

## CHAPTER 97-228

### House Bill No. 1179

An act relating to regulation of professions and occupations; amending s. 455.213, F.S., relating to general licensing provisions; providing for direct payment of organization-related or vendor-related fees associated with the examination to the organization or vendor; providing that passing a required examination does not entitle a person to licensure if the person is not otherwise qualified; amending s. 455.217, F.S., relating to examinations; authorizing the contracting for examinations and services related to examinations; providing requirements with respect to examinations developed by the department or a contracted vendor and to national examinations; amending s. 455.225, F.S.; providing that complaints or actions against unlicensed persons or persons operating outside their scope of practice are not confidential; amending s. 489.109, F.S.; revising language relating to fees applicable to regulation of construction contracting, to conform to changes authorizing contracted examinations; amending s. 489.111, F.S.; revising provisions relating to licensure by examination; amending s. 489.113, F.S.; authorizing a local construction regulation board to deny, suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining a permit or permits with specific conditions; providing for notices of noncompliance for minor violations of regulatory law; amending s. 489.114, F.S., relating to evidence of workers' compensation coverage; conforming terminology; amending s. 489.115, F.S.; providing for licensure by endorsement reciprocity with other jurisdictions; providing for rules covering requirements relating to the content of continuing education courses and standards for approval of continuing education providers; requiring submission of a credit report reflecting financial responsibility as a prerequisite to the initial issuance of a certificate; amending s. 489.119, F.S.; requiring business organizations other than sole proprietorships to secure a certificate of authority rather than registration or certification; amending s. 489.1195, F.S.; specifying requirements for financially responsible officers; amending s. 489.127, F.S., relating to prohibitions and penalties; including reference to certificates of authority; specifying that a local occupational license issued under authority of chapter 205, F.S., is not a license for purposes of part I of chapter 489, F.S., relating to construction contracting; amending s. 489.129, F.S., relating to disciplinary proceedings; including reference to certificates of authority; prohibiting issuance or renewal of licensure until restitution is paid in full, if restitution has been ordered, or until all terms and conditions of the final order have been satisfied; amending s. 489.131, F.S.; providing applicability of the part to the authority of local authorities to issue and the requirement of specified contractors to obtain local occupational license tax certificates; providing for payment of local bonds into the Construction Industry Recovery Fund; providing for issuance of notices of noncompliance for minor violations of regulatory law; amending s.

489.132, F.S., relating to prohibited acts by unlicensed principals; conforming terminology; creating ss. 489.1455 and 489.5335, F.S.; providing requirements for local reciprocity of licensed journeymen; providing for a fee; creating s. 489.146, F.S.; requiring privatization of services of the Department of Business and Professional Regulation; providing requirements and rulemaking authority for such purpose; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 455.213, Florida Statutes, are amended to read:

455.213 General licensing provisions—

(1) Any person desiring to be licensed shall apply to the department in writing ~~to take the appropriate examination~~. The application for licensure shall be made on a form prepared and furnished by the department and shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the agency. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization or vendor related fees associated with the examination may be paid directly to the organization or vendor.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination.

Section 2. Section 455.217, Florida Statutes, is amended to read:

455.217 Examinations.—This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

(1) The Division of Technology, Licensure, and Testing of the Department of Business and Professional Regulation shall provide, contract or approve services for the development, preparation, and administration, scoring, score reporting and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.

(a) The department, acting in conjunction with the Division of Technology, Licensure, and Testing and the Division of Real Estate, as appropriate, shall ensure that ~~the~~ examinations adequately and reliably measure an applicant's ability to practice the profession regulated by the department

~~and shall seek the advice of the appropriate board in the preparation and administration of the examinations. After an examination developed or approved by the department has been administered, the board or department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use professional testing services to for the development, preparation, and evaluation of prepare, administer, grade, and evaluate the examinations, when such services are available and approved by the board.~~

(b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board or, when there is no board, the department when there is no board, shall by rule specify the general areas of competency to be covered by the each examination, the relative weight to be assigned in grading each area tested, and the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection does not apply to national examinations approved and administered pursuant to paragraph (d).

