply for a license using the method described in the bill, as they are subject to and must pay fees for initial licenses and for license renewals in current law in order to legally perform contracting services in the state. *See* s. 489.109, F.S., relating to fees applicable to registered contractors.

B. Private Sector Impact:

The method for obtaining a license as a registered contractor authorized in the bill will assist those contractors who chose registration in a local community rather than qualification as a statewide certified contractor, to remain in the workforce when the local jurisdiction determines not to issue local licenses.

C. Government Sector Impact:

The impact on state revenues and expenditures is indeterminate, but depends on the number of contractors who choose the method for obtaining a license as a registered contractor authorized in the bill. Under the bill, the board will be responsible for disciplining a licensee issued a registration pursuant to the requirements set forth in the bill.

No analysis by the DBPR of the impact of the bill on its operations, revenue, and expenditures has been provided as of the date of this analysis.

There is no impact expected on local government revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.117 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.