

**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION**

**CONSTRUCTION INDUSTRY LICENSING BOARD**



**FLORIDA STATUTES, CH. 489, PART I**

CHAPTER 489

CONTRACTING

PART I CONSTRUCTION CONTRACTING (ss. 489.101-489.146)

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**489.101 Purpose.**—The Legislature deems it necessary in the interest of the public health, safety, and welfare to regulate the construction industry.  
History.—ss. 1, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 1, 20, 21, ch. 88-156; s. 4, ch. 91-429; s. 20, ch. 2000-332.

**489.103 Exemptions.**—This part does not apply to:  
 (1) Contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto. The board, in agreement with the Department of Transportation, shall, by rule, define “services incidental thereto” for the purposes of this subsection only.

(2) Any employee of a certificateholder or registrant who is acting within the scope of the license held by that certificateholder or registrant and with the knowledge and permission of the licenseholder. However:

(a) If the employer is not a certificateholder or registrant in that type of contracting, and the employee performs any of the following, the employee is not exempt:

- 1. Holds himself or herself or his or her employer out to be licensed or qualified by a licensee;
- 2. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
- 3. Performs any of the acts which constitute contracting.

(b) The legislative intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

For the purpose of this part, “employee” is defined as a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law.

(3) An authorized employee of the United States, this state, or any municipality, county, irrigation district, reclamation district, or any other municipal or political subdivision, except school boards, state university

boards of trustees, and community college boards of trustees, unless for the purpose of performing routine maintenance or repair or construction not exceeding \$200,000 to existing installations, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment. If the construction, remodeling, or improvement exceeds \$200,000, school boards, state university boards of trustees, and community college boards of trustees shall not divide the project into separate components for the purpose of evading this section.

(4) An officer appointed by a court when he or she is acting within the scope of his or her office as defined by law or court order. When construction projects which were not underway at the time of appointment of the officer are undertaken, the officer shall employ or contract with a licensee.

(5) Public utilities, including special gas districts as defined in chapter 189, telecommunications companies as defined in s. 364.02(14), and natural gas transmission companies as defined in s. 368.103(4), on construction, maintenance, and development work performed by their employees, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is incidental to their business. The board shall define, by rule, the term "incidental to their business" for purposes of this subsection.

(6) The sale or installation of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent fixed part of the structure, such as awnings. However, this subsection does not exempt in-ground spas and swimming pools that involve excavation, plumbing, chemicals, or wiring of any appliance without a factory-installed electrical cord and plug. This subsection does not limit the exemptions provided in subsection (7).

(7) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors:

(a) When building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$75,000, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner-builder within 1 year after completion of same creates a presumption that the construction was undertaken for purposes of sale or lease.

(b) When repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of such owner or tenant of the owner and not offered for sale within 1 year after completion of the work and when the property has been damaged by natural causes from an event recognized as an emergency situation designated by executive order issued by the Governor declaring the existence of a state of emergency as a

result and consequence of a serious threat posed to the public health, safety, and property in this state.

This subsection does not exempt any person who is employed by or has a contract with such owner and who acts in the capacity of a contractor. The owner may not delegate the owner's responsibility to directly supervise all work to any other person unless that person is registered or certified under this part and the work being performed is within the scope of that person's license. For the purposes of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner must personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

#### DISCLOSURE STATEMENT

1. I understand that state law requires construction to be done by a licensed contractor and have applied for an owner-builder permit under an exemption from the law. The exemption specifies that I, as the owner of the property listed, may act as my own contractor with certain restrictions even though I do not have a license.
2. I understand that building permits are not required to be signed by a property owner unless he or she is responsible for the construction and is not hiring a licensed contractor to assume responsibility.
3. I understand that, as an owner-builder, I am the responsible party of record on a permit. I understand that I may protect myself from potential financial risk by hiring a licensed contractor and having the permit filed in his or her name instead of my own name. I also understand that a contractor is required by law to be licensed in Florida and to list his or her license numbers on permits and contracts.
4. I understand that I may build or improve a one-family or two-family residence or a farm outbuilding. I may also build or improve a commercial building if the costs do not exceed \$75,000. The building or residence must be for my own use or occupancy. It may not be built or substantially improved for sale or lease. If a building or residence that I have built or substantially improved myself is sold or leased within 1 year after the construction is complete, the law will presume that I built or substantially

improved it for sale or lease, which violates the exemption.

5. I understand that, as the owner-builder, I must provide direct, onsite supervision of the construction.

6. I understand that I may not hire an unlicensed person to act as my contractor or to supervise persons working on my building or residence. It is my responsibility to ensure that the persons whom I employ have the licenses required by law and by county or municipal ordinance.

7. I understand that it is a frequent practice of unlicensed persons to have the property owner obtain an owner-builder permit that erroneously implies that the property owner is providing his or her own labor and materials. I, as an owner-builder, may be held liable and subjected to serious financial risk for any injuries sustained by an unlicensed person or his or her employees while working on my property. My homeowner's insurance may not provide coverage for those injuries. I am willfully acting as an owner-builder and am aware of the limits of my insurance coverage for injuries to workers on my property.

8. I understand that I may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on my building who is not licensed must work under my direct supervision and must be employed by me, which means that I must comply with laws requiring the withholding of federal income tax and social security contributions under the Federal Insurance Contributions Act (FICA) and must provide workers' compensation for the employee. I understand that my failure to follow these laws may subject me to serious financial risk.

9. I agree that, as the party legally and financially responsible for this proposed construction activity, I will abide by all applicable laws and requirements that govern owner-builders as well as employers. I also understand that the construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

10. I understand that I may obtain more information regarding my obligations as an employer from the Internal Revenue Service, the United States Small Business Administration, the Florida Department of Financial Services, and the Florida Department of Revenue. I also understand that I may contact the Florida Construction Industry Licensing Board at            (telephone number)            OR            (Internet website address)            for more information about licensed contractors.

11. I am aware of, and consent to, an owner-builder building permit applied for in my name and understand that I am the party legally and financially responsible for the proposed construction activity at the following address:            (address of property)           .

12. I agree to notify            (issuer of disclosure statements)            immediately of any additions, deletions, or changes to any of the information that I have provided on this disclosure.

Licensed contractors are regulated by laws designed to protect the public. If you contract with a person who does not have a license, the Construction Industry Licensing Board and Department of Business and Professional Regulation may be unable to assist you with any financial loss that you sustain as a result of a complaint. Your only remedy against an unlicensed contractor may be in civil court. It is also important for you to understand that, if an unlicensed contractor or employee of an individual or firm is injured while working on your property, you may be held liable for damages. If you obtain an owner-builder permit and wish to hire a licensed contractor, you will be responsible for verifying whether the contractor is properly licensed and the status of the contractor's workers' compensation coverage.

Before a building permit can be issued, this disclosure statement must be completed and signed by the property owner and returned to the local permitting agency responsible for issuing the permit. A copy of the property owner's driver license, the notarized signature of the property owner, or other type of verification acceptable to the local permitting agency is required when the permit is issued.

Signature:            (signature of property owner)           .

Date:            (date)           .

(8) Any construction, alteration, improvement, or repair carried on within the limits of any site the title to which is in the United States or with respect to which federal law supersedes this part.

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than \$1,000, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$1,000 for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

(10)(a) Any construction or operation incidental to the construction or repair of irrigation and drainage ditches;

(b) Regularly constituted irrigation districts or reclamation districts; or

(c) Clearing or other work on the land in rural districts for fire prevention purposes or otherwise except when performed by a licensee.

(11) A registered architect or engineer acting within the scope of his or her practice or any person exempted by the law regulating architects and engineers, including

persons doing design work as specified in s. 481.229(1)(b); provided, however, that an architect or engineer shall not act as a contractor unless properly licensed under this chapter.

(12) Any person who only furnishes materials or supplies without fabricating them into, or consuming them in the performance of, the work of the contractor.

(13) Any person who is licensed pursuant to chapter 527 when such person is performing the work authorized by such license.

(14) Any person who sells, services, or installs heating or air-conditioning units which have a capacity no greater than 3 tons or 36,000 Btu, which have no ducts, and which have a factory-installed electrical cord and plug.

