

STORAGE NAME: h4439z.brc
DATE: June 19, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: 3RD ENG/HB 4439 (PCB BRCA 98-07)

RELATING TO: Contracting

SPONSOR(S): Committee on Business Regulation and Consumer Affairs; and Representatives
Ogles; Brown and others

COMPANION BILL(S): CS/CS/SB 2336(s); 1ST ENG/HB 853(c); 2ND ENG/HB 4119(c);
CS/CS/HB 4181(c); HB 4359(c); HB 4429(c); HB 4507(c); CS/CS/SB
1190(c); CS/SB 2084(c); CS/1ST ENG/SB 2484(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 6 NAYS 0
- (2) COMMUNITY AFFAIRS YEAS 9 NAYS 0
- (3) REAL PROPERTY AND PROBATE (W/D)
- (4) GENERAL GOVERNMENT APPROPRIATIONS YEAS 10 NAYS 0
- (5) SENATE COMMUNITY AFFAIRS (W/D)

I. FINAL ACTION STATUS:

Chapter 98-419, Laws of Florida

2ND ENG/HB 4439 passed the House on April 29, 1998. In the Senate, it was substituted for CS/CS/SB 2336 and amended and passed on April 30, 1998. The House concurred in the Senate amendments and passed it as amended on May 1, 1998, making it a 3RD ENG version.

Vote: House Yeas 119 Nays 0; Senate Yeas 37 Nays 0

II. SUMMARY:

This act contains provisions related to construction matters, including: building code administrators and inspectors; asbestos abatement; architects; engineers; construction and electrical contractors; occupational license taxes for telephone installation; and exemptions from the Florida Building Code.

The act clarifies existing provisions and -- particularly with regard to alarm monitoring -- eliminates excessive regulation. The act establishes training requirements for persons working on medical gas equipment. The act allows licensed architects and engineers to -- upon request by the local building department -- perform building code inspection activities without having to obtain building code administrator or inspector licensure. The act revises regulation of fire protection equipment dealers.

The act prohibits unqualified persons from referring to themselves as industrial hygienists or safety professionals. The act prohibits local jurisdictions from charging the occupational license tax for installation of telephones "on a per instrument basis." The act exempts electric utility power plants from being covered under the Florida Building Code.

There should be no significant fiscal impact on state or local government, or the private sector in general. See Fiscal Comment section.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Legislative History:

This act contains provisions relating to electrical and construction contracting matters, and other contracting-associated issues. Many of the provisions were previously passed as part of HB 2011 (1997), which died without Senate action. HB 2011 was the legislative package for the Department of Business and Professional Regulation (DBPR).

For the past three years, the DBPR legislative package has not become law. In 1995, it was vetoed by the Governor (due to provisions related to a local government control versus statewide contractors' controversy) and in 1996, the Senate failed to take action on it (it no longer contained the provision which caused the veto). In 1997, it failed because the Senate did not take action.

Building Code Administrators and Officials - Part XII, Chapter 468, F.S.:

(Sections 1-6)

Building code administrators and inspectors are licensed pursuant to part XII of chapter 468, F.S. The following are the current situations regarding a variety of changes made in the act. Currently:

- A "residential" electrical inspector license is required to inspect residential buildings. A "commercial" electrical inspector license is required to inspect commercial buildings.
- The definitions in s. 468.603, F.S., do not adequately describe the responsibilities and duties of a building code administrator, plans examiner, and building code inspector.
- Section 468.605(2), F.S., designates a nine-member Building Code Administrator and Inspector Board, of which one member must serve as a city manager. During the 1995 legislative session, the Governor's nominee for the city manager position was not confirmed by the Senate. The "city manager" position nominee was not confirmed because the Senate questioned the conflict with the dual-office holding prohibition.
- There is currently no requirement that the post-secondary education used as a qualification for licensure must be in a field related to the profession. For example, an applicant with a major in Russian Literature currently meets the statutory requirement.
- There is no avenue for a licensee in one or more categories to meet examination/experience requirements for additional license categories.
- Education is not allowed to substitute for 5 years of required experience for building code administrators.

- Plans examining is not specified as a licensure category.
- Existing language allows a provisional license only when “a newly-employed or promoted inspector lacks the qualifications for standard certification.” A newly-employed inspector or plans examiner who meets the standards but must wait several months to take the examination needs a provisional license also.
- Individual/business who inspect or review plans for project may also be the individuals/ businesses who designed or permitted the project.
- Contractors can pay inspection or review fees directly to the provider (contract inspector or plans examiner).
- The statutory cap for examinations for non-governmental employees is \$50.
- Local government employees are required to pay \$5 for each initial certification and \$5 for each license renewal.
- Local governments retain 10% of surcharge fees to fund projects and activities intended to improve the quality of building code enforcement.
- The Building Code Administrators and Inspectors Board does not retain any additional funds for continuing education and/or training of building code administrators, building code inspectors, and plans examiners.

Engineers and Architects/Building Inspectors - Chapters 471 and 481, F.S.:

(Sections 7-8)

Architects and engineers are often asked to perform plans review or building inspection duties by local jurisdictions who are experiencing a temporary shortage of inspectors or plans reviewers. They had, in the past, performed these duties -- by contract -- without being forced to obtain licensure as a building inspector. Now that such an activity requires licensure, architects and engineers wish to be able to continue to perform these services without having to seek licensure as a building inspector.

Asbestos Abatement - Chapter 469, F.S.:

(Sections 12-21)

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 construction contractor license for all abatement work, not just abatement work involving a building structure.

