

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1800

SPONSOR: Committee on Regulated Industries and Senator Mitchell

SUBJECT: Construction

DATE: April 14, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Guthrie	RI	Favorable/CS
2.				
3.				
4.				
5.				

## I. Summary:

The bill:

- Privatizes the inspection of elevators.
- Establishes special disciplinary procedures for building code enforcement officials.
- Increases the validity period for a provisional certification for a newly employed or promoted building code inspector, plans examiner, or building code administrator from the current period of one to three years to a period of three to five years.
- Clarifies the job scope of pool contractors.
- Moves the Construction Industry Licensing Board offices from Jacksonville to Leon County.
- Clarifies the statute on grandfathering electrical and alarm system contractors into certification.
- Eliminates a requirement that persons who monitor fire alarm systems obtain technical training.

It is recommended by the Department of Business and Professional Regulation.

The bill substantially amends the following sections of the Florida Statutes: 399.061, 468.603, 468.609, 112.3145, 125.56, 212.08, 252.924, 404.056, 468.604, 468.605, 468.607, 468.617, 468.621, 468.627, 468.631, 468.633, 471.045, 481.222, 489.103, 489.105, 489.107, 489.128, 489.503, 489.514, 489.5185, 489.522, 489.531, 489.505 and 489.515. The bill also creates section 468.619, Florida Statutes and repeals section 489.537(8), Florida Statutes.

## II. Present Situation:

See Effect of Proposed Changes

## III. Effect of Proposed Changes:

Section 1 amends s. 399.061, F.S.

*Present Situation:* This section requires the Division of Hotels and Restaurants to inspect elevators for which a service maintenance contract is not continuously in force at least once between July 1 of any year and June 30 of the next year. When a service maintenance contract is continuously maintained with an elevator company, the division must verify with the elevator company before the end of each fiscal year that the contract is in force and is being implemented. An elevator covered by such a service maintenance contract must be inspected by a state elevator inspector at least once every 2 fiscal years; however, if the elevator is not an escalator or a dumbwaiter and the elevator serves only two adjacent floors and is covered by a service maintenance contract, no inspection is required so long as the service contract remains in effect.

*Effect of Proposed Changes:* The bill provides that elevators are to be inspected by a third-party inspection service certified as a Qualified Elevator inspector or maintained pursuant to a service contract continuously in force. A statement verifying the maintenance contract must be filed with the division annually. All elevators must be inspected by a certificate-of-competency holder at least once every 2 years; however, if the elevator is not an escalator or a dumbwaiter and the elevator serves only two adjacent floors and is covered by a service maintenance contract, no inspection is required so long as the service contract remains in effect.

**Sections 2, 3, 4, and 5** amend ss. 468.603, 468.604, 468.605, and 468.607, F.S., making technical changes relating to proper terminology for identifying building code inspectors and inspections.

**Section 6** amends s. 468.609, F.S., relating to standards for certification as a building code administrator, plans examiner, or inspector.

*Present Situation*

Section 468.609, F.S., provides the standards for certification as a building code administrator, plans examiner, or inspector. No person may engage in the duties of a building code administrator, plans examiner, or inspector unless that person possesses a currently valid standard certificate, limited certificate, or provisional certificate.

To obtain a standard certificate, a person must pass an examination approved by the board, which demonstrates that the applicant has fundamental knowledge of the state laws and codes relating to the construction of buildings for which the applicant has code administration, plans examining, or inspection responsibilities. The section provides legislative intent that the examination approved for certification be substantially equivalent to the examinations administered by the Southern Building Code Congress International, the Building Officials Association of Florida, the South Florida Building Code (Dade and Broward), and the Council of American Building Officials.

Building code administrators, plans examiners, and inspectors holding office on July 1, 1993, are not required to possess a standard certificate as a condition of tenure or continued employment, but must obtain a limited certificate qualifying them to engage in building code administration, plans examination, or inspection in the class, at the performance level, and within the governmental jurisdiction in which the person is employed.