(15) The installation and maintenance of water conditioning units for domestic, commercial, or industrial purposes by operators of water conditioning services. No municipality or county may adopt an ordinance, rule, or regulation which requires such an operator to become licensed, certified, or registered as a plumber or which otherwise prevents the installation and maintenance of such water conditioning units by an operator.

(16) An architect or landscape architect licensed pursuant to chapter 481 or an engineer licensed pursuant to chapter 471 who offers or renders design-build services which may require the services of a contractor certified or registered pursuant to the provisions of this chapter, as long as the contractor services to be performed under the terms of the design-build contract are offered and rendered by a certified or registered general contractor in accordance with this chapter.

(17) Contracting for repair, maintenance, remodeling, or improvement by any person licensed under part I of chapter 475 while acting as the owner's agent pursuant to that license, where all work requiring a contractor is performed by a contractor who has a current, valid certificate or registration issued under this part to perform such work, and where the aggregate contract for labor, materials, and all other items is less than \$5,000; however, this exemption does not apply:

(a) If the maintenance, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than \$5,000 for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is qualified to engage in contracting.

(18) Any one-family, two-family, or three-family residence constructed by Habitat for Humanity International, Inc., or its local affiliates. Habitat for Humanity International, Inc., or its local affiliates, must:

(a) Obtain all necessary building permits.

(b) Obtain all required building code inspections.

(c) Provide for supervision of all work by an individual with construction experience.

(19) A disaster recovery mitigation organization or a not-for-profit organization repairing or replacing a one-family, two-family, or three-family residence that has been impacted by a disaster when such organization:

(a) Is using volunteer labor to assist the owner of such residence in mitigating unsafe living conditions at the residence;

(b) Is not holding itself out to be a contractor;

(c) Obtains all required building permits;

(d) Obtains all required building code inspections; and

(e) Provides for the supervision of all work by an individual with construction experience.

(20) The sale, delivery, assembly, or tie-down of prefabricated portable sheds that are not more than 250 square feet in interior size and are not intended for use as a residence or as living quarters. This exemption may not be construed to interfere with the Florida Building Code or any applicable local technical amendment to the Florida Building Code, local licensure requirements, or other local ordinance provisions.

(21) The sale, delivery, assembly, or tie-down of lawn storage buildings and storage buildings not exceeding 400 square feet and bearing the insignia of approval from the Department of Community Affairs showing compliance with the Florida Building Code.

(22) A person licensed pursuant to s. 633.061(1)(d) or (3)(b) performing work authorized by such license.

**History.**—ss. 11, 17, ch. 79-200; ss. 2, 3, ch. 81-318; s. 1, ch. 84-160; s. 1, ch. 87-235; ss. 2, 20, 21, ch. 88-156; s. 3, ch. 89-115; s. 69, ch. 89-162; s. 1, ch. 89-343; s. 29, ch. 89-374; s. 38, ch. 90-228; ss. 34, 68, ch. 91-137; s. 4, ch. 91-429; s. 7, ch. 92-55; s. 1, ch. 93-154; s. 1, ch. 93-166; s. 255, ch. 94-119; s. 4, ch. 96-298; s. 73, ch. 96-388; s. 1125, ch. 97-103; s. 39, ch. 98-250; s. 19, ch. 98-287; s. 22, ch. 98-419; s. 39, ch. 2000-141; s. 34, ch. 2000-154; s. 30, ch. 2000-372; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 26, ch. 2003-32; s. 5, ch. 2005-30; s. 26, ch. 2005-132; s. 43, ch. 2005-147; s. 1, ch. 2006-283; s. 56, ch. 2007-217; s. 25, ch. 2009-195; s. 26, ch. 2010-176.

#### **489.105 Definitions.**—As used in this part:

(1) "Board" means the Construction Industry Licensing Board.

(2) "Department" means the Department of Business and Professional Regulation.

(3) "Contractor" means the person who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of regulation under this part, "demolish" applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which commercial or residential buildings do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

(d) "Sheet metal contractor" means a contractor whose services are unlimited in the sheet metal trade and who has the experience, knowledge, and skill necessary for the manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, insulation, alteration, repair, servicing, or design, when not prohibited by law, of ferrous or nonferrous metal work of U.S. No. 10 gauge or its equivalent or lighter gauge and of other materials, including, but not limited to, fiberglass, used in lieu thereof and of air-handling systems, including the setting of air-handling equipment and reinforcement of same, the balancing of air-handling systems, and any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system.

(e) "Roofing contractor" means a contractor whose services are unlimited in the roofing trade and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, when not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of all kinds of roofing, waterproofing, and coating, except when coating is not represented to protect, repair, waterproof, stop leaks, or extend the life of the roof. The scope of work of a roofing contractor also includes required roof-deck attachments and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement.

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated

existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring.

(h) "Class C air-conditioning contractor" means a contractor whose business is limited to the servicing of air-conditioning, heating, or refrigeration systems, including any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system, and whose certification or registration, issued pursuant to this part, was valid on October 1, 1988. No person not previously registered or certified as a Class C air-conditioning contractor as of October 1, 1988, shall be so registered or certified after October 1, 1988. However, the board shall continue to license and regulate those Class C air-conditioning contractors who held Class C licenses prior to October 1, 1988.

(i) "Mechanical contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and

skill to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as is necessary to make complete an air-distribution system, boiler and unfired pressure vessel systems, lift station equipment and piping, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing which requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, when not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, pneumatic control piping, gasoline tanks and pump installations and piping for same, standpipes, air piping, vacuum line piping, oxygen lines, nitrous oxide piping, ink and chemical lines, fuel transmission lines, liquefied petroleum gas lines within buildings, and natural gas fuel lines within buildings; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor shall also include any excavation work incidental thereto, but shall not include any work such as potable water lines or connections thereto, sanitary sewer lines, swimming pool piping and filters, or electrical power wiring.

(j) "Commercial pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing which requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning shall not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license shall not be required for the cleaning of the pool or spa in any way that does not affect the structural integrity of the pool or spa or its associated equipment.

(k) "Residential pool/spa contractor" means a contractor whose scope of work involves, but is not limited to, the construction, repair, and servicing of any residential swimming pool, or hot tub or spa, regardless of use. The scope of work includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing which requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning shall not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license shall not be required for the cleaning of the pool or spa in any way that does not affect the structural integrity of the pool or spa or its associated equipment.

(l) "Swimming pool/spa servicing contractor" means a contractor whose scope of work involves, but is not limited to, the repair and servicing of any swimming pool, or hot tub or spa, whether public or private, or otherwise, regardless of use. The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing which requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping, the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of any repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning shall not require licensure unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. In addition, a license shall not be required for the cleaning of the pool or spa in any way that does not affect the structural integrity of the pool or spa or its associated equipment.

(m) "Plumbing contractor" means a contractor whose contracting business consists of the execution of contracts requiring the experience, financial means,

knowledge, and skill to install, maintain, repair, alter, extend, or, when not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, when not prohibited by law, design the following without obtaining any additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, when not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers to the extent authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in such a manner as to comply with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor shall apply to private property and public property, shall include any excavation work incidental thereto, and shall include the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified herein as being the work of a trade other than that of a plumbing contractor. Nothing in this definition shall be construed to limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6). Nothing in this definition shall be construed to require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

(n) "Underground utility and excavation contractor" means a contractor whose services are limited to the construction, installation, and repair, on public or private property, whether accomplished through open excavations or through other means, including, but not limited to, directional drilling, auger boring, jacking and boring, trenchless technologies, wet and dry taps, grouting, and slip lining, of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line on residential or single-occupancy commercial properties, or on multioccupancy properties at manhole or wye lateral extended to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. However, an underground utility and

excavation contractor may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings no smaller than 2 inches in diameter, provided that each conduit system installed is designed by a licensed professional engineer or an authorized employee of a municipality, county, or public utility and that the installation of any such conduit does not include installation of any conductor wiring or connection to an energized electrical system. An underground utility and excavation contractor shall not install any piping that is an integral part of a fire protection system as defined in s. 633.021 beginning at the point where the piping is used exclusively for such system.

(o) "Solar contractor" means a contractor whose services consist of the installation, alteration, repair, maintenance, relocation, or replacement of solar panels for potable solar water heating systems, swimming pool solar heating systems, and photovoltaic systems and any appurtenances, apparatus, or equipment used in connection therewith, whether public, private, or otherwise, regardless of use. A contractor, certified or registered pursuant to the provisions of this chapter, is not required to become a certified or registered solar contractor or to contract with a solar contractor in order to provide any services enumerated in this paragraph that are within the scope of the services such contractors may render under this part.