In 1995, the asbestos regulation was modified to establish and clarify that certain asbestos abatement activities do not require licensure. Several “cleanup and technical” changes remain to be made, in addition, the DBPR is recommending several technical changes to track federal Environmental Protection Agency (EPA) guidelines.

Construction Contracting - Part I of chapter 489, F.S.:

(Sections 9-11 and 22-34)

General Provisions

Construction contracting is regulated under Part I of chapter 489, F.S. Electrical and alarm system contracting is regulated under Part II of the same chapter.

The Construction Industry Licensing Board (CILB) regulates construction contracting in Florida. The Electrical Contractors' Licensure Board (ECLB), regulates electrical and alarm system contracting. Both boards are created under the Department of Business and Professional Regulation (DBPR).

The CILB is composed of 18 members: 4 general contractors; 3 building or residential contractors; 2 consumer members; 2 building official members; and 1 each from the following categories: roofing; sheet metal; air conditioning; mechanical; pool; plumbing; and underground utility and excavation.

Chapter 489, F.S., requires all individuals who practice contracting in Florida must either be "registered" or "certified." Florida has thus taken the very unusual (and perhaps unique) step of allowing two alternative systems of licensure to exist simultaneously and in a parallel fashion.

All individuals who practice contracting in Florida must be registered with or certified by the Board. Registration allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. This registration is issued by the Department of Business and Professional Regulation upon proof of local licensure. Such proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. The CILB has no input in, or control over, the licensure standards utilized by local jurisdictions. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and have no experience or examination requirements.

On the other hand, certification allows an individual to practice contracting in any jurisdiction in the State. DBPR will issue a certificate to an individual who applies to the CILB, shows four (4) years of experience, and passes a DBPR/CILB sanctioned and administered examination.

Medical Gas Certification

(Sections 27-28)

Medical gas piping systems are designed for various purposes, including the conveyance of oxygen to patient rooms, the precise delivery of anesthetic agents, or the suction of organic materials during surgery.

Presently, a license as a plumbing contractor is required in order to engage in the business of medical gas system installation, alteration, repair, or maintenance.

Employees of the licensed contractor, working under the licensee's general supervision, are exempt from licensure requirements.

Medical gas systems, like other mechanical systems, are subject to applicable state and local building codes. Unlike most other systems, however, these systems are also subject to the scrutiny of Florida's Department of Health (DOH), as well as the office of the State Fire Marshal.

Electrical Contracting - Part II of Chapter 489, F.S.:

(Sections 35-50)

General Provisions

Electrical and alarm system contractors are regulated by the Electrical Contractors' Licensing Board (ECLB) within the Department of Business and Professional Regulation, pursuant to Part II of chapter 489, F.S. Contractors either must 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 within the geographic confines of the local jurisdiction only). Section 489.505(25), F.S., defines "licensure" to mean both certification and registration.

Alarm system contracting is within the scope of a certified electrical contractor's license; however, it is not within the scope of a registered electrical contractor's license. Registered electrical contractors must be separately licensed as either certified or registered alarm system contractors in order to engage in alarm system contracting.

Businesses that install, maintain or monitor their own alarm systems (e.g., department stores and banks) must be licensed as either electrical or alarm system contractors, under the definitions of electrical and alarm system contracting in s. 489.505, F.S. Apparently, some local governments have required these businesses to obtain separate occupational licenses for the operation of an electrical or alarm business, in addition to whatever occupational license is required for the operation of their main business (e.g., retail store).

Alarm Monitoring

(Sections 35-36)

Presently, all alarm monitoring must be done by licensed alarm contractors.

Four Dollar Charge for Building Construction Industry Advisory Committee (BCIAC)

(Section 38)

Presently, there is a \$4 surcharge placed on licensure fees paid by all of the contractors licensed under Part I of ch. 489, F.S. This revenue goes to fund the Building Construction Industry Advisory Committee, which approves grants for academic study of construction-related issues and problems. The contractors licensed under Part II of the chapter (electrical and alarm system contractors) do not presently pay into this fund.

Electrical Contractors Licensure Qualifications (ECLB)
(Section 39)

The regulation of certified electrical or alarm system contractors has gone through years of changes designed to better enable technically qualified people to sit for the certification examination. Prior to 1993, in order to sit for the examination to obtain a state certification as an electrical or alarm system contractor, the applicant was required to show either: (1) three years "management" experience in the trade; (2) six years "comprehensive, specialized training, education or experience associated with an electrical or alarm system contracting business"; or (3) three years licensed as an engineer. The vast majority of applicants who have successfully qualified have done so pursuant to the "three years management" experience path, and virtually no applicants have ever successfully qualified pursuant to the six years "comprehensive, specialized" path.

The ECLB interprets "management" to mean "in control of," and has consistently required someone who is applying under management experience to have been in charge of the day-to-day operations of the business, including "check signing authority."

In 1993, the Legislature changed that, and provided that three years "supervisory" experience could qualify an applicant. However, in response to this, the ECLB sought to incorporate "management" into their definition (in rule) of "supervisory." This would have the effect of circumventing the legislative intent of imposing a path different from management, and of reimposing a requirement that the person have years of experience in control of an electrical or alarm business before he can sit for examination to obtain a license to run such a business.

Representatives of the industry and the ECLB explain their desire for a "management" experience licensure standard by asserting that the state certification law was originally designed so that anyone who did not already have several years of experience in control of his business -- prior to applying for a state certification -- could get that experience by obtaining a local (registered) license, and running his own locally licensed business for at least three years. In other words, their argument is that: Since a person has the option of obtaining a local license to run a contracting business, the requirement that an applicant already possess "management" experience is not an unreasonable barrier.

