

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Community Affairs Committee

BILL: CS/SB 404

SPONSOR: Community Affairs Committee and Senators Baker and Haridopolos

SUBJECT: Housing and Construction Industry

DATE: March 14, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/ 1 amendment</u>
2.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Building Code Inspectors and Plans Examiners

The CS permits an applicant to qualify for licensure as a building code inspector or plans examiner if he or she demonstrates a combination of completion of an approved training program and a minimum of two years experience in the field of building codes inspection, plan review, fire code inspections, fire plans review of new buildings as a certified fire safety inspector, or construction. The approved training program shall include 300 hours with 20 hours of instruction laws, rules, and ethics.

The CS requires that the certification examinations for building code enforcement officials must be substantially similar to those administered by the International Code Council. The CS permits building code enforcement officials employed by small counties having a population of 150,000 or less to provide building code services to another small county.

The CS limits the building code enforcement official's bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., relating to the official duties of an enforcement official. It does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official may hold.

The CS authorizes the Florida Building Code Administrators and Inspectors Board to take disciplinary action if the licensee fails to enforce the Florida Building Code or permitting requirements that the licensee knew were applicable, obstructs an investigation, or provides forged documents or false evidence or testimony in an investigation, and accepts free labor, services or materials or at non-competitive rates from non-family members.

It also requires a minimum of three hours continuing education in laws, rules, and ethics. Proof of completion of core courses must be completed during the first two years of licensure.

Construction Contracting

The CS requires applicants for initial issuance of a certificate or registration to submit to a statewide criminal history records check through the Florida Department of Law Enforcement, and provides that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding. Fifty percent of the requirement may be met by completing a 14-hour financial responsibility course.

Manufactured Housing

The CS creates s. 553.382, F.S., to provide for the placement of manufactured housing on mobile home lots in mobile home parks, recreational vehicle parks, and mobile home condominiums, cooperatives, or subdivisions. Manufactured housing units may not be placed on a mobile home lot without the prior written approval of the mobile home park owner. Manufactured housing placed on mobile home lots must be taxed as mobile homes under s. 320.08(11), F.S., and may be subject to payments to the Florida Mobile Home Relocation Corporation as required under s. 723.06116, F.S.

The CS substantially amends ss: 468.609, 468.617, 468.619, 468.621, 468.627, and 489.115, F.S., and creates s. 553.382, F.S.

II. Present Situation:

Building Code Inspectors and Plans Examiners

Part XII of ch. 468, F.S., provides for the regulation of building code administrators, inspectors and plans examiners by the Florida Building Code Administrators and Inspectors Board (board) within the Department of Business and Professional Regulation (department). The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

It is the responsibility of the building code administrator to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repairs, remodeling, or demolition of structures, and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code. A building code inspector is responsible for conducting inspections of construction when permitting is required to ensure compliance with the code. A plans examiner is responsible for conducting review of construction plans submitted in the building permit application for compliance with the code.

There are three types of certificates specifying activities which can be performed by a building code administrator, plans examiner or building code inspector: a standard certificate, a limited certificate, and a provisional certificate. The requirements for certification are established in

ss. 468.407 and 468.409, F.S., and no person can engage in any of the duties of a building code administrator, plans examiner or building code inspector without possessing a certification which is issued by the board.

Section 468.619, F.S., establishes the building code enforcement officials' bill of rights. It provides procedures for the department to question building enforcement officials against whom a complaint has been filed; and establishes time frames to complete any investigation of an enforcement building official and to initiate an administrative action against an enforcement building official. The department must submit an investigation, whether complete or not, to the probable cause panel for review within 180 days from the date of the receipt of the complaint. If the investigation is not complete, the probable cause panel must review the complaint and instruct the department to complete the investigation within a time certain and, in no event, greater than 90 days or dismiss the complaint with prejudice.

The building code enforcement officials' bill of rights also provides that:

- The department must inform the licensee of any complaint within 10 days after receipt by the department;
- The enforcement official under investigation has the right to be represented by counsel or by any other representative of his or her choice, who shall be present at such time as the enforcement official wishes during the interview;
- The enforcement official has 30 days to respond to any legally sufficient complaint; and
- The department must allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to the probable cause panel, and the enforcement official must be permitted to submit explanatory or mitigating material to the panel for consideration.

The department is required to investigate all legally sufficient complaints it receives pursuant to the provisions of s. 455.225, F.S.

Continuing Education

Section 468.627(5), F.S., provides that a certificateholder must provide proof that at least 14 classroom hours of at least 50 minutes of continuing education courses have been completed during each biennium since the issuance or renewal of the certificate required in s. 468.609(2), F.S. Each certificateholder is required to submit proof of completion of the core curriculum courses or of passing an equivalency test for the training program established under s. 553.841, F.S., within two years of commencing the program.

Construction Contractors

Construction contractors are regulated under part I of ch. 489, F.S., and the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation. Contractors must either be certified (licensed by the state to contract statewide) or registered (licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only.) To be certified by the department, applicants must meet certain eligibility requirements, and must be at least 18 years of age and have a good

moral character. The board may refuse to certify an applicant for failure to satisfy the requirement for good moral character¹ if:

- There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor; and
- The board finds that a lack of good moral character is supported by clear and convincing evidence.