(p) "Pollutant storage systems contractor" means a contractor whose services are limited to, and who has the experience, knowledge, and skill to install, maintain, repair, alter, extend, or design, when not prohibited by law, and use materials and items used in the installation, maintenance, extension, and alteration of, pollutant storage tanks. Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(q) "Specialty contractor" means a contractor whose scope of work and responsibility is limited to a particular phase of construction established in a category adopted by board rule and whose scope is limited to a subset of the activities described in one of the paragraphs of this subsection.

(4) "Primary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained the building permit; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

(5) "Secondary qualifying agent" means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control construction activities on a job for which he or she has obtained a permit, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

(6) "Contracting" means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure. However, the term "contracting" shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, or to the individual or business entity that offers to sell or sells manufactured or factory-built buildings that will be completed on site on property on which either party to a contract has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing or completing such residences.

(7) "Certificate" means a certificate of competency issued by the department as provided in this part.

(8) "Certified contractor" means any contractor who possesses a certificate of competency issued by the department and who shall be allowed to contract in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.

(9) "Registration" means registration with the department as provided in this part.

(10) "Registered contractor" means any contractor who has registered with the department pursuant to fulfilling the competency requirements in the jurisdiction for which the registration is issued. Registered contractors may contract only in such jurisdictions.

(11) "Certification" means the act of obtaining or holding a certificate of competency from the department as provided in this part.

(12) "Local construction regulation board" means a board, composed of not fewer than three residents of a county or municipality, which the governing body of that county or municipality may create and appoint to maintain the proper standard of construction of that county or municipality.

(13) "Business organization" means any partnership, corporation, business trust, joint venture, or other legal entity which engages or offers to engage in the business of contracting or acts as a contractor as defined in this section.

(14) "Financially responsible officer" means a person other than the primary qualifying agent who with the approval of the board assumes personal responsibility for all financial aspects of the business organization.

(15) "Structural component" means any vertical or horizontal load-bearing member of a structure which supports dead or live loads in addition to its own weight and includes, but is not limited to, a foundation, an exterior or interior load-bearing wall, a column, a column beam, a floor, and a roof structure.

(16) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration

panel, considers the facts and arguments presented by the parties and renders a decision which is binding on the parties.

(17) "Pollutant storage tank" means a tank, together with associated piping or dispensing facilities, which is or could be used for the storage or supply of pollutants as defined in s. 376.301 and which is required to be registered under chapter 17-761, Florida Administrative Code.

(18) "Tank" means any container other than one which is aboveground and either elevated or situated upon an impermeable surface, or which is located in an accessible underground area and either elevated or situated upon an impermeable surface therein, in such manner that any leak in such container may be readily detected.

(19) "Initial issuance" means the first time a certificate or registration is granted to an individual or business organization, including the first time an individual becomes a qualifying agent for that business organization and the first time a business organization is qualified by that individual.

**History.**—ss. 2, 17, ch. 79-200; ss. 1, 3, ch. 80-85; s. 367, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 28, 49, ch. 82-179; s. 1, ch. 83-140; s. 5, ch. 83-160; s. 1, ch. 85-290; ss. 27, 31, ch. 86-159; s. 6, ch. 87-374; ss. 3, 20, 21, ch. 88-156; s. 2, ch. 89-343; s. 30, ch. 89-374; ss. 33, 34, ch. 90-228; ss. 35, 66, ch. 91-137; s. 4, ch. 91-429; s. 1, ch. 92-55; s. 10, ch. 92-115; s. 57, ch. 92-149; s. 4, ch. 93-154; s. 2, ch. 93-166; s. 256, ch. 94-119; s. 184, ch. 94-218; s. 1, ch. 96-365; s. 1126, ch. 97-103; s. 8, ch. 98-170; ss. 23, 59, ch. 98-419; s. 33, ch. 2000-372; s. 6, ch. 2005-30; s. 4, ch. 2008-191; s. 30, ch. 2008-240; s. 26, ch. 2009-195.

#### **489.107 Construction Industry Licensing Board.**

(1) To carry out the provisions of this part, there is created within the department the Construction Industry Licensing Board. Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member shall serve more than two consecutive 4-year terms or more than 11 years on the board.

(2) The board shall consist of 18 members, of whom:

(a) Four are primarily engaged in business as general contractors;

(b) Three are primarily engaged in business as building contractors or residential contractors, however, at least one building contractor and one residential contractor shall be appointed;

(c) One is primarily engaged in business as a roofing contractor;

(d) One is primarily engaged in business as a sheet metal contractor;

(e) One is primarily engaged in business as an air-conditioning contractor;

(f) One is primarily engaged in business as a mechanical contractor;

(g) One is primarily engaged in business as a pool contractor;

(h) One is primarily engaged in business as a plumbing contractor;

(i) One is primarily engaged in business as an underground utility and excavation contractor;

(j) Two are consumer members who are not, and have never been, members or practitioners of a

profession regulated by the board or members of any closely related profession; and

(k) Two are building officials of a municipality or county.

(3) To be eligible to serve, each contractor member must have been certified by the board to operate as a contractor in the category with respect to which the member is appointed, be actively engaged in the construction business, and have been so engaged for a period of not less than 5 consecutive years before the date of appointment. Each appointee must be a citizen and resident of the state.

(4) The board shall be divided into two divisions, Division I and Division II.

(a) Division I is comprised of the general contractor, building contractor, and residential contractor members of the board; one of the members appointed pursuant to paragraph (2)(j); and one of the members appointed pursuant to paragraph (2)(k). Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.

(b) Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the board; one of the members appointed pursuant to paragraph (2)(j); and one of the members appointed pursuant to paragraph (2)(k). Division II has jurisdiction over the regulation of contractors defined in s. 489.105(3)(d)-(p).

(c) Jurisdiction for the regulation of specialty contractors defined in s. 489.105(3)(q) shall lie with the division having jurisdiction over the scope of work of the specialty contractor as defined by board rule.

(5) Five members of Division I constitute a quorum, and five members of Division II constitute a quorum. The combined divisions shall meet together at such times as the board deems necessary, but neither division, nor any committee thereof, shall take action on any matter under the jurisdiction of the other division. However, if either division is unable to obtain a quorum for the purpose of conducting disciplinary proceedings, it may request members of the other division, who are otherwise qualified to serve on the division unable to obtain a quorum, to join in its deliberations. Such additional members shall vote and count toward a quorum only during those disciplinary proceedings.

(6) The Construction Industry Licensing Board and the Electrical Contractors' Licensing Board shall each appoint a committee to meet jointly at least twice a year.

**History.**—ss. 3, 17, ch. 79-200; ss. 2, 3, ch. 80-85; s. 368, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 84-322; ss. 4, 20, 21, ch. 88-156; s. 11, ch. 89-162; s. 36, ch. 91-137; s. 4, ch. 91-429; s. 157, ch. 92-149; s. 5, ch. 93-154; s. 3, ch. 93-166; s. 257, ch. 94-119; s. 185, ch. 94-218; s. 24, ch. 98-419.

**489.108 Rulemaking authority.**—The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it.

**History.**—s. 2, ch. 87-235; s. 21, ch. 88-156; s. 4, ch. 91-429; s. 160, ch. 98-200.

**489.109 Fees.**—

(1) The board, by rule, shall establish reasonable fees to be paid for applications, 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 fee may not exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. The initial certification fee and the renewal fee may not exceed \$250. 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 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) With respect to an application for registration or certification to qualify a business organization, the initial application fee and the renewal fee shall be \$50.

(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 XII 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.

(2) The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of the construction industry.

(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of \$4 to the department at the time of application or renewal. The funds must be transferred at the end of each licensing period to the Department of Community Affairs to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building

Commission. The board shall, at the time the funds are transferred, advise the Department of Community Affairs on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the Department of Community Affairs. The Department of Community Affairs shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The Department of Community Affairs shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.