Comparatively, in Part I of the chapter (construction contracting), all that is required for certification is four years experience "in the trade." Neither doctors, dentists, nor any other professional license applicant is required to show experience in control of a business related to his license, before being allowed to sit for the examination.

In 1994, the Legislature provided that four years as a foreman or supervisor would qualify an applicant to sit for the examination. Also, the term "business" was changed to "endeavor," thereby allowing persons with many years of electrical or alarm experience in the armed forces, or in government work, to qualify.

Fire Alarm System Agent
(Section 50)

Burglar alarm system agents (i.e., those alarm personnel who work on burglar alarms) are required to undergo a criminal history check and complete certain training. There is presently no such requirement for *fire* alarm system agents.

Industrial Hygienists and Safety Professionals
(Section 51)

Presently, there is no regulation in Florida relating to industrial hygienists or safety professionals.

Fire Protection Equipment Dealers - Chapter 633, F.S.:

(Sections 52-59)

The Division of State Fire Marshal (SFM) within the Department of Insurance is primarily concerned with protecting Florida residents and their property from the hazards of fire. One of the division's responsibilities is to inspect, train, license and examine fire equipment dealers. Pursuant to the provisions of chapter 633, F.S., the division currently licenses 500 dealers and over 1,000 employees of fire equipment dealers.

As provided under s. 633.061, F.S., fire equipment dealers must successfully complete a prescribed training course and be tested and licensed (or permitted) by the SFM. As such, these dealers are authorized to inspect and install fire protection equipment. There are various classifications of licensed or permitted dealers and each applicant for licensure must carry proof of insurance providing certain coverages for comprehensive general liability for bodily injury and property damage, products liability, completed operations, and contractual liability.

The Division of State Fire Marshal may take disciplinary action against licensees, permittees and certificateholders and may suspend or revoke such licenses, permits, or certificates. Representatives with the SFM state that provisions within the disciplinary code relating to licenses, permits and certificates (ss. 633.162 and 633.547, F.S.) must be changed so that persons who have had their license, permit or certificate revoked may not change their company name and attempt to become licensed again under the new company name.

Pay Telephones/Occupational Licenses - Chapter 205, F.S.;

(Section 60)

Currently, a small number of counties set the amount they will charge for an occupational license according to the number of pay telephones being installed. Other local jurisdiction apparently charge a "flat fee" for an occupational license to install pay telephones, regardless of the number being installed.

Florida Building Code/Utility Power Plants - Chapter 553, F.S.:

(Section 61)

Part VII of Chapter 553, F.S., provides the mechanism for the promulgation, adoption, and enforcement of state minimum building codes. Section 553.73, F.S., requires units of local government and state agencies that have code enforcement authority to adopt the State Minimum Building Code as its building code. However, a local jurisdiction may adopt, under certain conditions, more stringent requirements than are imposed by the State Minimum Building Code. The State Minimum Building Code consists of four model codes.

HB 4181 (1998) authorizes the adoption and subsequent updates of a statewide unified building code to be called the Florida Building Code. Upon initial adoption, the Florida Building Code is deemed adopted by all local jurisdictions.

The existing building codes do not require permitting or inspection for electric utility power plants.

B. EFFECT OF PROPOSED CHANGES:

Building Code Administrators and Officials - Part XII Chapter 468, F.S.:

(Sections 1-6)

The act makes a variety of changes to the regulation, including: (1) Adding categories of licensure; (2) Setting forth the actual duties of building code administrators, plans examiners and inspectors; (3) Increasing the examination fee for non-governmental employees from \$50 to \$150 per examination and providing that no certification fees, biennial renewal fees, or examination fees be paid by employees of local government; and (4) Allowing local governments to retain 25% of surcharge fees and the Board to retain 25%. All changes are being made pursuant to a recommendation by the State Board of Building Code Administrators and Inspectors.

Engineers and Architects/Building Inspectors - Chapters 471 and 481, F.S.:

(Sections 7-8)

The act provides that an engineer or architect may, upon request from the local building department -- perform building inspection duties without having to obtain licensure as a building inspector; also provides that an architect may not act as a plans examiner on a building he designed.

Asbestos Abatement - Chapter 469, F.S.:

(Sections 12-21)

The act makes minor and technical clarifications to existing asbestos abatement regulation. It conforms some terminology to that used by the federal EPA.

Construction Contractors - Chapter 489, F.S.:

(Sections 9-11 and 22-34)

The act makes a variety of changes to the law. These significant changes are discussed under the following headings:

Exceptions to Unlicensed Contracting
(Section 22)

The act provides that the setting up of small portable sheds does not require licensure. The act provides that construction work on a Habitat for Humanity home does not require licensure. The act also provides that a licensed real estate broker may contract for repair of a building in his charge, so long as he contracts with a licensed contractor.

Medical Gas Certification
(Sections 27-28)

The act requires any licensed plumbing contractor who does medical gas work to undergo training in the field of medical gas according to specified criteria. This training shall be for a minimum of 6 hours, and may be part of his existing Continuing Education (C.E.) requirement. The contractor's workforce who engage in medical gas work is required to obtain at least 8 hours of specified training in the field. Any other person who wishes to perform only the brazing work associated with medical gas work must be tested on brazing. All training and testing must be approved by the CILB. It is the contractor's responsibility to see that his workforce is properly qualified pursuant to these requirements.

The act also requires that all installation, improvements, maintenance, or repair of the conduit that transports medical gas shall be "governed and regulated" by the National Fire Prevention Association Standard 99C. It also provides that no county or municipality is exempt from the medical gas code requirements established in the act.

