

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: Regulated Industries Committee

BILL: SB 404

SPONSOR: Senator Baker

SUBJECT: Construction Industry/Regulation

DATE: January 30, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/ 1 amendment
2.			CA	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Building Code Inspectors and Plans Examiners. The bill 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 in the field of building code inspection or plans review and a minimum of two years experience in the field. The training program shall include 300 hours with 20 hours of instruction laws, rules, and ethics.

The bill requires that the certification examinations for building code enforcement officials must be substantially similar to those administered by the International Code Council. The bill 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 bill 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 bill 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 bill authorizes the Construction Industry Licensing Board (CILB) to conduct a criminal records background check on applicants for licensure to determine moral character. The bill 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.

This bill substantially amends the following sections of the Florida Statutes: 468.609, 468.617, 468.619, 468.621, 468.627, and 489.115.

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.

A building code administrator administers direct regulatory administration or supervision building code activities, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform. A building inspector inspects and determines that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws. Sections 468.607 and 468.609, F.S., set forth the requirements for licensure for the various types and categories of certificate holders.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of ch. 468, F.S.

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 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;
- 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; and
- The department must allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and must be permitted to submit explanatory or mitigating material to the panel for their 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 building official must provide proof that at least 14 classroom hours of continuing education courses have been completed during each biennium since the issuance or renewal of the license. Each certificateholder is required to submit proof of completion of the core curriculum courses or of passing an equivalency test for the training program under s. 553.841, F.S., within two years of commencing the program.

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

Construction Contractors

Construction contracting is regulated under part I of ch. 489, F.S. Construction contractors are regulated by the Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation. Contractors must either be certified, i.e., licensed by the state to contract statewide, or registered, i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only.

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

¹ Section 489.111, F.S.

- The finding by the board of 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 ch. 489, pt I, F.S. Moral character 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 ch. 489, pt. II, F.S., for electrical and alarm system contractors. These individuals are also licensed by the department.³

An initial applicant or certificateholder or registrant requesting a change of status is also required to submit a credit report from a nationally recognized credit agency to the board. 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.

III. Effect of Proposed Changes:

Building Code Inspectors and Plans Examiners - Qualifications

The bill amends s. 468.609, F.S., to provide a fifth option to qualify to take the licensing examination to be a building code inspector or plans examiner.

The bill permits an applicant to qualify if he or she demonstrates a combination of an approved training program in the field of building code inspection or plans review and experience which totals two years. The educational component must be a training program of at least 300 hours in the chosen category of building code inspection or plans review. The education must include at least 20 hours of study in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities.

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).

The bill 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 bill requires that the certification examinations must be substantially similar to the examinations administered by the International Code Council. It deletes the requirement that the examinations must be substantially similar to the examinations administered by the Southern Building Code Congress and the Council of American Building Officials.

Building Code Inspectors in Small Counties

The bill amends s. 468.617(4), F.S., to permit building code inspectors, plans examiners, and building code administrators who hold a limited certificate and are employed by a jurisdiction within a statutorily defined small county to provide building code inspections, plans review, or building code administration services to another jurisdiction within a statutorily defined small county. The bill defines the term “small county” as defined in s. 339.2818, F.S., which relates to the Small County Outreach Program and defines the term as a county having a population of 150,000 or less.

Building Code Enforcement Official’s Bill of Rights

The bill amends the building code enforcement official’s bill of rights in s. 468.619, F.S., to limit the application of the bill of rights to disciplinary investigations and proceedings against licenses under part XII of ch. 468, F.S., and to disciplinary investigations and proceedings relating to the official duties of an enforcement official. The bill specifies that the bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official holds.

Building Code Enforcement Official - Disciplinary Proceedings

The bill amends s. 468.621, F.S., to authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements within Florida that the certificateholder knew were applicable. The bill provides a violation for a building official who obstructs an investigation or provides forged documents or false evidence or testimony in an investigation.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official. It creates an exemption for immediate family members, who are defined as including:

a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse, or any person who resides in the primary residence of the enforcement official.

Building Code Enforcement Officials - Continuing Education

The bill amends s. 468.627(5), F.S., to require that a minimum of three hours of the required 14-hour classroom continuing education must be in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities.

The bill amends s. 468.627(6), F.S., to delete the certificateholder's option to provide proof of passing the equivalency test of the Building Code Program within two years after commencement of the program in lieu of taking the core curriculum courses. The bill would require the certificateholder to provide proof of completion of the core curriculum courses.

Construction Contracting – Criminal History Records Check

The bill amends s. 489.115, F.S., to authorize the Construction Industry Licensing Board (CILB) to conduct a criminal records background check on applicants for licensure to determine moral character. Good moral character is a requirement for certification as a construction contractor.⁷ The bill provides standards for denial of a license based upon moral character, including the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The board may not deny licensure based solely on a felony conviction, or for felons who have had their civil rights restored, or who have failed to provide proof of restoration of civil rights.

Construction Contracting – Net Worth

The bill 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. The bill provides that fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

The bill provides that the minimum bonding requirement for Division I certificateholders may be no more than \$20,000 and no more than \$10,000 for Division II certificateholders.

Effective Date

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

⁷ Section 489.111(2)(b), F.S.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The certificateholder may incur the cost of obtaining the bond under the new bonding requirements.

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:

Barcode 215424 by Regulated Industries:

The amendment deletes the reference to determining moral character in s. 489.115, F.S. As amended the bill would permit the CILB to deny an application for licensure on the basis of criminal history. This additional licensure requirement would be unrelated to the good moral character requirement in s. 489.111, F.S., which would remain undefined in current law.

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