**History.**—ss. 4, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 5, 20, 21, ch. 88-156; s. 35, ch. 88-205; s. 1, ch. 89-5; s. 62, ch. 89-162; s. 31, ch. 89-374; s. 4, ch. 91-429; s. 58, ch. 92-149; s. 7, ch. 93-166; s. 258, ch. 94-119; s. 4, ch. 97-228; s. 12, ch. 99-254; s. 40, ch. 2000-141; s. 27, ch. 2009-195.

#### **489.111 Licensure by examination.—**

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

(2) A person shall be eligible for licensure by examination 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 person-hours shall be used in determining full-time equivalency.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her 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 worker, 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 worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. 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 or she possesses a minimum of 3 years of proven

experience in the classification in which he or she is certified.

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

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

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

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

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

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

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

d. An applicant is eligible to take the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses related to the scope of work covered by that license and approved by the Construction Industry Licensing Board by rule and has at least 1 year of proven experience related to the scope of work of such a contractor.

(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.

**History.**—ss. 5, 17, ch. 79-200; s. 369, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 6, 20, 21, ch. 88-156; s. 12, ch. 89-162; s. 4, ch. 91-429; s. 480, ch. 97-103; s. 5, ch. 97-228; s. 1, ch. 2001-117; s. 7, ch. 2002-392.

#### **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 or her competency and qualifications to be certified pursuant to this part. To establish competency, a person shall pass the appropriate examination approved by the board and certified 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.

(2) No person who is not certified or registered shall engage in the business of contracting in this state. However, for purposes of complying with the provisions of this chapter, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o). This subsection does not affect the application of any local construction licensing ordinances. To enforce this subsection:

(a) The department shall issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order.

(b) A county, municipality, or local licensing board created by special act may issue a cease and desist order to prohibit any person from engaging in the business of contracting who does not hold the required certification or registration for the work being performed under this part.

(3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category, however:

(a) A general, building, or residential contractor, except as otherwise provided in this part, shall be responsible for any construction or alteration of a structural component of a building or structure, and any certified general contractor or certified underground utility and excavation contractor may perform clearing

and grubbing, grading, excavation, and other site work for any construction project in the state. Any certified building contractor or certified residential contractor may perform clearing and grubbing, grading, excavation, and other site work for any construction project in this state, limited to the lot on which any specific building is located.

(b) A general, building, or residential contractor shall not be required to subcontract the installation, or repair made under warranty, of wood shingles, wood shakes, or asphalt or fiberglass shingle roofing materials on a new building of his or her own construction.

(c) A general contractor shall not be required to subcontract structural swimming pool work. All other swimming pool work shall be subcontracted to an appropriately licensed certified or registered swimming pool contractor.

(d) A general contractor shall not be required to subcontract the construction of a main sanitary sewer collection system, storm collection system, or water distribution system, not including the continuation of utility lines from the mains to the buildings, and may perform any of the services, on public or private property, for which a license as an underground utility and excavation contractor is required under this part.

(e) A general contractor shall not be required to subcontract the continuation of utility lines from the mains in mobile home parks, and such continuations are to be considered a part of the main sewer collection and main water distribution systems.

(f) A solar contractor shall not be required to subcontract minor, as defined by board rule, electrical, mechanical, plumbing, or roofing work so long as that work is within the scope of the license held by the solar contractor and where such work exclusively pertains to the installation of residential solar energy equipment as defined by rules of the board adopted in conjunction with the Electrical Contracting Licensing Board.

(g) No general, building, or residential contractor certified after 1973 shall act as, hold himself or herself out to be, or advertise himself or herself to be a roofing contractor unless he or she is certified or registered as a roofing contractor.

(4)(a) When a certificateholder desires to engage in contracting in any area of the state, as a prerequisite therefor, he or she 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 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.

(5) The certificate is not transferable.

(6) The board shall, by rule, designate those types of specialty contractors which may be certified under this part. The limit of the scope of work and responsibility of a specialty contractor shall be established by the board by rule. However, a certified specialty contractor category established by board rule exists as a voluntary statewide licensing category and does not create a mandatory licensing requirement. Any mandatory statewide construction contracting licensure requirement may only be established through specific statutory provision.

(7) If an eligible applicant fails any contractor's written examination, except the general and building contractors' examination, and provides the board with acceptable proof of lack of comprehension of written examinations, the applicant may petition the board to be

administered a uniform oral examination, subject to the following conditions:

(a) The applicant documents 10 years of experience in the appropriate construction craft.

(b) The applicant files written recommendations concerning his or her competency in the appropriate construction craft.

(c) The applicant is administered only one oral examination within a period of 1 year.

(8) Any public record of the board, when certified by the executive director of the board or the executive director's representative, may be received as prima facie evidence in any administrative or judicial proceeding.

(9)(a) This part does not prevent any contractor from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors that remaining work which is part of the project contracted.

(b) This part, chapter 471, chapter 481, or any other provision of law does not:

1. Prevent any licensed engineer or architect from contracting directly with a licensed contractor for the preparation of plans, specifications, or a master design manual addressing structural designs used to make an application for building permits.

2. Require a licensed engineer or architect, when preparing drawings, specifications, plans, or master design manuals for use by any licensed contractor, to prepare site-specific drawings, specifications, or plans for the design and construction of single-family and two-family dwellings; swimming pools, spas, or screened enclosures; or any other structure not exceeding 1,200 square feet or one story in height. For the purpose of issuing building permits, local building officials shall accept such drawings, specifications, or plans when submitted by any licensed contractor. Upon good cause shown, local government code enforcement agencies may accept or reject plans prepared by persons licensed under chapter 471, chapter 481, or this chapter.

As used in this section, the term "master design manual" means a restrictive design manual intended to be used to design, permit, and construct structures as described in this section. Any such manual must be prepared by a licensed engineer or architect and specifically detail the limits of its use, including, but not limited to, the structure type, size, materials, loading conditions, time limits, applicable codes, and associated criteria. The manual must also detail the required training for the contractor, engineer, or architect using the manual. All master design manuals must be peer reviewed by an independent licensed engineer or architect having no financial interest in the development of the manual or the construction of structures pursuant to the manual. The engineer or architect conducting the peer review must be identified in the manual.

(c) Notwithstanding anything in this chapter or any other provision of law, a licensed engineer or architect is not required for the preparation or use of any design

guide adopted by the Florida Building Commission as part of the building code pursuant to s. 553.73.

(10) The addition of a new type of contractor or the expansion of the scope of practice of any type of contractor under this part shall not limit the scope of practice of any existing type of contractor under this part unless the Legislature expressly provides such a limitation.

**History.**—ss. 6, 17, ch. 79-200; ss. 3, 4, ch. 80-85; ss. 2, 3, ch. 81-318; s. 2, ch. 85-290; ss. 28, 31, ch. 86-159; s. 3, ch. 87-235; s. 13, ch. 87-310; s. 7, ch. 87-374; ss. 7, 20, 21, ch. 88-156; s. 32, ch. 89-374; s. 43, ch. 90-228; s. 67, ch. 91-137; s. 4, ch. 91-429; s. 59, ch. 92-149; ss. 2, 6, ch. 93-154; s. 8, ch. 93-166; s. 186, ch. 94-218; s. 481, ch. 97-103; s. 6, ch. 97-228; s. 25, ch. 98-419; s. 4, ch. 2003-257; s. 8, ch. 2007-227.

#### **489.1136 Medical gas certification.—**

(1)(a) In addition to the certification or registration required to engage in business as a plumbing contractor, any plumbing contractor who wishes to engage in the business of installation, improvement, repair, or maintenance of any tubing, pipe, or similar conduit used to transport gaseous or partly gaseous substances for medical purposes shall take, as part of the contractor's continuing education requirement, at least once during the holding of such license, a course of at least 6 hours. Such course shall be given by an instructional facility or teaching entity that has been approved by the board. In order for a course to be approved, the board must find that the course is designed to teach familiarity with the National Fire Prevention Association Standard 99C (Standard on Gas and Vacuum Systems, latest edition) and also designed to teach familiarity and practical ability in performing and inspecting brazing duties required of medical gas installation, improvement, repair, or maintenance work. Such course shall issue a certificate of completion to the taker of the course, which certificate shall be available for inspection by any entity or person seeking to have such contractor engage in the business of installation, improvement, repair, or maintenance of a medical gas system.