(c) If a practical examination is deemed to be necessary, ~~the rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.~~

(d) ~~(c)~~ A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or non-profit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department, and which is approved by the board. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade tape and information to be returned to the board or department or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph. Any licensing or certification examination that is not developed or administered by the department in house or provided as a national examination shall be competitively bid.

(e) ~~(d)~~ The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations,

the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.2175 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.

(f) (e) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this chapter. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration of that profession's examination. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for ~~on~~ which he failed to achieve a passing grade, if he successfully passes that portion within a reasonable time of his passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board, or the department, when there is no board, the department shall make rules providing for reexamination of any applicants who fail an have failed the examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for ~~on~~ which he failed to achieve a passing grade, if he successfully passes that portion within a reasonable time, as determined by rule of the board, or department when there is no board, of his passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph(1)(d), the department shall provide procedures for applicants who have taken and failed an examination developed by the department or a contracted vendor to review their examination questions, answers, papers, grades and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. The board or, when there is no board, the department shall make available an examination review procedure for applicants and charge an examination review fee not to exceed \$75 per review. Unless prohibited or limited by rules implementing security or access guidelines of national examinations, the applicant is entitled to review his examination questions, answers, papers, grades, and grading key. An applicant may waive in writing the confidentiality of his examination grades.

(4) (3) For each examination developed or administered by the department or a contracted vendor, The department shall make an accurate record

of each applicant's examination questions, answers, papers, grades, and grading key. ~~The department shall be kept keep such record~~ for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257 . This subsection does not apply to national examinations approved and administered pursuant to paragraph (1)(d).

(5)(4) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3) (2).

(6)(5) For examinations developed by the department or a contracted vendor, each board, or the department, when there is no board, may provide licensure examinations in an applicant's native language. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English. Requests for translated examinations must be on file in the board office, or with the department when there is no board, at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7)(6) In addition to meeting any other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department , if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department.

Section 3. Subsections (3), and (10) of section 455.225, Florida Statutes, 1996 Supplement, are amended to read:

455.225 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department or the Agency for Health Care Administration, as appropriate.

(3)(a) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department or the agency may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department or the agency if there is no board, shall establish by rule those ~~minor violations which are minor violations~~ under this provision ~~which do not endanger the public health, safety, and welfare and which do not demonstrate a serious inability to practice the profession.~~ Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(b) The department may issue a notice of noncompliance for an initial offense of a minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(10) The complaint and all information obtained pursuant to the investigation by the department or the Agency for Health Care Administration are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department or the agency, or until the regulated professional or subject of the investigation waives his privilege of confidentiality, whichever occurs first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department or the agency shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 455.241, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation, if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 455.241. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department or the agency. This subsection does not prohibit the department or the Agency for Health Care Administration from providing such information to any law enforcement agency or to any other regulatory agency.

Section 4. Subsection (1) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

(1) The board, by rule, shall establish reasonable fees to be paid for applications, ~~examination~~, certification and renewal, registration and renewal, and recordmaking and recordkeeping. The fees shall be established as follows:

(a) With respect to an applicant for a certificate, the initial application ~~and examination~~ fee may not exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350.<sup>5</sup> ~~and~~ The initial certification fee and the renewal fee may not exceed \$200. However, any applicant who seeks certification under this part by taking a practical examination must pay as an examination fee the actual cost incurred by the department in developing, preparing, administering, scoring, score reporting, and evaluating in conducting the examination, if the examination is conducted by the department.

(b) With respect to an applicant for registration, the initial application fee may not exceed \$100, and the initial registration fee and the renewal fee may not exceed \$200.

(c) The board, by rule, may establish delinquency fees, not to exceed the applicable renewal fee for renewal applications made after the expiration date of the certificate or registration.

(d) The board, by rule, may establish a fee for transfer of a certificate of authority or registration from one business organization to another, not to exceed the applicable renewal fee.

(e) The board, by rule, shall impose a renewal fee for an inactive status certificate or registration, not to exceed the renewal fee for an active status certificate or registration. Neither the inactive certification fee nor the inactive registration fee may exceed \$50. The board, by rule, may provide for a different fee for inactive status where such status is sought by a building code administrator, plans examiner, or inspector certified pursuant to part XIII of chapter 468 who is employed by a local government and is not allowed by the terms of such employment to maintain a certificate on active status issued pursuant to this part.

