

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 Regulated Industries Committee

BILL: SB 2194

INTRODUCER: Senator Aronberg

SUBJECT: Contracting

DATE: April 14, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill redefines the term “initial issuance” and revises requirements for applicants for initial certification as a contractor. The bill deletes the provision requiring an applicant to provide a credit report to the Construction Industry Licensing Board (CILB or board) within the Department of Business and Professional Regulation (department or DBPR) and requiring the board to make a determination of financial responsibility. The bill adds a provision to allow a certificate holder or registrant to apply continuing education hours earned for certain courses for both parts I and II of ch. 489, F.S. An initial applicant is required to submit with the application a complete set of fingerprints to the Department of Law Enforcement (FDLE) for processing and forwarding to the Federal Bureau of Investigation (FBI) for a Level two background screening instead of the criminal history records check. The applicant is required to pay the cost of the screening. If there is a felony conviction the applicant may be denied based upon certain criteria.

The bill provides that every contractor obtaining a new license pursuant to ch. 489, Part I, F.S., obtain and maintain a licensing bond in the amount of \$75,000. Financially injured consumers would be able to access the bond for violations of s. 489.129, F.S. An irrevocable letter of credit for \$75,000 and assigned to the Department of Business and Professional Regulation (DBPR or department) may substitute for the bond requirement. The bill eliminates certain licensure categories from ch. 489, Part I, F.S., including financially responsible officer, certificate of authority, and secondary qualifying agent. The bill eliminates a provision that conflicts with the department’s fingerprint requirement for new contractor applicants. The bill provides for the termination of the Florida Homeowners’ Construction Recovery Fund effective June 30, 2010.

This bill substantially amends the following sections of the Florida Statutes: 489.105, 489.115, 489.119, 489.1195, 489.127, 489.128, 489.129, 489.140, 489.1401.

II. Present Situation:

Financial Requirements

The licensure and regulation of contractors is governed by pt. I, ch. 489, F.S. According to the department, financial misconduct by Florida's licensed contractors has caused significant financial injury to the public. The CILB ordered licensed contractors to pay injured consumers over \$8,800,000 in 2006 and over \$7,600,000 in 2007. The CILB voted in October 2007 to request the Florida Legislature to impose a licensing bond requirement on Florida's licensed contractors.

The department is of the opinion that Florida currently has a financial responsibility and stability threshold for initial contractor licensure that does not deter financial harm caused to consumers. There is no financial oversight of contractors by the CILB after initial licensure requirements, except for disciplinary actions taken after consumer injury has occurred.

The CILB is charged with determining the financial responsibility and stability of applicants when they apply for licensure pursuant to authority in s. 489.115(5)(b) and (7), F.S. The CILB requires a large amount of financial information with contractor applications in an effort to apply the financial responsibility and stability provisions. The financial information requirements have resulted in most applications being delayed because of technical deficiencies in the financial information provided by applicants.

The CILB has recently revised the financial responsibility requirements to impose a minimum credit score or bond requirements. An application processing service has filed a challenge to the new requirements as they feel the minimum requirements will lower the pool of applicants who would require their services. Florida does not have a licensing bond requirement for contractors at this time. According to the department, several other states, including California and Arizona, do have contractor licensing bond requirements.

Licensure Categories

The following categories of licensure were enacted following Hurricane Andrew in an effort to allow the CILB to better regulate the construction industry. However, the department indicated that these measures have not proven effective in protecting the public and currently dilute disciplinary efforts, delay the application process, and provide an unnecessary burden to licensees.

Section 489.1195(1)(b), F.S., allows business entities to designate a financially responsible officer to assume responsibility for directing the financial aspects of a construction business. Financially responsible officers must post a \$100,000 bond that is payable to the Florida Homeowners' Construction Recovery Fund if a successful claim is made involving their business.

The licensed contractor who qualifies the company is not liable for financial misconduct by the business where a financially responsible officer has been designated. Accordingly, the CILB

cannot discipline contractors for financial misconduct where a financially responsible officer has been designated.

The department also pointed out that the financially responsible officer licensure category has created uncertainty among contractor applicants regarding their responsibilities and contributed to deficiencies which delay the application process. Department records indicate there are less than 5,000 financially responsible officer licensees.

Section 489.119(2), F.S., requires construction businesses to obtain a certificate of authority in addition to having a licensed contractor qualify their business. The CILB has authority to discipline the certificate of authority, but rarely does so because action against the qualifying contractor effectively impacts the ability of the business to engage in contracting. The department believes that additional disciplinary cases against certificates of authority would unnecessarily increase investigations and prosecutions with no tangible benefit.