The board may provide for the issuance of provisional certificates to any newly employed or promoted building code administrator, plans examiner, or inspector. Provisional certificates are valid for a period specified by board rule, not to be less than one year nor more than three years. Rule 61G19-6.012, F.A.C., presently provides that provisional certificates are valid for two years.

Any individual who holds a valid certificate issued by the Southern Building Code Congress International, the Building Officials Association of Florida, the South Florida Building Code (Dade and Broward), or the Council of American Building Officials certification programs, or who has been approved for certification under one of those programs not later than October 1, 1995, is deemed to have satisfied the requirements for receiving a standard certificate in the corresponding statutory category. Employees of counties with a population of less than 50,000, or employees of municipalities with a population of less than 3,500, are deemed to have satisfied the requirements for standard certification if such employee is approved for certification under one of the programs set forth in this paragraph not later than October 1, 1998.

#### *Effect of Proposed Changes*

The bill amends s. 468.609, F.S., to increase the validity period for a provisional certification from the current period of 1 to 3 years to a period of 3 to 5 years. The provisional certification is for any eligible newly employed or promoted building code inspector, plans examiner, or building code administrator. The bill also allows a building code administrator who holds a limited or provisional certificate in any county with a population of less than 75,000 and in any municipality located within such a county to provide direct supervision of and to determine the qualifications of a newly employed or hired person who has filed a provisional certificate application and is performing the duties of a plans examiner or building code inspector.

The bill deletes references to examinations administered by the Building Officials Association of Florida, the South Florida Building Code (Dade and Broward) from the provisions on the examination to obtain a standard certificate. According to the Department of Business and Professional Regulation, these entities do not offer examinations. The bill adds the International Code Council to this list.

**Section 7** amends s. 468.617, F.S., making technical changes relating to proper terminology for identifying building code inspectors and inspections.

**Section 8** creates s. 468.619, F.S., establishing the enforcement officials bill of rights.

#### *Present Situation*

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

The department is required to investigate all legally sufficient complaints it receives pursuant to the provisions of s. 455.225, F.S. The determination of legal sufficiency is made upon initial

receipt of a complaint received from the public or other source. A complaint is legally sufficient when the allegation, if true, amounts to a licensure violation.

The department's complaint, investigatory, and prosecutorial processes are as follows. Once the complaint is received, it must be forwarded to the proper office. Most complaints against regulated professionals are received at a central location, processed, and distributed to the appropriate board office. Legal sufficiency is determined, if possible, from the description of the alleged violation. Sometimes, additional information, such as copies of documents, may be required. In some cases this can be done quickly, but in others it can take a much longer period of time and require the cooperation of sources outside the control of the department.

If a complaint is determined to be legally sufficient, the case is sent to the investigative office in the area where the alleged violation occurred. It can take several days to get the complaint to the proper office and assigned to an investigator. The investigator must rely on the cooperation of others to conduct the investigation. Sometimes subpoenas must be issued to get information. As an investigation progresses, new leads and sources of information are revealed, which must be pursued. Sometimes, especially in a technical area such as building code matters, experts must be retained to perform expert analysis.

Once an investigation of a legally sufficient complaint is completed, it is forwarded to the Office of General Counsel for review and presentation to the probable cause panel of the board. The panel, which consists of at least two board members, determines whether there is probable cause to support prosecution of the matter. The complaint, the investigation, and the panel's deliberations are confidential until ten days after probable cause is found by the panel. If probable cause is not found, the case remains confidential and may be closed or sent back for further investigation.

When probable cause is found, the department files an administrative complaint and pursues prosecution of the matter. Each prosecuted case eventually ends up before the board. The board is the agency head for purposes of taking final agency action in each case.

#### *Effect of Proposed Changes*

Newly created s. 468.619, F.S., establishes legislative findings that building code enforcement officials are employed by local jurisdictions to exercise police powers of the state in the course of their duties and are in that way similar to law enforcement personnel, correctional officers, and firefighters. An additional finding is that building code enforcement officials are thereby sufficiently distinguishable from other professionals regulated by the department so that their circumstances merit additional specific protections in the course of disciplinary investigations and proceedings against their licenses.

The section provides that in any conflict between a provision of this section and a provision of chapter 455, the provision of this section supersedes the provision of chapter 455.