When an applicant is found to be unqualified because of a lack of moral character, the board must furnish a statement to the applicant “containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.”² Moral character is not defined in part I of ch. 489, F.S., but is defined in ch. 468, F.S., for community association managers and for each controlling person of an employee leasing company. Moral character is also defined in ch. 473, F.S., for certified public accountants, and in part II of ch. 489, F.S., for electrical and alarm system who are also licensed by the department.³

An initial applicant for certification, or a certificateholder or registrant requesting a change of status, is also required to submit to the board a credit report from a nationally recognized credit agency to demonstrate financial responsibility. The credit report is the minimum evidence necessary for the board to be satisfied that the applicant, certificateholder, or registrant is financially responsible to be certified, has the necessary credit and business reputation to engage in contracting, and has the minimum financial stability necessary to avoid financial mismanagement or conduct. The board is required by rule to adopt guidelines for determining financial stability.⁴

The Building Code Commission is required to update the Florida Building Code every three years. When updating the code, the commission is required to select “the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are adopted by the International Code Council.”⁵

According to the International Code Council, it is a membership association dedicated to building safety and fire prevention, developing the codes used to construct residential and commercial buildings.⁶ The council membership includes state, county, and municipal code enforcement and fire officials, architects, engineers, builders, contractors, elected officials, manufacturers and others individuals in the construction industry.

¹ Section 489.111, F.S.

² Section 489.111(3)(b), F.S.

³ Generally moral character means a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

⁴ Section 489.115(6), F.S., and *see* rule 61G4-15.005, F.A.C.

⁵ Section 553.73(6)(a), F.S.

⁶ <http://www.iccsafe.org/news/pdf/factsheet.pdf> (last visited February 1, 2007).

Manufactured Buildings

Manufactured buildings in Florida must conform to the building construction standards contained in part I of ch. 553, F.S., and the federal performance standards determined by the United States Department of Housing and Urban Development (HUD). Since 1976, all manufactured homes must meet the same set of HUD standards regardless of the state in which they are built or the area in which they are sited. HUD standards cover body and frame requirements, thermal protection, plumbing, electrical, HVAC, fire safety and other aspects, and HUD approved state and private-third party agencies inspect manufactured homes at one stage of production and approve the design as consistent with HUD standards.⁷ All transportable sections of manufactured homes built in the United States after 1976 contain a red label which represents the manufacturer's certification that the home section is built to meet HUD's construction and safety standards.

In Florida, the Department of Community Affairs (DCA), through the Building Codes & Standards Office, administers the manufactured buildings program. All manufacturers of buildings that are closed-construction installed in Florida must be certified by DCA, and the design and fabrication of manufactured buildings and components must comply with the requirements of the Florida Building Code.

Chapter 320, Florida Statutes – Motor Vehicle Licenses

Section 320.01(2)(b), F.S., defines “manufactured home” as a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act. The Department of Highway Safety and Motor Vehicles is authorized under s. 320.08(11), F.S., to levy and impose annual license taxes. The annual license fees for mobile homes are:

- \$20 for a mobile home not exceeding 35 feet in length,
- \$25 for a mobile home over 35 feet in length but not exceeding 40 feet in length,
- \$30 for a mobile home over 40 feet in length but not exceeding 45 feet in length,
- \$35 for a mobile home over 45 feet in length but not exceeding 50 feet in length,
- \$40 for a mobile home over 50 feet in length but not exceeding 55 feet in length,
- \$45 for a mobile home over 55 feet in length but not exceeding 60 feet in length,
- \$50 for a mobile home over 60 feet in length but not exceeding 65 feet, and
- \$80 for a mobile home over 65 feet in length.

Florida Mobile Home Relocation Corporation Trust Fund

The Florida Mobile Home Relocation Corporation (corporation) and the corporation's Trust Fund were created in 2001 to provide relocation assistance to mobile home park residents who are evicted due to changes in land use. When a mobile home park receives a change in land use and the park residents are required to move due to the change in use, the mobile home park

⁷ See “Fact Sheet for Builders and Manufacturers” at <http://www.hud.gov/offices/hsg/sfh/mhs/mhsshtmr.cfm>

owner is required to pay the corporation \$2,750 for each single-section mobile home and \$3,750 for each multi-section mobile home when the home owner has applied to the corporation for payment of moving expenses. The park owner's payments are deposited into the Florida Mobile Home Relocation Corporation Trust Fund and are used by the corporation to pay the amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the existing park, or \$3,000 for a single section mobile home or \$6,000 for a multisection mobile home, whichever payment is the lesser of the two choices. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location. In lieu of collecting payments for relocation, a mobile home owner may abandon the mobile home in the mobile home park in which it is located and collect \$1,375 for a single section mobile home and \$2,750 for a multisection mobile home so long as the current title to the home is delivered to the corporation. In cases of abandonment, the mobile home park owner must submit payments to the corporation in an amount that is equal to the payment due the home owner.

