

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 16, 1998 Revised: \_\_\_\_\_

Subject: Contracting

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>CA</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**I. Summary:**

This bill amends provisions relating to the regulation of the construction industry. It amends provisions relating to the regulation of building code administrators, inspectors and plans examiners to add categories of licensure for building code personnel, revise examination and license fees, and allow engineers and architects to perform building inspections and plan reviews without becoming certified as building inspectors or plans examiners. The bill also amends provisions relating to the regulation of asbestos contractors and consultants to conform the licensure requirements with federal standards and to clarify licensure requirements relating to financial stability and insurance.

In addition, the bill amends provisions relating to the regulation of construction, electrical, and alarm contractors. Significant changes include: exempting the construction of portable sheds and Habitat for Humanity homes from licensure requirements for construction contractors under certain circumstances; establishing training requirements for medical gas installation; clarifying what constitutes a knowing violation of a building code; making the complaint and supporting documents available to a contractor under investigation by the Department of Business and Professional Regulation; limiting the department’s jurisdiction to investigate or pursue a complaint when a local enforcement board has initiated action against a contractor; exempting alarm monitoring from licensure requirements for alarm contractors under certain circumstances; extending the \$4 fee to fund the Building Construction Industry Advisory Committee to electrical and alarm contractors (currently only construction contractors pay this fee); and requiring locally licensed electrical contractors to have taken a licensing examination to qualify for state registration.

This bill substantially amends the following sections of the Florida Statutes: 468.603, 468.605, 468.609, 468.617, 468.627, 469.001, 469.002, 469.004, 469.005, 469.006, 469.013, 489.103,

489.105, 489.107, 489.113, 489.115, 489.119, 489.129, 489.131, 489.140, 489.141, 489.142, 489.143, 489.503, 489.505, 489.507, 489.509, 489.511, 489.513, 489.517, 489.519, 489.521, 489.525, 489.533, 489.537, 489.539, 553.06, and 553.19.

This bill creates the following sections of the Florida Statutes: 468.604, 471.045, 481.222, and 489.1136.

This bill repeals the following sections of the Florida Statutes: 469.015 and 489.1135.

## **II. Present Situation:**

### **Building Code Administrators, Inspectors, and Plans Reviewers**

Part XII of chapter 468, F.S., provides for the regulation of building code administrators, inspectors, and plans examiners by the Florida Building Code Administrators and Inspectors Board within DBPR. The regulation provides for the mandatory certification of municipal and county building code administrators, inspectors, and plans examiners. The law provides for various categories and levels of certificates for these positions. The category of certificate relates to the subject area specialty, such as electrical or mechanical, while the level of certificate relates to the person's experience and technical proficiency.

Three levels of certificates can be obtained by building code administrators, inspectors and plans examiners: standard, limited, and provisional. To obtain a standard certificate, an individual must pass an examination approved by the board. Individuals who were employed on July 1, 1993, as building code administrators, plans examiners, or inspectors, but are not eligible for standard certification, may be issued a limited certificate. The limited certificate is valid only as an authorization for the building code administrator, plans examiner, or inspector to continue in the position held, and to continue performing all functions assigned to that position on July 1, 1993. A provisional certificate may be issued to a newly employed or newly promoted building code administrator, plans examiner, or inspector who lacks the qualifications for a standard license. To obtain a provisional license, an individual must be employed by an agency of government. Provisional licenses are issued only to applicants who can demonstrate the ability to meet licensure requirements by the expiration date of the provisional license. Provisional licenses are valid for 2 years and are not renewable.

### **Asbestos Abatement Contractors and Consultants**

Chapter 469, F.S., provides for the regulation of asbestos abatement contractors and consultants by DBPR. The chapter sets forth requirements for licensure, including the completion of specified course work relating to asbestos abatement. Current law requires a person to possess a contractor license under ch. 489, F.S., prior to the issuance of an asbestos contractor license, and requires a license for all abatement work, not just abatement work involving a building structure. In addition, to qualify for licensure as an asbestos consultant, individuals must be licensed as an engineer, architect, or geologist, or be an industrial hygienist or a certified safety professional.

