

STORAGE NAME: h2239z.brc

****FAILED TO PASS THE LEGISLATURE****

DATE: June 29, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
FINAL ANALYSIS**

BILL #: HB 2239 (PCB BRCA 00-03)

RELATING TO: Construction

SPONSOR(S): Committee on Business Regulation & Consumer Affairs, Representative Ogles and others

TIED BILL(S):

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

(1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0

(2)

I. SUMMARY:

HB 2239 died on the House calendar. Most of the provisions contained in HB 2239 passed in CS/SB 220 (Ch. 00-372, Laws of Florida).

This bill is the Department of Business and Professional Regulation's (DBPR) annual legislative proposal on construction matters. It deals with building code inspectors, construction contractors, and electrical and alarm system contractors.

Most of the bill is technical or clarifying. The bill clarifies the job scope of pool contractors; clarifies an alarm system contractor licensure exemption; and clarifies the criteria for grandfathering electrical and alarm system contractors into certification.

Substantive changes include: (1) Eliminating a requirement that persons who monitor fire alarm systems must obtain technical training; (2) Moving the Construction Industry Licensing Board (CILB) from Jacksonville to Leon County; (3) Establishing additional due process protections that apply to building code enforcement officials, when investigated by DBPR; and (4) Increasing the licensure validity period for building code enforcement officials who are newly hired (provisional licensees).

This bill does not have a significant effect upon state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

See section-by-section

C. EFFECT OF PROPOSED CHANGES:

See section-by section

D. SECTION-BY-SECTION ANALYSIS:

Building code administrators, inspectors, and plans examiners

Section 1. Creates s. 468.619, F.S., establishing the enforcement officials bill of rights.

Present Situation

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, Florida Statutes. This regulation is under the Florida Building Code Administrators and Inspectors Board and administered by the DBPR. The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

The department is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 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.

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If legal sufficiency is determined, the case is sent to the investigative office in the area where the alleged violation occurred. This 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.

Appeals may be taken to the District Courts of Appeal pursuant to section 120.68, F.S. The rights of licensees are protected during the disciplinary process by chapter 120, F.S., and the uniform rules adopted by the Administration Commission pursuant thereto, s. 455.225, F.S., and the Florida and United States Constitutions.

Building officials have alleged that in several instances, the department and board have taken an inordinate amount of time to reach conclusions to drop cases, and that in at least one instance, they prevented a licensee from renewing his license, simply because his investigation was still ongoing, and caused him to lose his job. In general, some of them are convinced that the department abuses its prosecutorial authority and that the board does not listen to reason. Therefore, they believe, additional due process protections are needed.

Effect of Proposed Changes

The section provides controls relating to reasonable times, places, and procedures for DBPR when questioning building enforcement officials against whom a complaint has been filed; and establishing time frames for keeping DBPR from having "open-ended" investigations and prosecutions. Specific provisions include requiring the department to:

- 1) Inform the licensee of any complaint within 10 days;
- 2) Reach a preliminary conclusion about "where the case is going" after 60 days, and notify the enforcement official of the preliminary conclusion;
- 3) Complete its investigation and be prepared to send it to probable cause within six months of the receipt of the complaint; and
- 4) Allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and letting him or her submit explanatory or mitigating material to the panel for their consideration.

Sections 2-5 and 7-19. Amends ss. 468.603, 468.604, 468.605, 468.605, 468.617, 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 6. Amends s. 468.609, F.S., relating to standards for certification, is amended to replace references to "inspector" with "building code inspector" and establishing eligibility requirements for obtaining a provisional license.

Present Situation

Part XII of chapter 468, F.S., provides for the regulation of building code administrators and inspectors by the Board of Building Code Administrators and Inspectors (Board) within the DBPR. The statute provides for various types and levels of mandatory certification of building code administrators and inspection personnel.

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

There are several categories of inspector and plans examiners certificates, relating to the scope of the activities the licensee may perform (e.g., building inspector, commercial or residential electrical inspector, mechanical inspector, building plans examiner, plumbing plans examiner, etc.). Part XII sets forth the requirements for licensure for the various types and categories of certificate holders, including credentials from specified private organizations or specified experience (or a combination of education and experience) and an examination.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S. Subsection (4) of s. 468.609, F.S., provides no person may engage in the duties of a building code administrator, plans examiner, or inspector pursuant after October 1, 1993, unless such person possesses one of the following types of certificates, currently valid, issued by the board attesting to the person's qualifications to hold such position:

- A standard certificate;
- A limited certificate (allows an individual to continue to work only in the position held on July 1, 1993);
- A provisional certificate (allows an individual to work for 1 to 3 years pending qualification for a standard certificate).

STANDARD CERTIFICATE Subsection (5) of s. 468.609, F.S., provides that to obtain a standard certificate, an individual must pass an examination approved by the board which demonstrates 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 subsection provides legislative intent that such examinations 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.