(f) The board, by rule, shall impose an additional late fee on a delinquent status certificateholder or registrant when such certificateholder or registrant applies for active or inactive status.

(g) The board, by rule, shall impose an additional fee, not to exceed the applicable renewal fee, which reasonably reflects the costs of processing a certificateholder's or registrant's request to change licensure status at any time other than at the beginning of a licensure cycle.

Section 5. Section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination ~~Examinations.~~—

(1) Any person who desires to be certified shall apply to the department in writing ~~to take the certification examination.~~

(2) A person shall be eligible for licensure by ~~entitled to take the examination for the purpose of determining whether he is qualified to engage in contracting throughout this state~~ if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 man-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a workman who has learned his trade by serving an apprenticeship as a skilled workman who is able to command the rate of a mechanic in his particular trade or as

a foreman who is in charge of a group of workmen and usually is responsible to a superintendent or a contractor or his equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled workman, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled workman, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. For the number of years of credits for any accredited college-level courses, the applicant shall show completion of an equal number of courses in the appropriate field of engineering, architecture, or building construction. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to take the building contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified residential contractor is eligible to take the general contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

c. An active certified building contractor is eligible to take the general contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class B contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified air-conditioning Class C contractor is eligible to take the air-conditioning Class A contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.

c. An active certified air-conditioning Class B contractor is eligible to take the air-conditioning Class A contractors' examination if he possesses a minimum of 1 year of proven experience in the classification in which he is certified.

6.a. An active certified swimming pool servicing contractor is eligible to take the residential swimming pool contractors' examination if he possesses a minimum of 3 years of proven experience in the classification in which he is certified.

b. An active certified swimming pool servicing contractor is eligible to take the swimming pool commercial contractors' examination if he possesses a minimum of 4 years of proven experience in the classification in which he is certified.



c. An active certified residential swimming pool contractor is eligible to take the commercial swimming pool contractors' examination if he possesses a minimum of 1 year of proven experience in the classification in which he is certified.

(3)(a) The board may refuse to certify an applicant for failure to satisfy the requirement of good moral character only if:

1. There is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a certified contractor; and

2. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

(b) When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(4) The department shall ensure that a sensitivity review committee has been established including representatives of various ethnic/minority groups. No question found by this committee to be discriminatory against any ethnic/minority group shall be included in the examination.

Section 6. Subsections (1) and (4) of sections 489.113, Florida Statutes, are amended to read:

489.113 Qualifications for practice; restrictions.—

(1) Any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his competency and qualifications to be certified pursuant to this part. To establish his competency, a person shall pass the appropriate examination approved by the board and certified administered by the department. Any person who desires to engage in contracting on other than a statewide basis shall, as a prerequisite thereto, be registered pursuant to this part, unless exempted by this part.

(4)(a) When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he shall be required only to exhibit to the local building official, tax collector, or other person in charge of the issuance of licenses and building permits in the area evidence of holding a current certificate and to pay the fee for the occupational license and building permit required of other persons.

(b) Notwithstanding the provisions of paragraph (a), a local construction regulation board may deny, ~~suspend, or revoke the authority of a certified contractor to obtain a building permit or limit such authority to obtaining the issuance of a building permit to a certified contractor, or issue a permit or permits~~ with specific conditions, if the local construction regulation board has found such contractor, through the public hearing process, to be guilty of fraud or a willful building code violation within the county or municipality

that the local construction regulation board represents or if the local construction regulation board has proof that such contractor, through the public hearing process, has been found guilty in another county or municipality within the past 12 months, of fraud or a willful building code violation and finds, after providing notice of an opportunity to be heard to the contractor, that such fraud or violation would have been fraud or a violation if committed in the county or municipality that the local construction board represents. Notification of and information concerning such permit denial shall be submitted to the department within 15 days after the local construction regulation board decides to deny the permit.

(c) The local government may also deny issuance of, or may suspend, any outstanding building permit where a contractor fails or refuses to provide proof of public liability and property damage insurance coverage as required by s. 489.115(5) and workers' compensation insurance coverage as required by s. 489.114.