### **Construction Contractors**

Part I of ch. 489, F.S., provides for the regulation of construction contractors by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR). Construction contractors encompass general, building, and residential contractors, as well as numerous categories of subcontractors, including plumbing, air-conditioning, mechanical, roofing, sheet metal, pool/spa, underground utility, solar, and pollutant storage system contractors. Part II of ch. 489, F.S., provides for the regulation of two additional categories of subcontractors, electrical and alarm system contractors, by the Electrical Contractors Licensing Board (ECLB) within the DBPR.

All individuals who practice contracting in Florida must be either certified or registered with the appropriate licensing board (i.e., CILB or ECLB). The DBPR certifies a contractor who has met state experience and examination requirements. A certified contractor may contract anywhere in the state without meeting additional local requirements. The DBPR registers a contractor who has met local licensing requirements. A registered contractor may contract only in the local jurisdiction issuing the license.

Section 489.103, F.S., provides exemptions from construction contractor licensure requirements under part I of ch. 489.103, F.S. Section 489.105, F.S., provides definitions relevant to the part. Section 489.107, F.S., creates the CILB and prescribes its membership and duties. Section 489.113, F.S., provides the qualifications for practicing construction contracting within the state, restricts the scope of work of certain contractors, and allows certain work to be done only by licensed subcontractors. Section 489.1135, F.S., contains grandfather provisions for licensure as an underground utility contractor. Section 489.115, F.S., provides requirements for license renewal, including continuing education requirements. Section 489.119, F.S., provides requirements for qualifying business organizations. Section 489.129, F.S., provides grounds for disciplinary action against a licensee and outlines the actions the Construction Industry Licensing Board (CILB) may take for violations. Section 489.131, F.S., delineates DBPR's disciplinary jurisdiction over registered contractors. Sections 489.140-489.144, F.S., create the Construction Industries Recovery Fund (CIRF) and prescribe the mechanism for filing and paying claims against the fund.

### **Electrical and Alarm System Contractors**

Section 489.503, F.S., sets forth exemptions from electrical and alarm system contractor licensure under part II of ch. 489, F.S. Section 489.505, F.S., provides definitions relevant to the part. Section 489.507, F.S., creates the ECLB and prescribes its membership and duties. Section 489.509, F.S., sets forth licensure fees under the part. Section 489.511, F.S., provides requirements for certification, examination and endorsement as an electrical or alarm system contractor. Section 489.513, F.S., provides requirements for registration. Section 489.517, F.S., provides requirements for license renewal, including continuing education requirements. Section 489.519, F.S., sets forth requirements for inactive licenses. Section 489.521, F.S., provides requirements for qualifying business organizations. Section 489.525, F.S., requires DBPR to

report certain information relating to certified electrical and alarm contractors to local building officials. Section 489.533, F.S., sets forth grounds for disciplinary action against licensees and the penalties the ECLB may impose for violations. Section 489.537, F.S., sets forth the applicability of part II of ch. 489, F.S. Section 489.539, F.S., adopts minimum electrical standards for the state.

### **III. Effect of Proposed Changes:**

The bill amends provisions in part XII of ch. 468, F.S., relating to building code enforcement personnel, ch. 469, F.S., relating to asbestos contractors and consultants, and parts I and II of ch. 489, F.S., relating to construction, electrical, and alarm system contractors to clarify, streamline and enhance the regulation of the construction industry.

#### **Building Code Administrators, Inspectors, and Plans Examiners**

**Section 1** amends s. 468.603(6), F.S., to create a third electrical inspector certification category for building inspectors who conduct both residential and commercial electrical inspections. Currently, there are two categories of electrical inspectors: residential and commercial.

**Section 2** creates s. 468.604, F.S., to establish specific statutory responsibilities for building code administrators, plans examiners and inspectors. Generally, it is the responsibility of building code administrator or official to supervise or perform the permitting and review of construction plans and the inspection of each phase of construction to ensure compliance with all applicable codes. It is the responsibility of building code inspectors to conduct inspections of permitted constructions projects to ensure compliance with applicable codes. Inspectors must be licensed in the appropriate category. Finally, it is the responsibility of plans examiners to conduct review of construction plans to assure compliance with all applicable codes. Plans examiners must be licensed in the appropriate plans examiner category.