(b) Any other natural person who is employed by a licensed plumbing contractor to provide work on the installation, improvement, repair, or maintenance of a medical gas system, except as noted in paragraph (c), shall, as a prerequisite to his or her ability to provide such service, take a course approved by the board. Such course shall be at least 8 hours and consist of both classroom and practical work designed to teach familiarity with the National Fire Prevention Association Standard 99C (Standard on Gas and Vacuum Systems, latest edition) and also designed to teach familiarity and practical ability in performing and inspecting brazing duties required of medical gas installation, improvement, repair, or maintenance work. Such course shall also include the administration of a practical examination in the skills required to perform work as outlined above, including brazing, and each examination shall be reasonably constructed to test for knowledge of the subject matter. The person taking such course and examination must, upon successful completion of both, be issued a certificate of completion by the giver of such course, which certificate shall be made available by the holder for inspection by any person or entity seeking to have such person perform work on the installation,

improvement, repair, or maintenance of a medical gas system.

(c) Any other natural person who wishes to perform only brazing duties incidental to the installation, improvement, repair, or maintenance of a medical gas system shall pass an examination designed to show that person's familiarity with and practical ability in performing brazing duties required of medical gas installation, improvement, repair, or maintenance. Such examination shall be from a test approved by the board. Such examination must test for knowledge of National Fire Prevention Association Standard 99C (Standard on Gas and Vacuum Systems, latest edition). The person taking such examination must, upon passing such examination, be issued a certificate of completion by the giver of such examination, and such certificate shall be made available by the holder for inspection by any person or entity seeking to have or employ such person to perform brazing duties on a medical gas system.

(d) It is the responsibility of the licensed plumbing contractor to ascertain whether members of his or her workforce are in compliance with this subsection, and such contractor is subject to discipline under s. 489.129 for violation of this subsection.

(e) Training programs in medical gas piping installation, improvement, repair, or maintenance shall be reviewed annually by the board to ensure that programs have been provided equitably across the state.

(f) Periodically, the board shall review training programs in medical gas piping installation for quality in content and instruction in accordance with the National Fire Prevention Association Standard 99C (Standard on Gas and Vacuum Systems, latest edition). The board shall also respond to complaints regarding approved programs.

(2)(a) On any job site where a medical gas system is being installed, improved, repaired, or maintained, it is required that a person qualified under paragraph (1)(a) or paragraph (1)(b) must be present. When any brazing work is performed by a person qualified under paragraph (1)(c), a person qualified under paragraph (1)(a) or paragraph (1)(b) must be present.

(b) It is the responsibility of the licensed contractor to ascertain whether members of his or her workforce are in compliance with paragraph (a), and such contractor is subject to discipline under s. 489.129 for violation of this subsection.

(3) The term "medical" as used in this section means any medicinal, life-supporting, or health-related purpose. Any and all gaseous or partly gaseous substance used in medical patient care and treatment shall be presumed for the purpose of this section to be used for medical purposes.

**History.**—s. 27, ch. 98-419; s. 35, ch. 2000-154; s. 14, ch. 2001-63.

**489.114 Evidence of workers' compensation coverage.**—Except as provided in s. 489.115(5)(d), 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 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 Financial Services 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 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 may result from records furnished to the Division of Workers' Compensation by the persons or entities governed by this section or an investigation completed by the Division of Workers' Compensation. 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 in the amount of \$500. 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 of the contractor under the provisions of s. 489.129.

**History.**—s. 29, ch. 89-289; s. 1, ch. 90-192; s. 47, ch. 90-201; s. 45, ch. 91-1; s. 4, ch. 91-429; s. 9, ch. 93-166; s. 7, ch. 97-228; s. 30, ch. 2001-91; s. 17, ch. 2002-236; s. 508, ch. 2003-261; s. 28, ch. 2009-195.

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

(1) No person may engage in the business of contracting in this state without first being certified or registered in the proper classification.

(2)(a) The department shall issue a certificate or registration to each person qualified by the board and upon receipt of the original license fee.

(b) Certification allows the certificateholder to engage in contracting only for the type of work covered by the certificate and only while the certificate is on active status.

(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;

(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 the 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, business practices, workplace safety, and, for applicable licensure categories, wind mitigation methodologies, and 1 hour of which must deal with laws and rules. 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. The board shall prescribe by rule the continuing education, if any, which is required during the first biennium of initial licensure. A person who has been licensed for less than an entire biennium must not be required to complete the full 14 hours of continuing education.

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 Florida Building Code and any alternate methodologies for providing such wind resistance which have been approved for use by the Florida Building Commission. 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.

3. The board shall require, by rule adopted pursuant to ss. 120.536(1) and 120.54, a specified number of hours in specialized or advanced module courses, approved by the Florida Building Commission, on any portion of the Florida Building Code, adopted pursuant to part IV of chapter 553, relating to the contractor's respective discipline.

(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 herself or the business organization he or she 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. The board may also adopt rules that would allow applicants to demonstrate financial responsibility, as an alternative to the foregoing, by providing minimum credit scores or bonds payable as prescribed for financially responsible officers. 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 or she has qualified, he or she does not provide the evidence required, he or she shall apply to the department for an extension of time which shall be granted upon a showing of just cause.

(d) An applicant for initial issuance of a certificate or registration shall submit as a prerequisite to qualifying for an exemption from workers' compensation coverage requirements under s. 440.05 an affidavit attesting to the fact that the applicant will obtain an exemption within 30 days after the date the initial certificate or registration is issued by the board.

(6) An applicant for initial issuance of a certificate or registration shall submit to a statewide criminal history records check through the Department of Law Enforcement. The Department of Business and Professional Regulation shall submit the requests for the criminal history records check to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall return the results to the department to determine if the applicant meets certification or registration requirements. If the applicant has been convicted of a felony, the board may deny licensure to the applicant based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The board shall also, in denying or approving licensure, consider the length of time since the commission of the crime and the rehabilitation of the applicant. The board may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.

(7) An initial applicant shall, along with the application, and a certificateholder or registrant shall, upon requesting a change of status, submit to the board a credit report from a nationally recognized credit agency that reflects the financial responsibility of the applicant or certificateholder or registrant. The credit report required for the initial applicant shall be considered the minimum evidence necessary to satisfy the board that he or she is financially responsible to be certified,

has the necessary credit and business reputation to engage in contracting in the state, and has the minimum financial stability necessary to avoid the problem of financial mismanagement or misconduct. The board shall, by rule, adopt guidelines for determination of financial stability, which may include minimum requirements for net worth, cash, and bonding for Division I certificateholders of no more than \$20,000 and for Division II certificateholders of no more than \$10,000. Fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

(8) If a certificateholder or registrant holds a license under both this part and part II and is required to have continuing education courses under s. 489.517(3), the certificateholder or registrant may apply those course hours for workers' compensation, workplace safety, and business practices obtained under part II to the requirements under this part.

<sup>1</sup>(9) An initial applicant shall submit, along with the application, a complete set of fingerprints to the department. The fingerprints shall be submitted to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward them to the Federal Bureau of Investigation for national processing for the purpose of determining if the applicant has a criminal history record. The department shall and the board may review the background results to determine if an applicant meets licensure requirements. The cost for the fingerprint processing shall be borne by the person subject to the background screening. These fees are to be collected by the authorized agencies or vendors. The authorized agencies or vendors are responsible for paying the processing costs to the Department of Law Enforcement.

**History.**—ss. 7, 17, ch. 79-200; ss. 2, 3, ch. 81-318; s. 85, ch. 83-329; ss. 8, 20, 21, ch. 88-156; s. 2, ch. 89-5; s. 33, ch. 89-374; s. 4, ch. 91-429; s. 60, ch. 92-149; s. 10, ch. 93-166; s. 75, ch. 93-415; s. 259, ch. 94-119; s. 6, ch. 94-284; s. 482, ch. 97-103; s. 8, ch. 97-228; s. 3, ch. 98-116; ss. 20, 21, ch. 98-287; s. 29, ch. 98-419; ss. 41, 42, ch. 2000-141; s. 31, ch. 2001-91; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 3, ch. 2007-86; s. 2, ch. 2007-126; s. 6, ch. 2007-227; s. 130, ch. 2008-4; s. 29, ch. 2009-195; s. 44, ch. 2010-114.

**Note.**—Section 58, ch. 2010-114, provides that "[t]he changes made by this act are intended to be prospective in nature. It is not intended that persons who are employed or licensed on the effective date of this act be rescreened until such time as they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in this act."