(d) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with state laws and local jurisdiction ordinances. It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.

Section 7. Section 489.114, Florida Statutes, is amended to read:

489.114 Evidence of workers' compensation coverage.—Any person, business organization, or qualifying agent engaged in the business of contracting in this state and certified or registered under this part shall, as a condition precedent to the issuance or renewal of a certificate, ~~or~~ registration, or certificate of authority of the contractor, provide to the Construction Industry Licensing Board, as provided by board rule, evidence of workers' compensation coverage pursuant to chapter 440. In the event that the Division of Workers' Compensation of the Department of Labor and Employment Security receives notice of the cancellation of a policy of workers' compensation insurance insuring a person or entity governed by this section, the Division

of Workers' Compensation shall certify and identify all persons or entities by certification or registration license number to the department after verification is made by the Division of Workers' Compensation that such cancellation has occurred or that persons or entities governed by this section are no longer covered by workers' compensation insurance. Such certification and verification by the Division of Workers' Compensation shall result solely from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section. The department shall notify the persons or entities governed by this section who have been determined to be in noncompliance with chapter 440, and the persons or entities notified shall provide certification of compliance with chapter 440 to the department and pay an administrative fine as provided by rule. The failure to maintain workers' compensation coverage as required by law shall be grounds for the board to revoke, suspend, or deny the issuance or renewal of a certificate, ~~or registration, or certificate of authority~~ of the contractor under the provisions of s. 489.129.

Section 8. Subsections (3), (4), and (5) of section 489.115, Florida Statutes, are amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(3) The board shall certify as qualified for certification by endorsement any applicant who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.111; ~~or~~

(b) Holds a valid license to practice contracting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to Florida's current certification criteria; ~~or~~

(c) Holds a valid, current license to practice contracting issued by another state or territory of the United States, if the state or territory has entered into a reciprocal agreement with the board for the recognition of contractor licenses issued in that state, based on criteria for the issuance of such licenses that are substantially equivalent to the criteria for certification in this state.

(4)(a) Each certificateholder or registrant who desires to continue as a certificateholder or registrant shall renew his certificate or registration every 2 years. The department shall mail each certificateholder and registrant an application for renewal.

(b)1. Each certificateholder or registrant shall provide proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. The board shall establish by rule that a portion of the required 14 hours must deal with the subject of workers'

compensation and workplace safety. The board shall by rule establish criteria for the approval of continuing education courses and providers, including requirements relating to the content of courses and standards for approval of providers, and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

2. In addition, the board may approve specialized continuing education courses on compliance with the wind resistance provisions for one and two family dwellings contained in the State Minimum Building Codes and any alternate methodologies for providing such wind resistance which have been approved for use by the Board of Building Codes and Standards. Division I certificateholders or registrants who demonstrate proficiency upon completion of such specialized courses may certify plans and specifications for one and two family dwellings to be in compliance with the code or alternate methodologies, as appropriate, except for dwellings located in floodways or coastal hazard areas as defined in ss. 60.3D and E of the National Flood Insurance Program.

(c) The certificateholder or registrant shall complete, sign, and forward the renewal application to the department, together with the appropriate fee. Upon receipt of the application and fee, the department shall renew the certificate or registration.

(5)(a) As a prerequisite to the initial issuance or the renewal of a certificate or registration, the applicant shall submit an affidavit on a form provided by the board attesting to the fact that the applicant has obtained workers' compensation insurance as required by chapter 440, public liability insurance, and property damage insurance for the safety and welfare of the public, in amounts determined by rule of the board. The board shall by rule establish a procedure to verify the accuracy of such affidavits based upon a random sample method.

(b) In addition to the affidavit of insurance, as a prerequisite to the initial issuance of a certificate, the applicant shall furnish a credit report from a nationally recognized credit agency that reflects the financial responsibility of the applicant and evidence of financial responsibility, credit, and business reputation of either himself or the business organization he desires to qualify. The board shall adopt rules defining financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy or assignment of receivers. Such rules shall specify the financial responsibility grounds on which the board may refuse to qualify an applicant for certification.

(c) If, within 60 days from the date the applicant is notified that he has qualified, he does not provide the evidence required, he shall apply to the department for an extension of time which shall be granted upon a showing of just cause.