Electrical and Alarm System Contractors - Chapter 489, F.S.:

(Sections 35-50)

Alarm System Monitoring
(Sections 35-36)

The act eliminates the requirement that alarm systems must be monitored by alarm system contractors under certain circumstances, including allowing: (1) Law enforcement agencies to monitor alarms; (2) Banks to monitor their own alarms; and (3) Direct employees of any business entity to monitor their alarms, providing the system is: (a) owned or leased by the entity; (b) complies with applicable firesafety standards; and (c) used only on property leased by the business, or is on property owned by the business which is not leased to someone else.

***Four Dollar Charge For The Building Construction
Industry Advisory Committee (BCIAC)***
(Section 38)

The act provides that four dollars of the existing licensure fee for contractors licensed under Part II of chapter 489 (electrical and alarm system contractors) shall be allocated to the same committee (the Building Code Industry Advisory Committee) which produces academic studies which benefit the construction industry.

Licensure Qualifications/ECLB
(Section 39)

This act clarifies and refines licensure qualifications for electrical or alarm system contractors. It explicitly allows experience in the trade gained in the armed forces or government to count toward licensure qualification. It provides for a category that had been absent in current law, providing that a person with a couple of years of experience in one type of category (education, for instance), and a couple of years in another category (the armed forces, for instance) and another couple of years in a third category (supervisor category, for instance) would qualify for the examination, so long as the categories totaled at least six years. The act requires electrical contractors licensed by local governments to have taken an examination in order to become registered with the ECLB.

Fire Alarm System Agent
(Section 50)

This act requires licensed fire alarm system contractors to have their employees obtain 18 hours of training related to installation and operation of fire alarm systems.

Industrial Hygienists and Safety Professionals
(Section 51)

This act provides that a person who represents himself as an industrial hygienist or safety professional to accurately disclose his credentials, and prohibits the use of several stipulated titles to only those persons who meet a specified level of qualification as an industrial hygienist or safety professional.

Fire Protection Equipment Dealers - Chapter 633, F.S.:

(Sections 52-59)

The act amends various provisions relating to chapter 633, F.S., which governs the licensing and permitting by the State Fire Marshal (SFM) of organizations and individuals who install and service fire safety equipment. It defines the term "fire extinguisher," provides requirements for conducting hydrotests of fire extinguishers and preengineered systems and revises the types of work that may be performed by persons who hold particular classes of licenses or permits issued by the SFM. The act provides requirements for obtaining an upgraded license for fire equipment dealers.

Pay Telephones/Occupational Licenses - Chapter 205, F.S.;

(Section 60)

The act provides that the occupational license tax applied to pay phone providers shall not be assessed on a per-instrument basis.

Florida Building Code/Utility Power Plants - Chapter 553, F.S.:

(Section 61)

The act clarifies that construction or alteration of electric utility power plants is not intended to be governed under the Florida Building Code.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. Sections 27-28: The Construction Industry Licensing Board may have to adopt rules to implement the regulation related to plumbers who do medical gas work.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. The building code administrator, plans examiner, or inspector examination fee for non-government employees is increased from \$50 to \$150.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Section 35: Allows various governmental and private entities to do their own alarm system monitoring.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Part XII of chapter 468, chapters 469 and 489, ss. 205.0535, 255.551, 376.60, 475.01, 481.222, 501.935, 553.06, 553.19 and 715.15, F.S.

E. SECTION-BY-SECTION RESEARCH:

Building Code Administrators and Officials

Section 1. Amends s. 468.603, F.S., adding a licensing category for inspectors who conduct both “residential” and “commercial” electrical inspections.

Section 2. Creates s. 468.604, F.S., establishing detailed responsibilities for a building code administrator, plans examiner, and building code inspector.

Section 3. Amends s. 468.605, F.S., deleting the city manager position and adding an inspector position to the Building Code Administrators and Inspectors Board. Deletes the requirement that the inspector positions not have managerial authority.

Section 4. Amends s. 468.609, F.S., making a variety of changes, including:

- (1) Providing that post-secondary education must be in the field of construction or related field.
- (2) Providing that a licensee in one or more inspector or plans examiner categories to take the certification examination for additional license categories by completing a training program.
- (3) Allowing education to substitute for 5 years of required experience for building code administrators.
- (4) Specifying plans examiner as a licensure category, subject to examination requirements.
- (5) Allowing any new or promoted inspector, plans examiner, or building official to receive a provisional license.

Section 5. Amends s. 468.617, F.S., prohibiting individual/business designing or permitting the project from also inspecting or reviewing plans; and eliminating the option for the contractor to pay inspection or review fees directly to the provider (contract inspector or plans examiner).

Section 6. Amends s. 468.627, F.S., to increase the examination fee for non-governmental employees to \$150 per examination; and providing that no certification fees, biennial renewal fees, or examination fees be paid by employees of local government.

Engineers/Architects/Building Inspectors

Section 7. Amends s. 471.045, F.S., allowing engineers to perform building inspection duties -- upon request by a local department -- without having to obtain licensure as a building inspector; also prohibits the architect from performing plans review on a building he designed.

Section 8. Amends s. 481.222, F.S., allowing architects to perform building inspection duties -- upon request by a local department -- without having to obtain licensure as a building inspector; also prohibits the architect from performing plans review on a building he designed.