#### **489.116 Inactive and delinquent status; renewal and cancellation notices.—**

(1) A certificateholder or registrant may not engage in contracting unless the certificateholder or registrant has an active status certificate or registration. A certificateholder or registrant who engages in contracting without an active status certificate or registration is subject to disciplinary action as provided in ss. 455.227 and 489.129.

(2) The board shall permit a certificateholder or registrant to elect, at the time of licensure renewal, an active or inactive status.

(3) An inactive status certificateholder or registrant may change to active status at any time, provided the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, and pays any applicable late fees.

(4) A certificateholder or registrant shall apply with a completed application, as determined by board rule, to renew an active or inactive status certificate or registration before the certificate or registration expires. Failure of a certificateholder or registrant to so apply shall cause the certificate or registration to become a delinquent certificate or registration. Further, any delinquent certificateholder or registrant who fails to apply to renew licensure on either active or inactive status before expiration of the current licensure cycle must reapply in the same manner as an applicant for initial certification or registration.

(5) A delinquent status certificateholder or registrant must apply with a completed application, as determined by board rule, for active or inactive status during the current licensure cycle. Failure by a delinquent status certificateholder or registrant to become active or inactive before the expiration of the current licensure cycle renders the certificate or registration void, and any subsequent licensure shall be subject to all procedures and requirements imposed on an applicant for initial licensure.

(6) An inactive certificateholder or registrant shall comply with the same continuing education requirements, if any, that are imposed on an active status certificateholder or registrant.

(7) The status or any change in status of a certificateholder or registrant shall not alter in any way the board's right to impose discipline or to enforce discipline previously imposed on a certificateholder or registrant for acts or omissions committed by the certificateholder or registrant while holding a certificate or registration.

(8) At least 60 days prior to the end of a licensure cycle, the department shall forward:

(a) A licensure renewal notification to an active or inactive certificateholder or registrant at the certificateholder's or registrant's address of record.

(b) A notice of pending cancellation of licensure to a delinquent status certificateholder or registrant at the certificateholder's or registrant's address of record.

**History.**—s. 11, ch. 93-166; ss. 10, 261, ch. 94-119.

#### **489.117 Registration; specialty contractors.—**

(1)(a) Any person engaged in the business of a contractor as defined in s. 489.105(3)(a)-(o) must be registered before engaging in business as a contractor in this state, unless he or she is certified. To be initially registered, the applicant shall submit the required fee and file evidence of successful compliance with the local examination and licensing requirements, if any, in the area for which registration is desired. An examination is not required for registration.

(b) Registration allows the registrant to engage in contracting only in the counties, municipalities, or development districts where he or she has complied with all local licensing requirements and only for the type of work covered by the registration.

(c) Each registrant shall report to the board each local jurisdiction and each category of registration in which the registrant holds a certificate of competency or license, or where the registrant has been granted a certificate of competency or license by reciprocal agreement, for which registration is required by this

part, within 30 days after obtaining such certificate or license.

(2) No new registration may be issued by the board after July 1, 1993, based on any certificate of competency or license for a category of contractor defined in s. 489.105(3)(a)-(o) which is issued by a municipal or county government that does not exercise disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in s. 489.131(7). For purposes of this subsection and s. 489.131(10), the board shall determine the adequacy of such disciplinary control by reviewing the local government's ability to process and investigate complaints and to take disciplinary action against locally licensed contractors.

(3)(a) Upon findings of fact supporting the need therefor, the board may grant a limited nonrenewable registration to a contractor not domiciled in the state, for one project. During the period of such registration the board may require compliance with this and any other statute of the state.

(b) The application for a temporary registration shall constitute appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of contracting for which the temporary license was issued.

(4)(a) A person holding a local license whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board to perform contracting activities within the scope of such specialty license.

(b) The local jurisdictions are responsible for providing the following information to the board within 30 days after licensure of, or any disciplinary action against, a locally licensed contractor who is registered under this part:

1. Licensure information.
2. Code violation information pursuant to s. 553.781.
3. Disciplinary information.

The board shall maintain such licensure and disciplinary information as it is provided to the board and shall make the information available through the automated information system provided pursuant to s. 455.2286.

(c) Providing discipline to such locally licensed contractors is the responsibility of the local jurisdiction.

(d) Any person who is not required to obtain registration or certification pursuant to s. 489.105(3)(d)-(o) may perform contracting services for the construction, remodeling, repair, or improvement of single-family residences, including a townhouse as defined in the Florida Building Code, without obtaining a local license if such person is under the supervision of a certified or registered general, building, or residential contractor. As used in this paragraph, supervision shall not be deemed to require the existence of a direct contract between the certified or registered general,

building, or residential contractor and the person performing specialty contracting services.

**History.**—ss. 8, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 9, 20, 21, ch. 88-156; s. 4, ch. 91-429; s. 2, ch. 92-55; s. 61, ch. 92-149; s. 3, ch. 93-154; s. 12, ch. 93-166; s. 262, ch. 94-119; s. 483, ch. 97-103; s. 22, ch. 98-287; s. 1, ch. 99-254; s. 5, ch. 2003-257; s. 30, ch. 2009-195.

**489.118 Certification of registered contractors; grandfathering provisions.**—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Exuper Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of \$500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2005.

**History.**—s. 3, ch. 99-254; s. 34, ch. 2000-372; s. 48, ch. 2002-402; s. 15, ch. 2004-6; s. 2, ch. 2005-227.

**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 applicant must apply for registration or certification as the qualifying agent of the business organization.

(a) An application for registration or certification to qualify a business organization 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.

(b)1. An application for registration or certification to qualify a business organization 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 business organization 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 business organization, 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 business organization 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 business organization as provided in s. 489.1195(2).

(c) The board may deny an application for registration or certification to qualify a business organization if the applicant, or any person listed in paragraph (a), has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.

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

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

(3)(a) A qualifying agent must be certified or registered under this part in order for the business organization to operate in the category of contracting in which the qualifying agent is certified or registered. If any qualifying agent ceases to be affiliated with a business organization, he or she shall inform the department. In addition, if the 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 business organization. This temporary certificate or registration shall only allow the business organization to proceed with incomplete contracts. For the purposes of this paragraph, an incomplete contract is one which has been awarded to, or entered into by, the business organization prior to the cessation of affiliation of the qualifying agent with the business organization or one on which the business organization was the low bidder and the contract is subsequently awarded, regardless of whether any actual work has commenced under the contract prior to the qualifying agent ceasing to be affiliated with the business organization.

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

(4) When a certified qualifying agent, on behalf of a business organization, makes application for a business tax receipt 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 issued by the department, and the state license numbers shall be noted thereon.

(5)(a) Each registered or certified contractor shall affix the number of his or her 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 or her Construction Industry Licensing Board registration or certification number.

(b) The registration or certification number of each contractor 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 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 number as required by this part when submitting an advertisement for publication, broadcast, or printing or fails to display the certification or registration number as required by this part.

(f) In addition to any other penalty prescribed by law, a local government may impose a civil fine pursuant to s. 489.127(5) against a person who is not certified or registered under this part if the person:

1. Claims to be licensed in any offer of services, business proposal, bid, contract, or advertisement, but does not possess a valid competency-based license issued by a local government in this state to perform the specified construction services; or

2. Claims to be insured in any offer of services, business proposal, bid, contract, or advertisement, but whose performance of the subject work is not covered by a general liability or workers' compensation insurance policy.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for registration or certification to qualify a new business organization. If the qualifying agent for a business organization desires to qualify additional business organizations, the board shall require the qualifying agent to present evidence of his or her ability to supervise the construction activities of each such organization. Approval of each business organization is discretionary with the board.

(7)(a) A business organization proposing to engage in contracting is not required to apply for or obtain authorization under this part to engage in contracting if:

1. The business organization employs one or more registered or certified contractors licensed in accordance with this part who are responsible for obtaining permits and supervising all of the business organization's contracting activities;

2. The business organization engages only in contracting on property owned by the business organization or by its parent, subsidiary, or affiliated entities; and

3. The business organization, or its parent entity if the business organization is a wholly owned subsidiary, maintains a minimum net worth of \$20 million.