In addition to the above payments, mobile home park owners pay a \$1 surcharge on the annual per lot fee that is remitted to the Department of Business and Professional Regulation under s. 723.007, F.S. Under s. 320.08015, F.S., mobile home owners pay a \$1 surcharge on the annual license fee remitted to the Department of Highway Safety and Motor Vehicles. Both surcharges are deposited into the Florida Mobile Home Relocation Corporation Trust Fund.

III. Effect of Proposed Changes:

Building Code Inspectors and Plans Examiners - Qualifications

The CS amends s. 468.609, F.S., to provide that applicants applying to take the certification examination to qualify as a building code inspector or plans examiner can meet the following criteria:

- Demonstrate completion of a combination of an approved training program in the field of building code inspection or plans review, and a minimum of 2 years experience in the field of building codes inspection, plan review, fire code inspections, fire plans review of new buildings as a certified fire safety inspector, or construction.
- The approved training portion includes satisfactory completion of a board approved training program of at least 300 hours in the chosen category of building code inspection or plans review in the selected certification category.
- The approved training portion must include at least 20 hours of study in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities.

The CS deletes s. 468.609(2)(d), F.S., which requires that an applicant for certification as a building inspector or plans examiner successfully complete the core curriculum in the building code training program.

The CS requires that the certification examinations must be substantially similar to the examinations administered by the International Code Council rather than exams administered by the Southern Building Code Congress and the Council of American Building Officials.

Building Code Inspectors in Small Counties

The CS amends s. 468.617(4), F.S., to clarify that certification requirements do not prohibit any building code inspector, plans examiner, or building code administrator who holds a limited certificate and who is employed by a jurisdiction within a small county having a population of 150,000 or less to provide building code inspections, plans review, or building code administration services to another jurisdiction within a small county having a population of 150,000 or less.

Building Code Enforcement Officials' Bill of Rights

The CS amends the building code enforcement officials' bill of rights in s. 468.619, F.S., to clarify that the bill of rights applies to disciplinary investigations and proceedings against licenses issued under part XII of ch. 468, F.S., but not to disciplinary investigations and proceedings against other licenses that the enforcement official holds or may hold.

Building Code Enforcement Official - Disciplinary Proceedings

The CS amends s. 468.621, F.S., to authorize the Florida Building Code Administrators and Inspectors Board to take disciplinary action against enforcement officials licensed under part XII of ch. 468, F.S., and establishes grounds for disciplinary actions against a building enforcement official for:

- Obstructing an investigation, providing or inducing another person to provide forged documents, false forensic evidence, or false testimony to a local or state board or board member, and
- Accepting labor, services, or materials at no charge or at noncompetitive rates from any person who performs work that is under the enforcement official's enforcing authority, excluding immediate family members.

Building Code Enforcement Officials - Continuing Education

The CS amends s. 468.627(5), F.S., to require that a minimum of three hours of the required 14 classroom hours required for certification, certification renewal, inactive status, or reactivation of inactive certificates be on state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of the certificateholder.

The CS amends s. 468.627(6), F.S., to require that a new certificateholder must provide proof to the board of completion of the core curriculum courses of the building code training program developed by the Building Code Education and Outreach Council as provided in s. 553.841, F.S., within the first 2-year period after initial licensure, and repeals current law providing that a certificateholder who passes the equivalency test in lieu of taking the core curriculum will receive full credit for core curriculum hours.

Construction Contracting – Criminal History Records Check and Net Worth

The CS amends s. 489.115, F.S., to provide that when an applicant first applies for certification or registration, that applicant must submit to a statewide criminal history records check conducted by the Florida Department of Law Enforcement (FDLE). The Department of Business and Profession Regulation (DBPR) is required to submit requests for background checks to FDLE for processing and FDLE returns the results to DBPR. The CILB is authorized to deny licensure to any applicant convicted of a felony based on the severity of the crime, the

relationship of the crime to contracting, or the potential for public harm, and can consider the length of time since the commission of the crime and the rehabilitation period when determining if licensure should be denied. The CILB may not deny licensure based solely on a felony conviction, or the applicant's failure to provide proof of restoration of civil rights.

The CS amends s. 489.115, F.S., to provide that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding for Division I certificateholders of no more than \$20,000; and no more than \$10,000 for Division II certificateholders. Fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board. Minimum bonding requirements for Division I certificateholders may be no more than \$20,000 and no more than \$10,000 for Division II certificateholders.

Manufactured Housing

The CS creates s. 553.382, F.S., to provide for the placement of manufactured housing on mobile home lots in mobile home parks, recreational vehicle parks, and mobile home condominiums, cooperatives, or subdivisions. Manufactured housing units may not be placed on a mobile home lot without the prior written approval of the mobile home park owner. Manufactured housing placed on mobile home lots must be taxed as mobile homes under s. 320.08(11), F.S., and may be subject to payments to the Florida Mobile Home Relocation Corporation as required under s. 723.06116, F.S.

Effective Date

The CS provides an effective date of July 1, 2007.

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:

The certificateholder may incur costs for completion of the approved training program required for certification, and in obtaining the bond under the new bonding requirements should board rules be revised to require bonding for Division I and Division II certificateholders.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

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