Section 9. Section 489.119, Florida Statutes, 1996 Supplement, is amended to read:

489.119 Business organizations; qualifying agents.—

(1) If an individual proposes to engage in contracting in the individual's own name, or a fictitious name where the individual is doing business as a sole proprietorship, registration or certification may be issued only to that individual.

(2) If the applicant proposes to engage in contracting as a business organization, including any partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name or a fictitious name where the applicant is doing business as a sole proprietorship, the business organization must apply for a certificate of authority ~~certification or registration~~ through a qualifying agent and under the fictitious name, if any.

(a) The application for a certificate of authority must state the name of the partnership and of its partners; the name of the corporation and of its officers and directors and the name of each of its stockholders who is also an officer or director; the name of the business trust and its trustees; or the name of such other legal entity and its members; and must state the fictitious name, if any, under which the business organization is doing business.

1. The application for primary qualifying agent must include an affidavit on a form provided by the board attesting that the applicant has final approval authority for all construction work performed by the entity and that the applicant has final approval authority on all business matters, including contracts, specifications, checks, drafts, or payments, regardless of the form of payment, made by the entity, except where a financially responsible officer is approved.

2. The application for financially responsible officer must include an affidavit on a form provided by the board attesting that the applicant's approval is required for all checks, drafts, or payments, regardless of the form of payment, made by the entity and that the applicant has authority to act for the business organization in all financial matters.

3. The application for secondary qualifying agent must include an affidavit on a form provided by the board attesting that the applicant has authority to supervise all construction work performed by the entity as provided in s. 489.1195(2).

(b) The applicant must furnish evidence of statutory compliance if a fictitious name is used, the provisions of s. 865.09(7) notwithstanding.

(c) A joint venture, including a joint venture composed of qualified business organizations, is itself a separate and distinct organization that must be qualified and obtain a certificate of authority in accordance with board rules.

(d) A certificate of authority must be renewed every 2 years. ~~The registration or certification, when issued upon application of a business organization, must be in the name of the business organization.~~ If there is a change in any information that is required to be stated on the application, the business organization shall, within 45 days after such change occurs, mail the correct information to the department.

(3)(a) The qualifying agent shall be certified or registered under this part in order for the business organization to be issued a certificate of authority ~~certified or registered~~ in the category of the business conducted for which the qualifying agent is certified or registered. If any qualifying agent ceases to be affiliated with such business organization, he shall so inform the department. In addition, if such qualifying agent is the only certified or registered contractor affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and shall have 60 days from the termination of the qualifying agent's affiliation with the business organization in which to employ another qualifying agent. The business organization may not engage in contracting until a qualifying agent is employed, unless the executive director or chair of the board has granted a temporary nonrenewable certificate or registration to the financially responsible officer, the president, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the entity. This temporary certificate or registration shall only allow the entity to proceed with incomplete contracts as defined in s. 489.121.

(b) The qualifying agent shall inform the department in writing when he proposes to engage in contracting in his own name or in affiliation with another business organization, and he or such new business organization shall supply the same information to the department as required of applicants under this part.

(c) Upon a favorable determination by the board, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without an examination, a new certificate of authority ~~or registration~~ in the business organization's name.

(4) Disciplinary action against a business organization holding a certificate of authority shall be administered in the same manner and on the same grounds as disciplinary action against a contractor. The board may deny the certification of any person cited in subsection (2) if the person has been involved in past disciplinary actions or on any grounds for which individual certification can be denied.

(5)(4) When a certified qualifying agent, on behalf of a business organization, makes application for an occupational license in any municipality or county of this state, the application shall be made with the tax collector in the name of the business organization and the qualifying agent; and the license, when issued, shall be issued to the business organization, upon payment of the appropriate licensing fee and exhibition to the tax collector of a valid certificate for the qualifying agent and a valid certificate of authority for the business organization issued by the department, and the state license numbers number shall be noted thereon.

(6)(5)(a) Each registered or certified contractor shall affix the number of his registration or certification to each application for a building permit and on each building permit issued and recorded. Each city or county building department shall require, as a precondition for the issuance of the building

permit, that the contractor taking out the permit must provide verification giving his Construction Industry Licensing Board registration or certification number.