Construction Contracting

Section 9. Amends s. 489.129, F.S., to delete paragraph (1)(d), which provides that "knowingly violating" a building code or law of this state or of any city or county is grounds for disciplinary action against licensees by DBPR. In addition, subsection (12) is created 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 where a local enforcement body has jurisdiction over the complaint. However, if DBPR proves that the local board has failed or refused to investigate a complaint within six months, DBPR can suspend or rescind its determination of the board's ability to discipline contractors. This section also requires local boards to have at least two consumer representatives.

Section 11. Explicitly provides that the provisions added in s. 489.131(7)(f), F.S., by Section 10. of this act, do not apply retroactively.

Asbestos Abatement

Section 12. Amends s. 469.001, F.S., clarifying definitions, and providing a definition for "project designer", in order to conform to federal standards.

Sections 13-14. Amend ss. 469.002 and 469.004 F.S., to exempt certain demolition activities by government agencies on government-owned buildings (included at the request of FDOT and directed primarily at buildings condemned for road and other government projects), and to move exemptions for resilient floor covering and asbestos-containing pipes from s. 469.004, F.S., and to establish an exemption from asbestos

consultant licensure requirements for a licensed roofer who is removing asbestos-containing roofing material.

Section 15. Amends s. 469.005, F.S., to revise licensure requirements to conform to federal standards.

Section 16. Amends s. 469.006, F.S., to give the department the ability to establish standards regarding financial stability and thus give it more a stable basis on which to grant or deny licensure; and to require that the consultant or contractor affix their signature (rather than a seal) to documents which are submitted to governmental agencies.

Sections 17-18. Amend ss. 469.013 and 469.014, F.S., to make technical changes and correct cross-references.

Section 19. Repeals s. 469.015, F.S., requiring the use of seals.

Sections 20-21. Amend ss. 255.551 and 376.60, F.S., to make technical cross-reference changes.

Construction Contracting

Section 22. Amends s. 489.103, F.S., creating an exemption from contractor licensure requirements for persons who set up storage sheds of less than 250 square feet, and which are not intended for human habitation; creating an exemption for Habitat for Humanity homes.

Section 23. Amends various paragraphs of subsection (3) of s. 489.105, F.S., and subsection (19) to:

(3) (a) Provides that the scope of work for the general contractor includes all activities which require licensure under Part I, unless specifically provided otherwise.

(d), (f),

(g), (h)

and (i) Provides that licensure is required if someone cleans ducts for air-conditioning or heating and ventilation systems, if they at least partially disassemble the system in the course of cleaning it.

(l) Provides that the substantial or complete disassembly of equipment attached to a pool requires licensure.

(n) Provides that the job scope of underground utility and excavation contractors includes such things as directional drilling, etc.

(19) Clarifies the term "initial issuance."

Section 24. Amends s. 489.107, F.S., to allow the CILB and the ECLB to appoint committees to meet jointly twice a year, rather than requiring the entire board to do so.

Section 25. Amends s. 489.113, F.S., to clarify that the expansion of the job scope of one license does not serve to limit the scope of practice of any existing license.

Section 26. Repeals s. 489.1135, F.S., relating to obsolete grandfathering procedures for underground utility and excavation contractors.

Medical Gas Certification

Section 27. Creates s. 489.1136, F.S., to require any licensed plumbing contractor who does medical gas work to undergo training in the field of medical gas according to specified criteria. This training shall be for a minimum of 6 hours, and may be part of the existing Continuing Education (C.E.) requirement. The contractor's workforce who engages in medical gas work is required to obtain at least 8 hours of specified training in the field. Any other person who wishes to perform only the brazing work associated with medical gas work must be tested on brazing. All training and testing must be approved by the CILB. It is the contractor's responsibility to see that his workforce is properly qualified pursuant to these requirements.

Section 28. Creates subsection (4) in s. 553.06, F.S., to establish the "National Fire Prevention Association Standard 99C" as the applicable standard for medical gas work; and provides that no county or municipality is exempt from the code requirements established in this subsection.

Construction Contracting

Section 29. Amends s. 489.115(4)(b)1., F.S., to provide that a person licensed under both parts of chapter 489, F.S., may apply courses taken to comply with continuing education requirements in Part II to the continuing education requirements in Part I of chapter 489, F.S., so long as those courses were on the subject of workers' compensation, safety, and business practices.

Section 30. Amends s. 489.119(3)(a), F.S., to provide clarification of the term "incomplete contract."

Construction Recovery Fund

Section 31. Amends s. 489.140, F.S., to strike provision transferring surplus moneys collected from disciplinary fines to recovery fund. CILB collects only about 10-12% of fines levied, so there is no surplus.

Section 32. Amends s. 489.141, F.S., to recognize claims based on CILB restitution orders. The change to s. 489.141(1)(a)1., F.S., strikes provision requiring claimant to file a notice at the time a civil suit is filed. Other amendments to subsequent subsections provide that claims are paid on "first in time, first in right" basis. Section 489.141(1)(c), F.S., is amended to allow filing of claim up to one year after conclusion of civil/administrative action. These amendments all adjust the claim's process to encompass more claimants and provide greater access by harmed consumers.

Section 33. Amends s. 489.142, F.S., to provide that the board may commence action regarding a claim even in an instance where the board has not received a certified notice of action.

Section 34. Amends s. 489.143(1), F.S., to recognize claims based on CILB restitution orders; deleting subsection (5), relating to a "stop-loss" provision; and new (5) and (6) are added to provide for payment of claims in the order filed, until annual appropriation is expended, with pending claims carried forward to next fiscal year.