Subsection (2) of s. 468.609, F.S., provides eligibility requirements to take the examination for certification as an inspector or plans examiner. Applicants must meet criteria relating to experience and/or education to take an examination. An applicant who holds a standard certificate as issued by the board and satisfactorily completes an inspector or plans examiner training program of not less than 200 hours in the certification category sought is also eligible to take an examination. All applicants must demonstrate successful completion of the core curriculum and specialized or advanced module course work approved by the Florida Building Commission, as part of the Building Code Training Program established pursuant to s. 553.841, F.S., appropriate to the licensing category sought or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or course work within 6 months after such certification.

Subsection (3) of s. 468.609, F. S., provides eligibility requirements to take the examination for certification as a building code administrator. Applicants must meet criteria relating to experience and/or education to take an examination. All applicants must demonstrate successful completion of the core curriculum and specialized or advanced module course work approved by the Florida Building Commission, as part of the Building Code Training Program established pursuant to s. 553.841, F.S., appropriate to the licensing category sought or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or course work within 6 months after such certification.

LIMITED CERTIFICATE Subsection (6) of s. 468.609, F.S., provides a building code administrator, plans examiner, or inspector holding office on July 1, 1993, is not required to possess a standard certificate as a condition of tenure or continued employment, but must be required to obtain a limited certificate. The subsection provides that by October 1, 1993, individuals who were employed on July 1, 1993, as building code administrators, plans examiners, or inspectors, who are not eligible for a standard certificate, but who wish to continue in such employment, must submit to the board an application and certification fees and shall receive 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 such person is employed. The limited certificate is valid only as an authorization for the building code administrator, plans examiner, or inspector to continue in the position held, and to continue performing all functions assigned to that position, on July 1, 1993. A building code administrator, plans examiner, or inspector holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance of a standard certificate or provisional certificate appropriate for such new position.

PROVISIONAL CERTIFICATE Subsection (7) of s. 468.609, F.S., authorizes the Board to provide for the issuance of provisional certificates valid for such period, not less than 1 year nor more than 3 years, as specified by board rule, to any newly employed or promoted building code administrator, plans examiner, or inspector.

Effect of Proposed Changes

Subsection (5) is amended to revise language providing legislative intent that examinations used for certification under this part be substantially equivalent to examinations administered by the Southern Building Code Congress International, the Building Officials Association of Florida, the South Florida Building Code, and the Council of American

Building Officials. References to the Building Officials Association of Florida and the South Florida Building Code are deleted.

Subsection (7) is amended to expand the period the board may provide for the issuance of provisional certificates from a minimum of 1 year and a maximum of 3 years to a minimum of 3 years and a maximum of 5 years. It also adds eligibility requirements for provisional certificates. Newly employed or promoted building code inspectors or plans examiners must meet examination eligibility requirements specified in subsection (2) and newly employed or promoted building code administrators must meet eligibility requirements specified in subsection (3). Finally, the section allows building code administrators with only a limited or provisional certificate to provide direct supervision and determine qualifications as set forth in the paragraph, providing such building code administrator is employed by a county with a population of less than 75,000, or by any municipality is such a county.

Subsection (8) is deleted to remove obsolete provisions that any individual who holds a valid certificate issued by the Southern Building Code Congresses International, the Building Officials Association of Florida, the South Florida Building Code, or the Council of American Building Officials certification program, or who has been approved for certification under such programs not later than October 1, 1995, shall be deemed to satisfy requirements for certification.

Commercial pool/spa contractors

Section 20. Amends s. 489.105, F.S., providing a more broad and inclusive term, "interior finishes," to describe certain pool work in the commercial pool/spa job scope, to replace more narrow and specific terms. In general, it also clarifies and streamlines the existing definition of the various types of pool contractors.

Present Situation

The job scope of each type of construction contractor is set forth in their respective definitions in s. 489.105, F.S. The activities listed in the definition become activities that only a person holding that license can lawfully perform. The existing job scope of a commercial pool contractor lists, among other things, guniting and fiber glassing. Interior pool finishing work that is not guniting or fiber glassing 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

This provision would require persons doing any kind of pool finishing work, using any technology or material, to be licensed as a commercial pool/spa contractor.

Construction Industry Licensing Board

Section 21. Provides that the Construction Industry Licensing Board shall be moved from Jacksonville to Leon County. See fiscal comment section discussion.

Unlicensed Contractors

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Sections 22. and 28. Amend ss. 489.128, and 489.532, F.S., closing a loophole in two provisions which make contracts with unlicensed contractors unenforceable.

Present Situation

Sections 489.128 (applying to construction contractors) and 489.532, F.S. (applying to electrical and alarm system contractors), provide that contracts with unlicensed contractors are unenforceable. However, each section also provides that the section does not apply if the contractor "obtains or reinstates" his or her license. The overall effect is to make the section unenforceable, since there is always the potential that some day in the future the contractor will obtain a license, or reinstate his or her license.