(b) The registration or certification number of each contractor or certificate of authority number for each business organization shall appear in each offer of services, business proposal, bid, contract, or advertisement, regardless of medium, as defined by board rule, used by that contractor or business organization in the practice of contracting.

(c) If a vehicle bears the name of a contractor or business organization, or any text or artwork which would lead a reasonable person to believe that the vehicle is used for contracting, the registration or certification number of the contractor or certificate of authority number of the business organization must be conspicuously and legibly displayed with the name, text, or artwork. Local governments may also require that locally licensed contractors must also display their certificate of competency or license numbers. Nothing in this paragraph shall be construed to create a mandatory vehicle signage requirement.

(d) For the purposes of this part, the term "advertisement" does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.

(e) The board shall issue a notice of noncompliance for the first offense, and may assess a fine or issue a citation for failure to correct the offense within 30 days or for any subsequent offense, to any contractor or business organization that fails to include the certification, ~~or registration, or certificate of authority~~ number as required by this part when submitting an advertisement for publication, broadcast, or printing or fails to display the certification, ~~or registration, or certificate of authority~~ number as required by this part.

~~(7)~~(6) Each qualifying agent shall pay the department an amount equal to the original fee for a certificate of authority ~~certification or registration~~ of a new business organization. If the qualifying agent for a business organization desires to qualify additional business organizations, the board shall require him to present evidence of ability and financial responsibility of each such organization. The issuance of such certificate of authority ~~certification or registration~~ is discretionary with the board.

Section 10. Subsection (1) of section 489.127, Florida Statutes, 1996 Supplement, is amended to read:

489.127 Prohibitions; penalties.—

(1) No person shall:

(a) Falsely hold himself or a business organization out as a licensee, certificateholder, or registrant;

(b) Falsely impersonate a certificateholder or registrant;

- (c) Present as his own the certificate, ~~or~~ registration, or certificate of authority of another;
- (d) Knowingly give false or forged evidence to the board or a member thereof;
- (e) Use or attempt to use a certificate, ~~or~~ registration, or certificate of authority which has been suspended or revoked;
- (f) Engage in the business or act in the capacity of a contractor or advertise himself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority;
- (g) Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in ss. 489.119 and 489.1195;
- (h) Commence or perform work for which a building permit is required pursuant to an adopted state minimum building code without such building permit being in effect; or
- (i) Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

For purposes of this subsection, a person or business organization operating on an inactive or suspended certificate, ~~or~~ registration, or certificate of authority ~~or operating beyond the scope of work or geographical scope of the registration,~~ is not duly certified or registered and is considered unlicensed. An occupational license certificate issued under the authority of chapter 205 is not a license for purposes of this part.

Section 11. Subsection (1) of section 489.1195, Florida Statutes, is amended to read:

489.1195 Responsibilities.—

(1) A qualifying agent is a primary qualifying agent unless he is a secondary qualifying agent under this section.

(a) All primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization; for all field work at all sites; and for financial matters, both for the organization in general and for each specific job.

(b) Upon approval by the board, a business entity may designate a financially responsible officer for purposes of certification or registration. A financially responsible officer shall ~~be responsible~~ assume personal responsibility for all financial aspects of the business organization and may not be designated as the primary qualifying agent. The designated financially responsible officer shall furnish evidence of the financial responsibility, credit, and business reputation of either himself, or the business organization he desires to qualify, as determined appropriate by the board.



(c) Where a business organization has a certified or registered financially responsible officer, the primary qualifying agent shall be responsible for all construction activities of the business organization, both in general and for each specific job.

Section 12. Paragraph (a) of subsection (6) and subsections (1), (5), and (7) of section 489.129, Florida Statutes, 1996 Supplement, are amended to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, ~~or registration, or certificate of authority~~, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed \$5,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

(a) Obtaining a certificate, ~~or registration, or certificate of authority~~ by fraud or misrepresentation.

(b) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.

(c) Violating any provision of chapter 455.

(d) Knowingly violating the applicable building codes or laws of the state or of any municipalities or counties thereof.

(e) Performing any act which assists a person or entity in engaging in the prohibited uncertified and unregistered practice of contracting, if the certificateholder or registrant knows or has reasonable grounds to know that the person or entity was uncertified and unregistered.