(b) Any business organization engaging in contracting under this subsection shall provide the board with the name and license number of each registered or certified contractor employed by the business organization to supervise its contracting activities. The business organization is not required to post a bond or otherwise evidence any financial or credit information except as necessary to demonstrate compliance with paragraph (a).

(c) A registered or certified contractor employed by a business organization to supervise its contracting activities under this subsection shall not be required to post a bond or otherwise evidence any personal financial or credit information so long as the individual performs contracting activities exclusively on behalf of a

business organization meeting all of the requirements of paragraph (a).

**History.**—ss. 9, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 29, 49, ch. 82-179; s. 6, ch. 83-160; s. 86, ch. 83-329; s. 2, ch. 84-322; ss. 10, 20, 21, ch. 88-156; s. 23, ch. 90-109; s. 37, ch. 91-137; s. 4, ch. 91-429; s. 3, ch. 92-55; s. 67, ch. 92-149; s. 13, ch. 93-166; s. 1, ch. 93-239; s. 263, ch. 94-119; s. 5, ch. 96-298; s. 73, ch. 96-388; s. 1127, ch. 97-103; s. 9, ch. 97-228; s. 30, ch. 98-419; s. 6, ch. 2003-257; s. 31, ch. 2009-195; s. 108, ch. 2010-5.

#### **489.1195 Responsibilities.—**

(1) A qualifying agent is a primary qualifying agent unless he or she 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 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 herself, or the business organization he or she 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.

(d) The board shall adopt rules prescribing the qualifications for financially responsible officers, including net worth, cash, and bonding requirements. These qualifications must be at least as extensive as the requirements for the financial responsibility of qualifying agents.

(2)(a) One of the qualifying agents for a business organization that has more than one qualifying agent may be designated as the sole primary qualifying agent for the business organization by a joint agreement that is executed, on a form provided by the board, by all qualifying agents for the business organization.

(b) The joint agreement must be submitted to the board for approval. If the board determines that the joint agreement is in good order, it shall approve the designation and immediately notify the qualifying agents of such approval. The designation made by the joint agreement is effective upon receipt of the notice by the qualifying agents.

(c) The qualifying agent designated for a business organization by a joint agreement is the sole primary qualifying agent for the business organization, and all other qualifying agents for the business organization are secondary qualifying agents.

(d) A designated sole primary qualifying agent has all the responsibilities and duties of a primary qualifying agent, notwithstanding that there are secondary qualifying agents for specified jobs. The designated sole primary qualifying agent is jointly and equally

responsible with secondary qualifying agents for field work supervision.

(e) A secondary qualifying agent is responsible only for:

1. The supervision of field work at sites where his or her license was used to obtain the building permit; and
2. Any other work for which he or she accepts responsibility.

A secondary qualifying agent is not responsible for supervision of financial matters.

(3)(a) A qualifying agent who has been designated by a joint agreement as the sole primary qualifying agent for a business organization may terminate this status as such by giving actual notice to the business organization, to the board, and to all secondary qualifying agents of his or her intention to terminate this status. The notice to the board must include proof satisfactory to the board that he or she has given the notice required in this paragraph.

(b) The status of the qualifying agent shall cease upon the designation of a new primary qualifying agent or 60 days after satisfactory notice of termination has been provided to the board, whichever first occurs.

(c) If no new primary qualifying agent has been designated within 60 days, all secondary qualifying agents for the business organization shall become primary qualifying agents unless the joint agreement specifies that one or more of them shall become sole qualifying agents under such circumstances, in which case only they shall become sole qualifying agents.

(d) Any change in the status of a qualifying agent is prospective only. A qualifying agent is not responsible for his or her predecessor's actions but is responsible, even after a change in status, for matters for which he or she was responsible while in a particular status.

**History.**—ss. 11, 21, ch. 88-156; s. 4, ch. 91-429; s. 14, ch. 93-166; s. 484, ch. 97-103; s. 11, ch. 97-228; s. 4, ch. 98-116; s. 27, ch. 99-7.

#### **489.121 Emergency registration upon death of contractor.—**

If an incomplete contract exists at the time of death of a contractor, the contract may be completed by any person even though not certified or registered. Such person shall notify the board, within 30 days after the death of the contractor, of his or her name and address, knowledge of the contract, and ability to complete it. If the board approves, he or she may proceed with the contract. For purposes of this section, an incomplete contract is one which has been awarded to, or entered into by, the contractor before his or her death, or on which he or she was the low bidder and the contract is subsequently awarded to him or her, regardless of whether any actual work has commenced under the contract before the contractor's death.

**History.**—ss. 10, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 12, 20, 21, ch. 88-156; s. 4, ch. 91-429; s. 485, ch. 97-103.

#### **489.124 Business records requirements; address of record; service.—**

(1) All contractors who are registered or certified pursuant to this chapter shall maintain complete financial and business records for the immediately preceding 3 years. The business and financial records to be maintained shall include minutes of corporate meetings,

business contacts, telephone records, insurance policies, letters of complaint, notices received from government entities, bank statements, canceled checks, records of accounts receivable and payable, financial statements, loan documents, tax returns, and all other business and financial records the contractor maintains in the regular course of business.

(2) Each certificateholder or registrant of the department shall be solely responsible for notifying the department in writing of the certificateholder's or registrant's current mailing address and phone number. If the mailing address is not the certificateholder's or registrant's physical address, the certificateholder or registrant shall also supply the physical address.

(a) A certificateholder's or registrant's failure to notify the department of a change of address or phone number shall constitute a violation of this section.

(b) The certificateholder or registrant shall be responsible for retaining proof that the certificateholder or registrant has notified the department of the certificateholder's or registrant's current address of record.

(3) Notwithstanding any other provision of law, service by regular mail to a certificateholder's or registrant's address of record shall constitute adequate and sufficient notice to the certificateholder or registrant for any official communication to the certificateholder or registrant by the board or the department, except when other service is required pursuant to the provisions of s. 455.224 or s. 455.225.

**History.**—s. 62, ch. 92-149; s. 15, ch. 93-166.

#### **489.125 Prequalification of certificateholders.**

Any person holding a certificate shall be prequalified to bid by a district school board pursuant to uniform prequalification of contractors criteria adopted by rule of the State Board of Education. This section does not supersede any small, woman-owned or minority-owned business enterprise preference program adopted by a district school board. A district school board may not modify or supplement the uniform prequalification criteria adopted by rule. A person holding a certificate must apply to each board for prequalification consideration.

**History.**—ss. 10, 17, ch. 79-200; ss. 2, 3, ch. 81-318; ss. 20, 21, ch. 88-156; s. 4, ch. 91-429; s. 21, ch. 94-292; s. 2, ch. 98-35; s. 18, ch. 2004-41.

#### **489.126 Moneys received by contractors.—**

(1) For purposes of this section, the term "contractor" includes all definitions as set forth in s. 489.105(3), and any person performing or contracting or promising to perform work described therein, without regard to the licensure of the person.

(2) A contractor who receives, as initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property must:

(a) Apply for permits necessary to do work within 30 days after the date payment is made, except where the work does not require a permit under the applicable codes and ordinances, and

(b) Start the work within 90 days after the date all necessary permits for work, if any, are issued,

unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both.

(3)(a) A contractor who receives money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed shall not, with intent to defraud the owner, fail or refuse to perform any work for any 90-day period.

(b) Proof that a contractor received money for the repair, restoration, addition, improvement, or construction of residential real property and that the amount received exceeds the value of the work performed by the contractor and that:

1. The contractor failed to perform any of the work for which he or she contracted during any 60-day period;

2. The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or a material breach of the contract by the owner; and

3. The contractor failed, for an additional 30-day period after the date of mailing of notification as specified in paragraph (c), to perform any work for which he or she contracted,

gives rise to an inference that the money in excess of the value of the work performed was taken with the intent to defraud.

(c) Notification as contemplated in paragraph (b) consists of a certified letter, return receipt requested, mailed to the address of the contractor as listed in the written contracting agreement. The letter must indicate that the contractor has failed to perform any work for a 60-day period, that the failure to perform the work was not the result of the owner's termination of the contract or a material breach of the contract by the owner, and that the contractor must recommence construction within 30 days after the date of mailing of the letter. If there is no address for the contractor listed in the written contracting agreement, or no written agreement exists, the letter must be mailed to the address of the contractor listed in the building permit application.