Section 489.1195(2), F.S., allows contractors who qualify the same business to designate one licensee as the primary qualifying agent. The other qualifying agents become secondary qualifying agents for that business. Secondary qualifying agents are not responsible for any financial misconduct committed by the business and may not be prosecuted for financial misconduct violations.

Fingerprint Process

Currently there appears to be a conflict between ss. 489.115(6) and 489.115(9), F.S., regarding the submission of fingerprints for criminal record checks.

Section 489.115(6), F.S., requires construction applicants to submit to a criminal history check and the department to submit requests for criminal history checks to the Department of Law Enforcement. This process requires the department to obtain the criminal records check within 30 days pursuant to s.120.60(1), F.S., or the application may not be denied for lack of a criminal history.

Section 489.115(9), F.S., allows the department to have fingerprints submitted to a vendor who then forwards them to the Department of Law Enforcement for processing. The results are then forwarded to the department from the Department of Law Enforcement. This process is the one currently utilized by the department.

Florida Homeowners' Construction Recovery Fund

Section 489.140, F.S., creates the Florida Homeowners' Construction Recovery Fund (FHCRF) to compensate homeowners who suffer financial injury from Division I contractors. The fund was originally established in 1993 after Hurricane Andrew as the Construction Industry Recovery Fund.

By 2004, there were concerns that revenues for the fund were not sufficient to cover the costs of claims being paid. The 2004 Florida Legislature excluded claims based upon work by Division II

contractors (roofing, pool, plumbing, etc.), raised claim limits, and renamed the fund the Florida Homeowners' Construction Recovery fund.

There is a projected shortfall in available cash for the FHCRF in the next two fiscal years. The FHCRF is funded through a surcharge on building permits of one-half cent per square foot of under-roof floor space permitted. Local governments forward the surcharge to the department on a quarterly basis. Revenue from the surcharge is first used to fund the Building Code Administrators and Inspectors Board and then the FHCRF. Consumer advocates have raised concerns about this funding first being used to fund the Building Code Administrators and Inspectors Board and then the FHCRF. They have also raised the issue that Division II contractors are not covered under the fund. The shortfall in revenues for the FHCRF is expected to continue for the foreseeable future given the slowdown in Florida's construction industry.

The FHCRF is projected to award \$3 million in claims for FY 2007-2008. According to the CILB, \$1.6 million was transferred to the Building Code Administrators and Inspectors Board for FY 2007-2008. The past five years have seen an average payout for the FHCRF of approximately \$2.6 million per year. Department projections indicate there will be \$1,777,472 available for the FHCRF in FY 2008-2009 and \$840,000 available in FY 2009-2010 after funding the Building Code Administrators and Inspectors Board.

The FHCRF is a fund of last resort that is available after an injured consumer has secured a civil judgment, criminal order, or administrative restitution order. The judgments or orders must be based upon financial misconduct violations of ch. 489, F.S., and an asset search for any of the contractor's assets has to be conducted.

III. Effect of Proposed Changes:

The bill redefines "initial issuance" to mean the first time a certificate or registration is granted to an individual, including the first time an individual becomes a qualifying agent for a business organization and the first time a business organization is qualified by that individual.

The bill strikes those provisions in s. 489.115(6), F.S., that conflict with the department's current process for obtaining electronic fingerprints pursuant to s. 489.115(9), F.S. The bill also clarifies that the board retains authority to deny applicants whose civil rights have not been restored where the board finds that an applicant has a lack of good moral character or has been convicted of a crime related to contracting.

The bill strikes the financial responsibility provisions of ss. 489.115(5)(b) and (7), F.S., and replaces them with a licensing bond requirement for new licenses. The bill requires that the bond be maintained as a condition of licensure. The bond requirement should result in less financial harm to consumers as contractors more strictly manage their financial affairs.

The bill requires applicants for new construction licenses to provide and maintain a licensing bond in the amount of \$75,000. Applicants shall not be required to present any further evidence of financial responsibility in order to obtain licensure. Failure to maintain the licensing bond shall result in the contractor's license being placed on inactive status and possible disciplinary

action. The CILB may impose the bond requirement as part of a disciplinary order pursuant to s. 489.129(1), F.S.

The licensing bond shall be accessible to persons who contract to perform work requiring a license under ch. 489, F.S., and who suffer damages from acts that would constitute a violation of s. 489.129(1), F.S. Subcontractors and suppliers who supply labor and materials shall also be able to recover from the bond.