**Section 3** amends subsection (2) of s. 468.605, F.S., to replace the “city manager” member of the Florida Building Code Administrators and Inspectors Board with a “building inspector” member who may or may not have managerial authority. In addition, the existing building inspector member is no longer required to be a person without managerial authority.

**Section 4** amends s. 468.609, F.S., to make a variety of changes to the criteria for taking the standard certification examination. Changes affecting inspectors and plans examiners include:

- Providing that the experience requirement may be in construction or related field inspection or plans review;
- Providing that the post-secondary education requirement must be in the field of construction or related field, and that the 1 year of work experience may be in plans review;

- Providing that an applicant who holds a standard certificate in one category may qualify to take the exam for certification in another category after taking at least 200 hours of training in the certification category sought.

Changes affecting building code administrators include:

- Clarifying and expanding the categories of professional experience, to include plans examiner, required to qualify an applicant to take the exam; and
- Allowing relevant education to substitute for 5 years of required experience.

This section is also amended to specify that a plans examiner is a recognized licensure category, subject to examination requirements. In addition, a noncertified newly hired or promoted inspector or plans examiner is authorized to perform their respective duties under supervision for 90 days if their application for a provisional license has been submitted.

**Section 5** amends s. 468.617, F.S., to allow local government to contract with qualified persons to do plan reviews and to prohibit persons contracting with local governments from inspecting or examining plans on projects in which they designed or permitted. In addition, the option for contractors to pay inspection or review fees directly to the contract inspector or plans examiner is deleted from this section.

**Section 6** amends s. 468.627, F.S., to increase the maximum examination fee, from \$50 to \$150, for administrators, examiners, or inspectors. Subsections (4) and (5), which provide for the initial certification and biennial certification renewal fee, are deleted. Subsection (6) is renumbered as subsection (4) and amended to provide that employees of local governments with responsibilities for inspection, regulation, and enforcement of the codes will not pay initial certification and biennial certification renewal fees. This change appears to be unnecessary, as this section proposes to remove the authorization for these fees.

**Section 7** creates s. 471.045, F.S., to allow certified engineers to perform building inspections and plan reviews for local governments and state agencies without becoming certified as building inspectors or plan reviewers by the Board of Building Code Administrators and Inspectors pursuant to part XIII of ch. 68, F.S.

**Section 8** creates s. 481.222, F.S., to allow licensed architects to perform building inspections and plan reviews for local governments and state agencies without becoming certified as building inspectors or plan reviewers by the Board of Building Code Administrators and Inspectors pursuant to part XIII of ch. 468, F.S.

**Section 9** amends s. 489.129, F.S., to clarify what constitutes “knowingly violating” a building code, which is grounds for disciplinary action against licensees by DBPR, and to require DBPR to make the complaint and supporting documents available to a contractor who is the subject of an investigation for a disciplinary violation.

**Section 10** amends s. 489.131, F.S., to clarify that DBPR may not initiate or pursue a complaint against a registered contractor *until* the local board has investigated and disciplined the contractor, unless the secretary of DBPR has initiated summary procedures to suspend or restrict the license.

### **Asbestos Abatement Contractors and Consultants**

**Section 11** amends s. 469.001, F.S., to clarify definitions and provide a definition for project designer, in order to conform to federal standards.

**Sections 12-13** amend ss. 469.002 and 469.004 F.S., to exempt certain demolition activities by government agencies on government-owned buildings (primarily buildings condemned for road and other government projects), to move exemptions for resilient floor covering and asbestos-containing pipes from s. 469.004, F.S., to s. 469.002, F.S., and to establish an exemption from asbestos consultant licensure requirements for a licensed roofer who is removing asbestos-containing roofing material.

**Section 14** amends s. 469.005, F.S., to revise licensure requirements to conform to federal standards.

**Section 15** amends s. 469.006, F.S., to give the department the ability to establish standards regarding financial stability and to require that the consultant or contractor affix a signature (rather than a seal) to documents which are submitted to governmental agencies.