Electrical Contracting--Alarm Monitoring

Section 35. Amends s. 489.503, F.S., to provide exemptions from the licensure requirements for:

- ◆ Monitoring of an alarm system by a direct employee of a law enforcement agency or fire department, or by a law enforcement officer acting in an official capacity.
- ◆ Monitoring for direct employees of financial institutions providing that the alarm systems are limited to the commercial property of the bank where the banking operations take place, or on the private property occupied by the bank's executive officers.
- ◆ Monitoring for direct employees of any business entity, providing the system is: (1) owned or leased by the entity; (2) complies with applicable firesafety standards; and (3) used only on property leased by the business, or is on property owned by the business which is not leased to someone else.

Section 36. Amends s. 489.505, F.S., to amend the definition of "alarm system" to include signaling devices, to amend the definition of "certified alarm contractor" to include an additional fire protection standard, and to repeal the obsolete definition in subsection (24) of "limited burglar alarm system contractor." Establishes the definition of "monitoring" to mean receiving electronic or electrical signals by an alarm system or closed circuit television system, and initiating a response thereto. Provides that monitoring does not include the instance where an occupant or employee initiates emergency action in response to an alarm signal, providing that such action is incidental to his primary responsibilities, and that he is not working in a proprietary monitoring facility, as defined in the NFPA Code adopted under chapter 633, F.S.; provides a definition for "fire alarm system agent" as an employee of a contractor who is doing work that is an element of a regulated activity and which is either altering, installing, maintaining, moving, repairing, replacing, servicing, selling onsite, or monitoring a fire alarm system for compensation.

Section 37. Amends s. 489.507, F.S., to allow a committee consisting of members of the CILB and the ECLB to meet jointly, rather than requiring the full boards to meet.

\$4 Fee--Department of Education

Section 38. Amends s. 489.509, F.S., to conform the time frame for renewal to current department procedures; provides that \$4 out of existing licensure fees shall go to fund academic studies benefiting the construction field.

Electrical Contracting

Section 39. Amends s. 489.511, F.S., to eliminate the examination qualification path for "foremen"; changes the six-year experience path from being experience at an "electrical

or alarm system installation or servicing endeavor" to experience at an "electrical or alarm system contracting business"; provides that electrical or alarm work experience in the armed forces or the government will be accepted toward licensure; provides that a combination of experience from the categories of education, supervision and management shall be acceptable as qualification to sit for the examination, so long as it totals six years of experience; and requires six years "supervisory" experience, rather than "broad" experience in one of the licensure qualification categories.

Section 40. Amends s. 489.513(3), F.S., to provide that locally licensed electrical contractors, in order to be registered, must have passed an examination given by the local jurisdiction which is "appropriate" and which tests "skills and knowledge relevant to the technical performance of the profession," or pass an examination "substantially equivalent" to the certification examination.

Section 41. Creates s. 489.517(4), F.S., to provide the "companion" exemption to the exemption found in s. 489.115(4)(b)1., F.S., providing that persons licensed in both parts of the chapter may apply courses taken to comply with continuing education requirements in Part I to the continuing education requirements in Part II of chapter 489, F.S., so long as those courses were on the subject of workers' compensation, safety, and business practices; also creates (5) to provide specific authority for the board to promulgate by a rule a procedure to verify the public liability and property damage insurance for a specific period.

Section 42. Amends s. 489.519, F.S., to allow a licensee to apply for inactive status at any time.

Section 43. Amends s. 489.521, F.S., to clarify the criteria the board should use in determining whether to allow a single licensee to qualify more than one business entity, establishes that the licensee must have both the capacity and intent to properly supervise the operation of each entity, and that failure to supervise can result in that qualification being suspended or revoked.

Section 44. Amends s. 489.525, F.S., to delete the requirement that the board shall inform the local jurisdictions of the names and licensure status of all certificateholders every year (that information is now available over the Internet); also provides that other information required to be reported does not have to be reported if it is available over the Internet or other electronic means.

Section 45. Amends s. 489.533, F.S., to provide that willful misrepresentation is a disciplinable act; that entering a plea of nolo contendere can be considered similarly to having been found guilty; that the contractor must pay any judgment against him within 18 months or according to an agreed upon schedule; and gives the board authority to require financial restitution to a consumer.

Section 46. Reenacts s. 489.518(5), F.S., for technical purposes.

Section 47. Amends s. 489.537, F.S., to allow registered electrical contractors to contract for the construction or repair of raceway systems; clarifies the applicability of two sections in chapter 205, F.S., to licensees under this part.

Section 48. Amends s. 489.539, F.S., to provide for the adoption of current electrical and alarm standards by the board.

Section 49. Amends s. 553.19, F.S., to update various building codes provisions.

Fire Alarm System Agents

Section 50. Creates s. 489.5185, F.S.:

- 1) Providing that an electrical or alarm system contractor may not employ someone to perform fire alarm system agent duties unless that person is properly qualified;
- 2) Providing that the employee can commence or continue work as a fire alarm system agent, pending the results of a criminal history check, providing that if the department finds that person is not qualified (if, for instance, it is determined that the applicant has a criminal history which disqualifies him), the contractor will terminate his employment in fire alarm system agent duties;
- 3) Requiring the employer to obtain a completed criminal history check, including fingerprint cards for each employee performing fire alarm system agent duties;
- 4) Requiring 18 hours of training, but allowing employment prior to training, so long as the person receives training within 90 days after initial employment;
- 5) Requiring board approval of training courses and providers (the fee for approval of training providers shall not exceed \$200, and a fee for the approval of courses at \$25 per credit hour, not to exceed \$100 per course);
- 6) Providing that certain types of criminal history will disqualify the person from fire alarm system agent duties.
- 7) Requiring each company to issue a picture ID to the fire alarm system agent, on a board-approved format, to be renewed every two years, to include the contractor's name and license number;
- 8) Requiring fire alarm system agents to get six hours of continuing education every two years;
- 9) Providing that anyone who has completed the training required of burglar alarm agents is not required to take additional training in order to comply with this act; and
- 10) Providing that violation of any of these new provisions constitutes a disciplinable act.