Effect of Proposed Changes

The section removes the sentence providing that the section shall not apply if the contractor obtains or reinstates the proper license. The effect of this is to remove the loophole that otherwise rendered the sections ineffective.

Exemptions from licensure as an electrical or alarm system contractor

Section 23. Amends s. 489.503, F.S., clarifying the licensure exemption related to the sale of liquefied petroleum gas, and also allowing an authorized representative or dealer for a personal emergency response system to provide such a system without being required to be an alarm system contractor. The section also allows persons who are authorized dealers or distributors for the producer of a personal emergency response system to be exempted from having to be an alarm contractor in order to provide these modular systems.

Electrical and alarm system contracting

Section 24. Amends s. 489.514, clarifying language adopted last year that grants a state certification to electrical or alarm system contractors who are licensed at the local level and who meet specific qualifications. The section provides that the:

- applicants must be granted a certification in one of the statutorily established categories, rather than allowing them to be certified in a category established by board rule.
- board shall accept certain examinations stipulated in statute as fulfilling qualification requirements, without spending their time investigating the format or detailed content of the examination.
- 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 25. Amends s. 489.5185, F.S., adding an exemption from alarm system training requirements.

Present Situation

Section 489.518, F.S., requires licensed electrical or alarm system contractors to obtain a criminal history check, and training, for persons in their employ who do installing, repairing, selling, servicing on-site, or monitoring of burglar alarm systems. These persons are termed "burglar alarm system agents." Similar provisions are in s. 489.5185, F.S., for fire alarm system agents. Each law has a number of exceptions to these requirements.

These laws were established primarily in the hope that training all alarm system agents would produce more capable work crews, and reduce the incidence of false alarms. "Monitoring" basically consists of answering a phone and forwarding the information in a responsible and competent fashion, so requiring technical training for monitoring personnel, to prevent false alarms, is not a practical solution.

Section 489.518, F.S., exempts burglar alarm system agents who only do monitoring from the training requirements. However, s. 489.5185, F.S., does not exempt fire alarm system agents who only do monitoring from the training requirements.

Effect of Proposed Changes

The provision would exempt fire alarm monitoring personnel from training requirements.

Section 26. Amends s. 489.522, F.S., providing that if a licensee no longer qualifies a business, he or she must either report that he or she is qualifying another business within 60 days, or place his or her license in an inactive status.

Section 27. Amends s. 489.531, F.S., creating criminal penalties for unlicensed electrical or alarm system contracting. It establishes the penalty for engaging in unlicensed contracting as a first degree misdemeanor, and establishes the penalty for a subsequent violation as a third degree felony. It also provides that the following activities are a third degree felony: (a) Unlicensed contracting during a declared state of emergency; and (b) Unlicensed operation by a pollutant storage systems contractor, a precision tank tester or an internal pollutant storage tank lining applicator.

It also changes several references regarding "local license" to "registration," and instances of "locally licensed" to "registered."

Section 28. See section 22 of this analysis.

Repeal/Obsolete Language

Section 29. Repeals s. 489.537(8), F.S., to delete obsolete provisions establishing a grandfathering pathway for alarm contractors who had, several years ago, been allowed to lawfully operate without a license.

Sections 30 & 31. Amend ss. 489.505, and 489.515, F.S., for technical purposes relating to the subsection repealed in the previous section of this bill.

Section 32. Provides that the bill shall take effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Moving the Construction Industry Licensing Board from Jacksonville to Leon County:

The department states that it intends to house the board staff in space it currently leases in its Northwood Mall facility. Currently, the CILB has 25 full time employees (FTE's) and six OPS employees. The department has indicated that it intends to maintain the CILB as a separate entity within the Division of Professions. However, it also intends to move some of the FTE positions currently dedicated to the CILB to staff the DBPR Call Center. The DBPR Call Center is intended to receive all of the DBPR "800 number" information inquiries and complaint intake. The department states that all of current CILB staff will be given an opportunity to fill vacant positions in DBPR's Jacksonville office (Real Estate, Regulation, and Alcohol Beverage and Tobacco divisions) if they do not want to relocate to Tallahassee.

The department indicates that there will be an annual savings to the department of \$95,851 (the annual lease on the Jacksonville facility). They also indicate that there will be a number of other savings, and that server costs for computers, phone costs, and postage savings will total approximately \$10,000 per year.

The current rent per square foot in Jacksonville is lower than will be billed back to the CILB trust fund account for staff space in the Northwood Mall facility. However, since some of the current CILB staff positions will be allocated to the Call Center, and since duplication of some technical support space (e.g., copying, printing, etc.) will be eliminated, it appears likely that the overall cost charged back to the CILB will not rise. The department states that the expenses for moving equipment and furniture are expected to total \$7,500.

IV. 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 counties or municipalities have to raise revenue 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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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