Prior to the investigation proceeding to the interview stage, or to any hearing, legal sufficiency must be found and asserted by the department. Whenever an enforcement official is subjected to an investigative interview for possible disciplinary action, the interview must take place at a

reasonable hour. If the interview is taken in person, it must take place not more than 30 miles from where the licensee works, or at any other mutually agreeable location or time. An enforcement official may not be subjected to an interview without first receiving written notice of sufficient details of the investigation in order to be reasonably apprised of the nature of the investigation and of the substance of the allegations made. The enforcement official must be informed prior to the interview whether the complaint originated from the department or from a consumer.

An enforcement official under investigation has the right, on request, to be represented by counsel or by any other representative chosen by the official, and the representative is to be present as the enforcement official wishes during the interview.

The interview, including notation of all recess periods, must be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the enforcement official, a copy of any such recording must be made available to the enforcement official no later than 72 hours following the interview, excluding holidays and weekends. The expense of the recording and transcript must be borne by the enforcement official. If the testimony is transcribed, the transcript must be furnished to the enforcement official for examination. Any changes in form or substance that the enforcement official wants to make must be listed in writing, with a statement of the reasons for making the changes. The changes must be attached to the transcript. Any transcript of an interview with an enforcement official which is to be used in any proceeding against the enforcement official must be sworn or affirmed to and acknowledged by the enforcement official.

The department must inform the enforcement official of any legally sufficient complaints received, including the substance of the complaint, within 10 days of receipt of the complaint. The enforcement official has 30 days to respond. The department must submit the investigation to the probable cause panel no more than 180 days after the date of receipt of the complaint, whether the investigation is complete or not. If the investigation is not complete, the probable cause panel is to instruct the department either to complete the investigation within a time certain, not to exceed 90 days, or to dismiss the complaint with prejudice. If the department fails to comply with these requirements, no action may be taken against the enforcement official. A dismissed investigation may not be reopened. However, in any instance of an additional complaint being initiated, information or investigation related to the dismissed complaint may be used.

The enforcement official is considered an agent of the employing governmental entity, and as such is to be defended by that entity in any action brought by the department or the board, provided the enforcement official is working within the scope of his or her employment. If any action taken against the enforcement official by the department or the board is found to be without merit by a court of competent jurisdiction, or if judgment in such an action is awarded to the enforcement official, the department or the board, or the assignee of the department or board, must reimburse the enforcement official or his or her employer, as appropriate, for reasonable legal costs incurred.

An enforcement official shall not be subject to disciplinary action in regard to the official's certification for exercising rights under this section.

An enforcement official may bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered pursuant to the performance of the enforcement official's duties or for abridgement of the enforcement official's civil rights arising out of the enforcement official's performance of official duties.

Notwithstanding any other law, while under investigation, the enforcement official may not be denied any rights or privileges of a licensee in good standing.

**Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20** amend ss. 468.621, 468.627, 468.631, 468.633, 112.3145, 125.56, 212.08, 252.924, 404.056, 471.045, 481.222, and 489.103, F.S., making technical changes relating to proper terminology for identifying building code inspectors and inspections.

**Section 21** amends s. 489.105, F.S., relating to pool and spa contractors.

#### *Present Situation*

The job scope of each type of construction contractor is set forth in the respective definitions in s. 489.105, F.S. The activities listed in the definition become activities that only a person holding that license lawfully can perform. Currently, the scope of work of a commercial or residential pool or spa contractor includes the repair or replacement of existing equipment or the installation of new equipment. The scope of work also includes layout, excavation, operation of construction pumps for dewatering purposes, steelwork, installation of light niches, construction of floors, guniting, fibreglassing, installation of tile and coping, installation of all perimeter and filter piping, installation of all filter equipment and chemical feeders of any type, plastering of the interior, construction of decks, construction of equipment rooms or housing for pool equipment, and installation of package pool heaters.

As the existing job scope specifically lists guniting and fibreglassing, interior pool finishing work that is not guniting or fibreglassing does not currently require a license. The Construction Industry Licensing Board (CILB) has recommended that a more general term, "interior finishes," replace the detailed listing, in order to capture new and evolving technologies using new materials.