Industrial Hygienists and Safety Professionals

Section 51. Creates s. 501.937, F.S., providing:

- (1) A definition for an industrial hygienist, and a safety professional.

- (2) That no person may represent himself as a certified industrial hygienist or certified safety professional (or one of several other specific titles) unless that person is properly qualified.
- (3) That in order to be qualified, the person must have a degree in an appropriate science field and hold a certificate from one of several stipulated private certifying organizations (or from a certifying program that the DBPR has concluded has substantially equivalent standards).
- (4) That a person who represents himself as an industrial hygienist or a safety professional is required to accurately disclose his credentials.
- (5) That failure to comply with the provisions of the act constitutes a deceptive and unfair trade practice.

Fire Protection Equipment Dealers

Section 52. Amends s. 633.021, F.S., to define "fire extinguisher" as a cylinder that is portable, manually operated, utilizes a variety of extinguishing agents that are expelled under pressure, is rechargeable, installed and serviced according to applicable procedures and is listed by a nationally recognized testing laboratory.

Section 53. Amends s. 633.061, F.S., to add the term "hydrotesting" to the SFM law to clarify that this term is within the scope of work performed by fire equipment dealers. Hydrotesting is a pressure test done on a fire extinguisher cylinder. The act also revises the specific types of work performed as to the class of licenses and permits issued by the SFM. The act adds a requirement for applicants for licenses of any class by providing that an applicant must have a current retestor identification number that is appropriate for the license for which the applicant is applying and that is listed with the U.S. Department of Transportation. The act provides procedures and requirements for fire equipment dealers to upgrade their license.

Section 54. Amends s. 633.065, F.S., to require that fire suppression equipment that is for new installations or alterations of existing systems must be "currently" listed by a nationally recognized testing laboratory.

Section 55. Amends s. 633.071, F.S., to clarify a provision relating to the standard service tag on all fire extinguishers by referring to a manufacturer's specifications, and to specify that preengineered systems must be hydrotested prior to being tagged.

Section 56. Amends s. 633.162, F.S., to provide for revisions to the disciplinary section of the SFM code as it applies to persons licensed or permitted. The act provides that during suspension or revocation of any license or permit, the former licensee or permittee shall not engage in any transaction or business for which the license or permit is required under this chapter. It mandates that the Department of Insurance not grant, so long as a revocation or suspension remains in effect, any new license or permit for the establishment of any new business of any person that has the same or similar management as previously revoked or suspended and it further allows the SFM the authority to deny, suspend or revoke the license of any person or business, the license of which has been suspended or revoked.

Section 57. Amends s. 633.171, F.S., relating to penalties for violations, to clarify that the current first degree misdemeanor penalty for rendering a fire extinguisher inoperative except during the time as the extinguisher is being serviced, also includes "hydrotested."

Section 58. Amends s. 633.547, F.S., relating to the discipline of fire protection system contractors who are certified under this chapter. The act provides for similar disciplinary procedures as outlined above.

Section 59. Amends s. 489.105, F.S., to provide a technical conforming cross reference change.

Pay Telephones/Occupational Licenses

Section 60. Amends s. 205.0535, F.S., to provide that the occupational license tax applied to pay phone providers shall not be assessed on a per-instrument basis.

Building Codes/Utility Power Plants

Section 61. Amends s. 553.73, F.S., to provide that the power plant structures of electric utilities shall not be subject to inspection or permitting under the Florida Building Code

Section 62. Provides that the act shall take effect October 1, 1998.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

RE: BUILDING INSPECTORS (Ch. 468, F.S.)

<u>Revenue:</u>	1998-99	1999-00
Department of Business & Professional Regulation		
Increase in examination fee for non-gov. employees:		
\$100 x 75 non-gov applicants	\$ 7,500	
\$100 x 100 non-gov applicants		\$ 10,000
 Reduce Professional Regulation Trust Fund by the following:		
\$25 x 100 non-gov applicants	\$2,500	\$ 2,500
\$ 5 x 600 gov applicants	3,000	3,000
\$ 5 x 5000 renewal licensees	<u> </u>	<u>\$25,000</u>

Overall reduction of Professional Regulation Trust Fund +\$2,000 (\$20,500)

<u>Expenditures:</u>	1998-99	1999-00
Department of Business & Professional Regulation		
Additional 15% retained by local gov	\$300,000	\$300,000
BCAIB retain additional 25%	<u>500,000</u>	<u>500,000</u>
Construction Industry Recovery Fund will be reduced	\$800,000	\$800,000

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Local governments will be able to retain approximately \$300,000 annually from a building code surcharge they are currently collecting and pay into the Construction Industry Recovery Fund.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Non-governmental applicants for building code administrator, plans examiner, or inspector examinations will have to pay an additional \$100.

2. Direct Private Sector Benefits:

The reduction of regulation regarding alarm system monitoring in section 35 (allowing various entities to perform their own monitoring) may allow for cost-savings.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

RE: SECTIONS 52-59

The Department of Insurance estimates it needs \$50,000 to implement the provisions of these sections because the State Fire Marshal would have to revise computer programs, applications and procedures related to the regulation of the industry.

RE: SECTION 60

The provisions contained in section 60 of this act prohibit local jurisdictions from charging an occupational license tax for pay telephones based on the number of instruments installed. Unverified information provided to staff by the provision proponents indicates that only a handful of counties currently set the amount charged for the occupational license according to the number of units installed.