The bill provides that actions may be brought directly on the bond within two years of the termination of the bond or when the breach occurs. The surety may cancel the bond with at least 30 days notice to the department, but the surety shall remain liable for any damages arising from a contract entered into prior to the effective date of the cancellation.

The bill also provides that an irrevocable letter of credit in the amount of \$75,000 may be furnished in lieu of the bond. The applicant shall be allowed to collect all interest on the letter of credit. Injured consumers shall apply to the department for payment from the letter of credit after securing a civil judgment or criminal order of restitution based upon a violation of s. 489.129(1), F.S. The claim must be made within one year of the conclusion of the civil or criminal action.

The bill eliminates the requirement that construction businesses maintain a certificate of authority. The bill also provides that no new financially responsible officer licenses or secondary qualifying agent designations shall be approved by the department after June 30, 2008.

The bill provides that all funding for the FHCRF shall cease effective June 30, 2010. The remaining funds in the FHCRF will be transferred to the CILB. The bill provides that no claims shall be received by the FHCRF after June 30, 2009 and the FHCRF shall be abolished effective June 30, 2010. Consumers will have two years to complete the claims process before the FHCRF is abolished.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

According to DBPR, there will be a reduction of revenue to DBPR’s Professional Regulation Trust Fund, from eliminating the Qualified Business licensure and the certificate of authority, which would result in a deficit in the CLIB’s operating account. It also eliminates the Florida Homeowners Construction Recovery Fund which would eliminate the payment of claims after FY 2009-10.

REVENUE			
	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
License Fees, Applications, Renewals & Other Rev.	(1,842,897)	(1,475,635)	(1,890,056)
Taxes:	0	0	
Other (identify):	0	0	
TOTAL:	(1,842,897)	(1,475,635)	(1,890,056)

B. Private Sector Impact:

The bill requires that all CLIB applicants must provide a \$75,000 bond or Irrevocable Letter of Credit (ILC). This will be an additional expense for all new applicants. The requirements may be impossible for some applicants.

C. Government Sector Impact:

According to the department, the bill will require modifications to the LicenseEase system/portal. Changes will include configuration updates to the transactions for certificates of authority and financial responsible officers; new transactions and checklists to support bonding and irrevocable letter of credit requirements; new batch processes to set licenses to an involuntary inactive status for failure to renew bonds or irrevocable letter of credit; and the creation of new letters. The department indicated that these changes can be handled with existing resources.

According to DBPR the amount of time it takes to review an application will decrease with the new requirements. The change will eliminate the need to submit the financial statement, credit report, and bank verification letter.

During FY 2006-07 the Central Intake Unit (CIU) approved 547 financially responsible officer (FRO) applications, which do not produce a license. Since the contractor will now be financially responsible for the business there is no need for FRO applications. This will decrease the workload for CIU.

During FY 2006-07, 35,022 certificates of authority were renewed. With this bill, CIU will not issue a license for certificates of authority but will still process a transaction in LicenseEase to show the relationship between the contractor and the business. The bill requires CIU to no longer process a renewal.

The bill requires that all CILB applicants provide a \$75,000 bond or ILC. This requirement has an impact on CIU. Since a business cannot operate without the bond or an ILC, CIU will need to monitor the licensees to make sure the bond is not cancelled or the ILC does not expire. If either of these instances happens, the license will have to be placed in an *involuntary inactive* status and the license holder notified in writing. The licensee must provide the department with a bond or ILC to have the license re-instated. This will create an additional workload. Since the bond requirement will be implemented in stages, any new licensure application received by the department will include the bond or the ILC. However, all change of status applications must comply with the bonding requirement. After the implementation of the bonding requirement, the majority of the licensees will be in compliance with the bonding requirement because a change of status would require an applicant to submit the bond/ILC.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Budget	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Other Personal Services	0	0	0
Expense	0	0	0
Operating Capital Outlay	0	0	0
Other (identify)	0	0	0
Subtotal	0	0	0

Non-Operating Expenditures	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>
Service Charge to GR (7.3% of revenue)	(134,531)	(107,721)	(137,974)
Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	(134,531)	(107,721)	(137,974)
TOTAL	(134,531)	(107,721)	(137,974)

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill eliminates the Florida Homeowners’ Construction Recovery Fund, but does not discontinue the collection of the fee.

Industry representatives and consumer advocates feel the \$75,000 bond requirement is not adequate to replace the FHCRF. These representative and advocates also raise the concern that the elimination of the FHCRF will make it impossible for many of the harmed consumers to seek redress for their injury.

The board will have to adopt new rules and amend existing rules. According to DBPR, the bill needs to provide stronger rule making authority to implement bond tracking processes.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