#### *Effect of proposed Changes*

The bill deletes current language relating to construction and replaces it with broader language including in the scope any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes. The scope also is broadened to include the application of interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment. This provision would require persons doing any kind of pool finishing work, using any technology or material, to be licensed as a pool/spa contractor.

**Section 22** amends s. 489.107, F.S., which provides for the Construction Industry Licensing Board. Section 20.165(7), F.S., prohibits the transfer of any board created by that section from its present location unless authorized by the Legislature in the General Appropriations Act. The bill

provides that, s. 20.16(7), F.S., notwithstanding, the physical offices of the Construction Industry Licensing Board must be located in Leon County.

**Section 23** amends s. 489.128, F.S., to provide that contracts entered into and performed by any construction contractor who fails to obtain or maintain a license are unenforceable, even if the contractor later obtains or reinstates a license.

**Section 24** amends s. 489.503, F.S., to allow an authorized representative or distributor for a personal emergency response system to provide, install, test, and maintain such a system without being a licensed alarm system contractor.

**Section 25** amends s. 489.514, F.S. Last year, legislation was enacted requiring that all contractors be registered or licensed with the state. Section 489.514, F.S., was enacted to grant a state certification to electrical or alarm system contractors who are licensed at the local level and who meet specific qualifications. The bill clarifies that:

- Applicants must be granted a certification in one of the statutorily established license categories, rather than a category established by board rule.
- Specific examinations fulfill qualification requirements, instead of requiring the board to determine whether an examination is substantially similar to the requirements.
- Continuing education required for renewal after the first full biennium for persons obtaining certification through the grandfathering provision shall be entirely on technical subjects related to alarm system contracting.

**Section 26** amends s. 489.5185, F.S., on fire alarm system agents.

#### *Present Situation*

Sections 489.518 and 489.5185, F.S., require training for specified employees, including burglar alarm system agents and fire alarm system agents, respectively. Section 489.518, F.S., exempts from the training requirements burglar alarm system agents who only do monitoring. Section 489.5185, F.S., however, does not exempt from the training requirements fire alarm system agents who only do monitoring.

#### *Effect of Proposed Changes*

The bill establishes a training exemption for fire alarm monitoring personnel.

**Section 27** amends s. 489.522, F.S., providing that within 60 days after a licensee no longer qualifies a business, the licensee must transfer the license to another business, qualify as an individual, or place the license in an inactive status.

**Section 28** amends s. 489.531, F.S., creating criminal penalties for unlicensed electrical or alarm system contracting, with a first offense being a first degree misdemeanor and a subsequent offense being a third degree felony. Unlicensed contracting during a declared state of emergency also is a third degree felony.

**Section 29** amends s. 489.532, F.S., to provide that contracts entered into and performed by any electrical or alarm system contractor who fails to obtain or maintain a license are unenforceable, even if the contractor later obtains or reinstates his or her license.

**Section 30** Repeals s. 489.537(8), F.S., to delete an obsolete grandfather clause that allowed certain locally registered electrical contractors and locally licensed alarm system contractors to operate within the licensing jurisdiction.

**Sections 31 and 32** amend ss. 489.505 and 489.515, F.S., to delete cross-references to s. 489.537(8), F.S., which is repealed in the previous section of this bill.

**Section 33** provides that the bill takes effect July 1, 2000.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The department states that it intends to house the Construction Industry Licensing Board staff in space it currently leases in its Northwood Mall facility. The department indicates that there will be an annual savings to the department of \$95,851 (the annual lease on the Jacksonville facility). The current rent per square foot in Jacksonville is lower than what will be billed to the CILB trust fund account for space in the Northwood Mall facility. However, because some of the current CILB staff positions will be allocated to the Call Center, and because duplication of some technical support space (e.g., copying, printing, etc.) will be eliminated, the department predicts that the overall cost charged back to the CILB will not



rise. The department further predicts that other savings, including server costs for computers, phone costs, and postage will total approximately \$10,000 per year.

The department predicts that the expenses for moving equipment and furniture will total \$7,500.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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