However, since the provision does not limit the *amount* of occupational license tax that might be charged (it only constrains the basis on which it may be calculated), it is concluded that *there is not necessarily any fiscal impact on the local jurisdiction*.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

The Department of Business and Professional Regulation (DBPR) vigorously objected to the provisions in section 10 of the act which interferes with the ability of the department to investigate or pursue a locally licensed contractor. When the proponents of the provision

agreed to provide that the provision would not be retroactive, the objections of the DBPR were slightly lessened.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1998, the House **Committee on Community Affairs** adopted the following amendments to the act:

Amendment 2: Amends paragraph 489.105(3)(m), Florida Statutes, removing the exemption from plumbing licensure requirements for gas utilities. The effect of this is that it eliminates the ability of a gas utility (not licensed as a plumbing contractor) to install or repair gas water heaters.

Amendment 3: Technical amendment, conforming the directory language to the adoption of amendment #2.

Amendment 7: Repeals subsection 489.505(24), Florida Statutes; amends subsections 489.505(1), (7), (19), and (23), Florida Statutes; rennumbers subsections (25), (26), and (27), Florida Statutes; and adds subsections (27) and (28). Inserting the definition of "fire alarm system agent" *around* existing proposed provisions (first strikes them, then puts them back with the additional definition on the end, plus the directory change).

Amendment 8: Creates section 489.5185, Florida Statutes, requiring training and criminal history checks for the workforce of fire alarm contractors.

Amendment 9: Creates section 471.026, Florida Statutes, allowing engineers to, upon the request of the local building department, perform building code inspection and plans review duties without having to be licensed as building code inspectors or plans reviewers. This provision tracks an essentially identical provision already in the act allowing architects to perform these same tasks.

Amendment 10: Creates section 501.937, Florida Statutes, requiring industrial hygienists and safety professionals to accurately disclose their credentials, and prohibiting persons from referring to themselves under certain protected titles, unless qualified under one of several stipulated paths.

Amendment 11: Effective October 1, 1998, redesignating subsections 633.021(7) through (25), Florida Statutes, and adding subsection 633.021(7), accomplishing various technical and substantive changes to chapter 633, setting forth the regulations associated with organizations and individuals who install and repair fire protection equipment. Substantive changes include requiring fire equipment dealers to obtain increased insurance coverage, and providing that an organization or person who has a license suspended or revoked may not apply for another license or be affiliated with another licensee during the period of the suspension or revocation.

Amendment 12: Amending subsection 468.431(2), Florida Statutes, requiring Community Association Management businesses to register with the Department of Business and Professional Regulation.

Amendment to amendment 12: Amending subsection 468.431(2), Florida Statutes, clarifying that rulemaking authority for enforcement of the requirement resides with the department.

Amendment 13: Amending subsections 468.385(4) and (6), Florida Statutes, making a variety of changes to the regulation of auctioneers. Provides that a written contract is required for all auctions. Clarifies that property, as well as money, must be accounted for by an auctioneer. Reduces the total amount of funds that must be maintained in the Auctioneer Recovery Fund. Reduces the amount of money that may be recovered for violations of the auctioneer practice act from \$50,000 per judgment to \$25,000 per judgment and from a lifetime limit of \$100,000 per licensee to \$50,000 per licensee.

On April 21, 1998, the **Committee on General Government Appropriations** adopted one amendment to amendment 2 adopted by the Committee on Community Affairs on April 15, 1998 and two technical amendments.

Amendment 1a: Restores the exemption from plumbing licensure requirements for gas utilities.

Amendment 2 and Amendment 3: Technical amendments which replace “governing” with “national” with respect to electrical code provisions.

On April 29, 1998, the bill passed the **House** with two technical amendments, and three substantive amendments. The substantive amendments contained provisions: (1) Which would have diverted funds from the Construction Industry Recovery Fund for use by local jurisdictions and training of building officials and inspectors; (2) Which exempted electric utilities’ structures or facilities involved in the generation, transmission or distribution of electricity from inclusion in the Florida Building Code; and (3) Required the DBPR to provide certain notification and information to a contractor who is the subject of a complaint.

On April 30, 1998, a “strike everything” amendment which essentially contained the provisions of CS/CS/SB 2336 was adopted onto HB 4439 on the **Senate Floor**. That strike everything amendment was substantially similar to the House bill, with the following differences. These provisions were eliminated from the House version of the bill with the Senate amendment: (1) Provisions related to auctioneers; (2) Provisions related to community association managers; and (3) A restriction on local government’s authority to levy occupational license taxes on real estate salespersons. An additional change made by the Senate amendment was that it provided that the DBPR may not initiate or pursue a complaint against a registered contractor where a local enforcement body has jurisdiction over the complaint. However, if DBPR proves that the local board has failed or refused to investigate a complaint within six months, DBPR can suspend or rescind its determination of the board’s ability to discipline contractors. The amendment also requires local boards to have at least two consumer representatives.

On May 1, 1998, the House concurred with the Senate amendments and the bill was ordered engrossed.

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DATE: June 19, 1998

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VIII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Gip Arthur

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Tonya Sue Chavis, Esq.

Joan Highsmith-Smith

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT
APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Juliette Noble

Cynthia P. Kelly

**FINAL RESEARCH PREPARED BY COMMITTEE ON BUSINESS REGULATION AND
CONSUMER AFFAIRS:**

Prepared by:

Legislative Research Director:

Gip Arthur

Lucretia Shaw Collins