**Section 16-17** amend ss. 469.013 and 469.014, F.S., to make technical changes and correct cross-references.

**Section 18** repeals s. 469.015, F.S., requiring the use of seals.

**Sections 19-20** amend ss. 255.551 and 376.60, F.S., to make technical cross-reference changes.

### **Construction Contractors**

**Section 21** amends s. 489.103, F.S., to create an exemption from licensure as a construction contractor for the sale, delivery, assembly, or tie-down of prefabricated portable sheds that do not exceed 250 square feet in interior size and are not intended to be used as living quarters. It also creates an exemption for one, two, or three family homes constructed by Habitat for Humanity International, Inc., provided all building permit and inspection requirements are met.

**Section 22** amends s. 489.105, F.S., to clarify that the scope of work for general contractors includes any activity requiring licensure under part I of ch. 489, F.S., and that general contractors may perform any work requiring licensure except as expressly limited in s. 489.113, F.S. Section 489.113, F.S., restricts the scope of work of certain contractors and allows certain work to be done only by licensed subcontractors. Section 2 of the bill also amends the scopes of work of

sheet metal contractors, air-conditioning contractors, mechanical contractors, and pool/spa contractors to include duct cleaning or equipment sanitizing that requires disassembly of a system. Also, the definition of underground utility contractor is amended to clarify that the scope of work for such contractors applies regardless of the means of excavation. Finally, “initial issuance” is defined to clarify when licensure requirements apply.

**Section 23** amends s. 489.107, F.S., to authorize the CILB to meet jointly with the ECLB through a committee.

**Section 24** amends s. 489.113, F.S., to clarify that the expansion of the scope of work of any type of contractor does not limit the scope of work of any other existing type of contractor unless the Legislature expressly provides the limitation.

**Section 25** repeals s. 489.1135, F.S., relating to obsolete grandfathering provisions for underground utility contractors.

**Section 26** creates s. 489.1136, F.S., to require any licensed plumber who does medical gas work to complete a one-time six hour continuing education course in the medical gas field. A contractor’s workforce engaging in medical gas work must complete at least 8 hours of training in the medical gas field. Any person who wishes to perform only brazing associated with medical gas work must be tested on brazing. The CILB must approve all medical gas training and testing. The contractor is responsible for ensuring that the contractor’s workforce meets the applicable requirements for engaging in medical gas work.

**Section 27** amends s. 553.06, F.S., to require that all medical gas installations, improvements, or repairs are governed by National Fire Prevention Association standards.

**Section 28** amends s. 489.115, F.S., to revise continuing education content requirements to include business practices and to allow part I contractors who are also licensed under part II to use certain continuing education requirements obtained pursuant to the part II for meeting part I requirements.

**Section 29** amends s. 489.119, F.S., to clarify the definition of an incomplete contract for purposes of performing contracting work pursuant to a temporary certificate.

**Section 30** amends s. 489.140, F.S., to delete a requirement that surplus moneys collected from disciplinary fines be transferred to the CIRF.

**Section 31** amends s. 489.141, F.S., to delete a requirement that individuals notify the board at the time when an action that might result in recovery from the CIRF is commenced and to require that claims against the fund be filed no more than one year after the conclusion of any civil or administrative action giving rise to the claim.

**Section 32** amends s. 489.142, F.S., to conform to the changes in s. 489.140, F.S.

**Section 33** amends s. 489.143, F.S., to clarify that recovery from the CIRF may be based on a restitution order by the CILB (as an alternative to the civil judgement currently required), to clarify the order of payment of claims, and to clarify the procedures for carrying over claims and for transferring excess moneys to fund the regulation of construction contractors.

### **Electrical and Alarm System Contractors**

**Section 34** amends s. 489.503, F.S., to clarify the exemption from electrical contracting licensure for the installation of cable television system and to add an exemption for alarm monitoring by law enforcement agency employees, financial institution employees, and business employees who monitor only the alarm systems of their employers.

**Section 35** amends s. 489.505, F.S., to: include a “signaling device” within the definition of an alarm system; add alarm circuits governed by a certain National Fire Protection Standard to the scope of alarm contracting work; eliminate the installation of elevators as a type of specialty contracting; eliminate the installation of residential fire alarm systems as part of the scope of work of a registered residential alarm system contractor; delete the obsolete definition of “limited burglar alarm system contractor”; and add a definition of alarm “monitoring.”