(f) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his certificate, ~~or registration, or certificate of authority~~ to be used by the uncertified or unregistered person with intent to evade the provisions of this part. When a certificateholder or registrant allows his certificate or registration to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act constitutes prima facie evidence of an intent to evade the provisions of this part.

(g) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration, or in accordance

with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.

(h) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(i) Being disciplined by any municipality or county for an act or violation of this part.

(j) Failing in any material respect to comply with the provisions of this part or violating a rule or lawful order of the board.

(k) Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 90 days if the contractor terminates the project without just cause or without proper notification to the owner, including the reason for termination, or fails to perform work without just cause for 90 consecutive days.

(l) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(m) Committing fraud or deceit in the practice of contracting.

(n) Committing incompetency or misconduct in the practice of contracting.

(o) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.

(p) Proceeding on any job without obtaining applicable local building department permits and inspections.

(q) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(r) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

(5) The board may not reinstate the certification, ~~or registration, or certificate of authority~~ of, or cause a certificate, ~~or registration, or certificate of authority~~ to be issued to, a person who or business organization which the board has determined is unqualified or whose certificate, ~~or registration, or certificate of authority~~ the board has suspended until it is satisfied that such person or business organization has complied with all the terms and conditions set forth in the final order and is capable of competently engaging in the business of contracting.

(6)(a) The board may assess interest ~~or penalties~~ payments on all fines imposed under this chapter against any person or business organization which has not paid the imposed fine by the due date established by rule or final order. The provisions of chapter 120 do not apply to such assessment. Interest rates to be imposed shall be established by rule and shall not be usurious.

(7) The board shall not issue or renew a certificate, ~~or registration, or certificate of authority~~ to any person or business organization that ~~who~~ has been assessed a fine, interest payments, or costs associated with investigation and prosecution, ~~or has been ordered to pay restitution~~, until such fine, interest payments, or costs associated with investigation and prosecution ~~or restitution~~ are paid in full ~~or until all terms and conditions of the final order have been satisfied~~.

Section 13. Paragraphs (c) and (e) of subsection (3) and subsection (7) of section 489.131, Florida Statutes, 1996 Supplement, are amended to read:

489.131 Applicability.—

(3) Nothing in this part limits the power of a municipality or county:

(c) To collect occupational license taxes, subject to s. 205.065, and inspection fees for engaging in contracting or examination fees from persons who are registered with the board pursuant to local examination requirements ~~and issue occupational license tax certificates~~. However, nothing in this part shall be construed to require general contractors, building contractors, or residential contractors to obtain additional occupational ~~license tax certificates~~ licenses for specialty work when such specialty work is performed by

employees of such contractors on projects for which they have substantially full responsibility and such contractors do not hold themselves out to the public as being specialty contractors.

(e) To require one bond for each contractor in an amount not to exceed \$5,000, which bond shall be conditioned only upon compliance with the applicable state minimum building code and applicable local building code requirements adopted pursuant to s. 553.73. Any such bond must be equally available to all contractors without regard to the period of time a contractor has been certified or registered and without regard to any financial responsibility requirements. Any such bonds shall be payable to the Construction Industry Recovery Fund ~~Governor~~ and filed in each county or municipality in which a building permit is requested. Bond reciprocity shall be granted statewide. All such bonds shall be included in meeting any financial responsibility requirements imposed by any statute or rule. Any contractor who provides a third party insured warranty policy in connection with a new building or structure for the benefit of the purchaser or owner shall be exempt from the bond requirements under this subsection with respect to such building or structure.

(7)(a) It is the policy of the state that the purpose of regulation is to protect the public by attaining compliance with the policies established in law. Fines and other penalties are provided in order to ensure compliance; however, the collection of fines and the imposition of penalties are intended to be secondary to the primary goal of attaining compliance with state laws and local jurisdiction ordinances. It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. A "notice of noncompliance" is a notification by the local jurisdiction agency charged with enforcing the ordinance, which is issued to the licensee that is subject to the ordinance. A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance. Failure of a licensee to take action correcting the violation within a set period of time would then result in the institution of further disciplinary proceedings.