**Section 36** amends s. 489.507, F.S., to allow the ECLB to meet jointly with the CILB through a committee.

**Section 37** amends s. 489.509, F.S., to conform the time frame for renewal to current DBPR procedures and to provide that \$4 of the current licensure fee for electrical and alarm system contractors will be used to fund academic studies in the construction field as approved by the Building Construction Industry Advisory Committee within the Department of Education. (This fee is currently imposed as an additional fee on construction contractors licensed under part I of ch. 489, F.S.)

**Section 38** amends s. 489.511, F.S., to: eliminate the examination qualification path for “foremen”; change the six-year experience path from an electrical or alarm contracting “endeavor” to an electrical or alarm contracting “business;” provide that experience obtained in the armed forces or with the government is acceptable for licensure; provide that a combination of six years of experience from the categories of education, supervision, and management is acceptable for licensure; and require six years supervisory experience, rather than “broad” experience, to qualify for licensure. In addition, s. 489.511, F.S., is amended to limit an applicant to taking the licensure examination no more than three times after October 1, 1998, unless the applicant completes additional education, as required by the board.

**Section 39** amends s. 489.513, F.S., to require that locally licensed electrical contractors must have taken an appropriate examination to be eligible for registration. If the local jurisdiction issuing the license that is the basis for registration does not require an examination, then the applicant must demonstrate passage of an examination equivalent to the one required for certification.

**Section 40** amends s. 489.517, F.S., to allow licensees under part II who also are licensed under part I to apply certain continuing education courses obtained to meet part I requirements toward meeting part II requirements and to specify the content of required continuing education hours. It also amends s. 489.517, F.S., to provide that, by applying for renewal, licensees are certifying that they meet public liability and property insurance requirements and to authorize the ECLB to adopt a procedure for random verification of compliance with insurance requirements.

**Section 41** amends s. 489.519, F.S., to allow a licensee to apply for voluntary inactive status at any time during the biennial licensure period and to require applicants after January 1, 1999, either to qualify a business or to place their licenses on inactive status.

**Section 42** amends s. 489.521, F.S., to clarify requirements for qualifying a business entity and to prescribe a procedure for the ECLB to allow a licensee to qualify more than one business entity.

**Section 43** amends s. 489.525, F.S., to delete the requirement that the ECLB inform local building officials of the names and licensure status of all certificate holders annually (such information now is available on the Internet) and to provide that any information that the ECLB must provide to local building officials need not be included in the report if it is available on the Internet or through other electronic means.

**Section 44** amends s. 489.533, F.S., to provide that: willful misrepresentation is a disciplinable act; entering a plea of nolo contendere may be considered to be a finding of guilt; a contractor must pay any judgment within 18 months or according to an agreed upon schedule or be subject to discipline for financial mismanagement; and the board has the authority to order restitution to a consumer as part of disciplinary action against a licensee.

**Section 45** amends s. 489.518, F.S., for the purposes of incorporating changes to s. 489.533, F.S.

**Section 46** amends s. 489.537, F.S., to allow registered contractors to construct or repair raceway systems and to clarify the applicability of occupational license provisions to electrical and alarm system contractors.

**Section 47** amends s. 489.539, F.S., to provide for the adoption by the ECLB of the current National Fire Protection Association and Underwriters Laboratories electrical and alarm system standards.

**Section 48** amends s. 553.19, F.S., to update various building codes.

**Section 49** provides that the act is effective July 1, 1998.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Non-governmental applicants for building code administrator, plans examiner, or inspector certification examinations will have to pay an additional \$100. Fees for initial certification and biennial certification renewals are eliminated.

Individuals performing alarm monitoring services, as specified in the bill, will benefit from the exemption from alarm system contracting licensure requirements.

Registered electrical contractors who were not required to take an examination to obtain their local license will incur the expense of taking an examination to obtain state registration, as required by the bill.

Licensed plumbers and their workers will incur the costs of meeting the medical gas requirements.

C. Government Sector Impact:

According to DBPR, transferring \$4 of the existing license fee for electrical and alarm system contractors to the Building Construction Industry Advisory Committee will result in an additional \$36,944 in funding for construction research for fiscal year 1997-1998.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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