(b)(a) The local governing body of a county or municipality, or its local enforcement body, is authorized to enforce the provisions of this part as well as its local ordinances against locally licensed or registered contractors, as appropriate. The local jurisdiction enforcement body may conduct disciplinary proceedings against a locally licensed or registered contractor and may require restitution, impose a suspension or revocation of his local license, or a fine not to exceed \$5,000, or a combination thereof, against the locally licensed or registered contractor, according to ordinances which a local jurisdiction may enact. In addition, the local jurisdiction may assess reasonable

investigative and legal costs for the prosecution of the violation against the violator, according to such ordinances as the local jurisdiction may enact.

(c)(b) In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, his rights to appeal, and the consequences should he decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

(d)(e) The department, the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Construction Industry Licensing Board. A challenge shall be filed within 60 days after the issuance of the recommended penalty to the board. If challenged, there is a presumptive finding of probable cause and the case may proceed without the need for a probable cause hearing.

(e)(d) Failure of the department, the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the time period set forth in this subsection shall constitute a waiver of the right to a hearing before the board. A waiver of the right to a hearing before the board shall be deemed an admission of the violation, and the penalty recommended shall become a final order according to procedures developed by board rule without further board action. The disciplined contractor may appeal this board action to the district court.

(f)(e) The department may investigate any complaint which is made with the department. However, if the department determines that the complaint against a registered contractor is for an action which a local jurisdiction enforcement body has investigated and reached adjudication or accepted a plea of nolo contendere, including a recommended penalty to the board, the department shall not initiate prosecution for that action, unless the secretary has initiated summary procedures pursuant to s. 455.225(8).

(g)(f) Nothing in this subsection shall be construed to allow local jurisdictions to exercise disciplinary authority over certified contractors.

Section 14. Subsection (5) of section 489.132, Florida Statutes, is amended to read:

489.132 Prohibited acts by unlicensed principals; investigation; hearing; penalties.—

(5) The department may suspend, revoke, or deny issuance or renewal of a certificate, ~~or~~ registration, or certificate of authority for any individual or

business organization that associates a person as an officer, director, or partner, or in a managerial or supervisory capacity, after such person has been found under a final order to have violated this section or was an officer, director, partner, trustee, or manager of a business organization disciplined by the board by revocation, suspension, or fine in excess of \$2,500, upon finding reasonable cause that such person knew or reasonably should have known of the conduct leading to the discipline.

Section 15. Section 489.1455, Florida Statutes, is created to read:

489.1455 Journeyman; reciprocity; standards.—

(1) An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with the Department of Labor and Employment Security and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed; and

(c) Has not had a license suspended or revoked within the last 5 years.

(2) A local government may charge a registration fee for reciprocity, not to exceed \$25.

Section 16. Effective upon this act becoming a law, section 489.146, Florida Statutes, is created to read:

489.146 Privatization of services.—Notwithstanding any other provision of this part relating to the review of licensure applications, issuance of licenses and renewals, collection of revenues, fees, and fines, service of documents, publications, and printing, and other ministerial functions of the department relating to the regulation of contractors, the department shall make all reasonable efforts to contract with one or more private entities for provision of such services, when such services can be provided in a more efficient manner by private entities. The department or the board shall retain final authority for licensure decisions and rulemaking, including all appeals or other legal action resulting from such licensure decisions or rulemaking. The department and the board shall adopt rules to implement the provisions of this section. The department shall report all progress and the status of privatization and privatization efforts to the Legislature by March 1, 1998.

Section 17. Section 489.5335, Florida Statutes, is created to read:

489.5335 Journeyman; reciprocity; standards.—

(1) An individual who holds a valid, active journeyman license in the electrical trade issued by any county or municipality in this state may work as a journeyman in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the electrical trade;

(b) Has completed an apprenticeship program registered with the Department of Labor and Employment Security and demonstrates 4 years' verifiable practical experience in the electrical trade, or demonstrates 6 years' verifiable practical experience in the electrical trade; and

(c) Has not had a license suspended or revoked within the last 5 years.

(2) A local government may charge a registration fee for reciprocity, not to exceed \$25.

Section 18. Except as otherwise provided herein, this act shall take effect July 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.