(4) Any person who violates any provision of this section is guilty of theft and shall be prosecuted and punished under s. 812.014.

**History.**—s. 1, ch. 94-110; s. 840, ch. 95-148; s. 2, ch. 95-240; s. 7, ch. 96-298; s. 73, ch. 96-388.

**Note.**—Former s. 252.361.

#### **489.127 Prohibitions; penalties.—**

(1) No person shall:

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

(b) Falsely impersonate a certificateholder or registrant;

(c) Present as his or her own the certificate or registration 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 that has been suspended or revoked;

(f) Engage in the business or act in the capacity of a contractor or advertise himself or herself 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;

(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 part IV of chapter 553 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 is not duly certified or registered and is considered unlicensed. A business tax receipt issued under the authority of chapter 205 is not a license for purposes of this part.

(2)(a) Any unlicensed person who violates any of the provisions of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any unlicensed person who commits a violation of subsection (1) after having been previously found guilty of such violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any unlicensed person who commits a violation of subsection (1) during the existence of a state of emergency declared by executive order of the Governor commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(d) Any person who operates as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator in violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

The remedies set forth in this subsection are not exclusive and may be imposed in addition to the remedies set forth in s. 489.129(2).

(3) The department may issue a stop-work order for all unlicensed work on a project upon finding probable cause to believe that construction work which requires certification or registration is being performed without a current, valid certificate or registration. Stop-work orders may be enforced using any cease and desist or other related action by the department as set forth in s. 455.228.

(4)(a) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not enter into an agreement, oral or written, whereby his or her certification number or registration number is used, or to be used, by a person who is not certified or registered as provided for in this chapter, or used, or to be used, by a business organization that is not duly qualified as provided for in this chapter to engage in the business, or act in the capacity, of a contractor.

(b) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not knowingly allow his or her certification number or registration number to be used by a person who is not certified or registered as provided for in this chapter, or used by a business organization that is not qualified as provided for in this chapter to engage in the business, or act in the capacity of, a contractor.

(c) A certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not apply for or obtain a building permit for construction work unless the certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, or business organization duly qualified by said contractor, has entered into a contract to make improvements to, or perform the contracting at, the real property specified in the application or permit. This paragraph does not prohibit a contractor from applying for or obtaining a building permit to allow the contractor to perform work for another person without compensation or to perform work on property that is owned by the contractor.

(d)1. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who violates this subsection after having been previously found guilty of such violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1) against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

(a) A code enforcement officer designated pursuant to this subsection may issue a citation for any violation of subsection (1) or s. 489.132(1) whenever, based upon personal investigation, the code enforcement officer has reasonable and probable grounds to believe that such a violation has occurred.

(b) A citation issued by a code enforcement officer shall be in a form prescribed by the local governing body of the county or municipality and shall state:

1. The time and date of issuance.
2. The name and address of the person to whom the citation is issued.
3. The time and date of the violation.
4. A brief description of the violation and the facts constituting reasonable cause.
5. The name of the code enforcement officer.
6. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
7. The applicable civil penalty if the person elects not to contest the citation.

(c) The local governing body of the county or municipality is authorized to enforce codes and ordinances against unlicensed contractors under the provisions of this subsection and may enact an ordinance establishing procedures for implementing this subsection, including a schedule of penalties to be assessed by the code enforcement officer. The maximum civil

penalty which may be levied shall not exceed \$500. Moneys collected pursuant to this subsection shall be retained locally, as provided for by local ordinance, and may be set aside in a specific fund to support future enforcement activities against unlicensed contractors.

(d) The act for which the citation is issued shall be ceased upon receipt of the citation; and the person charged with the violation shall elect either to correct the violation and pay the civil penalty in the manner indicated on the citation or, within 10 days of receipt of the citation, exclusive of weekends and legal holidays, request an administrative hearing before the enforcement or licensing board or designated special magistrate to appeal the issuance of the citation by the code enforcement officer.

1. Hearings shall be held before an enforcement or licensing board or designated special magistrate as established by s. 162.03(2), and such hearings shall be conducted pursuant to the requirements of ss. 162.07 and 162.08.

2. Failure of a violator to appeal the decision of the code enforcement officer within the time period set forth in this paragraph shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation, and penalties may be imposed accordingly.

3. If the person issued the citation, or his or her designated representative, shows that the citation is invalid or that the violation has been corrected prior to appearing before the enforcement or licensing board or designated special magistrate, the enforcement or licensing board or designated special magistrate may dismiss the citation unless the violation is irreparable or irreversible.

4. Each day a willful, knowing violation continues shall constitute a separate offense under the provisions of this subsection.

(e) A person cited for a violation pursuant to this subsection is deemed to be charged with a noncriminal infraction.

(f) If the enforcement or licensing board or designated special magistrate finds that a violation exists, the enforcement or licensing board or designated special magistrate may order the violator to pay a civil penalty of not less than the amount set forth on the citation but not more than \$1,000 per day for each violation. In determining the amount of the penalty, the enforcement or licensing board or designated special magistrate shall consider the following factors:

1. The gravity of the violation.
2. Any actions taken by the violator to correct the violation.
3. Any previous violations committed by the violator.

(g) Upon written notification by the code enforcement officer that a violator had not contested the citation or paid the civil penalty within the timeframe allowed on the citation, or if a violation has not been corrected within the timeframe set forth on the notice of violation, the enforcement or licensing board or the designated special magistrate shall enter an order ordering the violator to pay the civil penalty set forth on the citation or

notice of violation, and a hearing shall not be necessary for the issuance of such order.

(h) A certified copy of an order imposing a civil penalty against an uncertified contractor may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including a levy against personal property; however, such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this subsection, whichever occurs first. After 3 months from the filing of any such lien which remains unpaid, the enforcement board or licensing board or designated special magistrate may authorize the local governing body's attorney to foreclose on the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution.

(i) This subsection does not authorize or permit a code enforcement officer to perform any function or duty of a law enforcement officer other than a function or duty that is authorized in this subsection.

(j) An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board or licensing board or designated special magistrate to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board or licensing board or designated special magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

(k) All notices required by this subsection shall be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer or code enforcement officer; by leaving the notice at the violator's usual place of residence with some person of his or her family above 15 years of age and informing such person of the contents of the notice; or by including a hearing date within the citation.

(l) For those counties which enact ordinances to implement this subsection and which have local construction licensing boards or local government code enforcement boards, the local construction licensing board or local government code enforcement board shall be responsible for the administration of such citation program and training of code enforcement officers. The local governing body of the county shall enter into interlocal agreements with any municipalities in the county so that such municipalities may, by ordinance, resolution, policy, or administrative order, authorize individuals to enforce the provisions of this subsection. Such individuals shall be subject to the requirements of training as specified by the local construction licensing board.

(m) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer

commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(n) Nothing contained in this subsection shall prohibit a county or municipality from enforcing its codes or ordinances by any other means.

(o) Nothing in this subsection shall be construed to authorize local jurisdictions to exercise disciplinary authority or procedures established in this subsection against an individual holding a proper valid certificate issued pursuant to this part.

(6) Local building departments may collect outstanding fines against registered or certified contractors issued by the Construction Industry Licensing Board and may retain 25 percent of the fines they are able to collect, provided that they transmit 75 percent of the fines they are able to collect to the department according to a procedure to be determined by the department.

**History.**—ss. 13, 17, ch. 79-200; ss. 13, 15, 25, 30, 34, 58, 62, ch. 80-406; s. 370, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 30, 31, ch. 86-159; s. 11, ch. 87-310; ss. 13, 20, 21, ch. 88-156; s. 3, ch. 89-343; s. 39, ch. 90-228; s. 38, ch. 91-137; s. 255, ch. 91-224; s. 4, ch. 91-429; s. 5, ch. 92-55; s. 69, ch. 92-149; s. 16, ch. 93-166; s. 264, ch. 94-119; s. 3, ch. 95-240; s. 8, ch. 96-298; s. 73, ch. 96-388; s. 1128, ch. 97-103; s. 10, ch. 97-228; s. 23, ch. 98-287; s. 86, ch. 2004-11; s. 117, ch. 2007-5; s. 131, ch. 2008-4; s. 32, ch. 2009-195.

**Note.**—Subsection (4) former s. 489.1265.

#### **489.128 Contracts entered into by unlicensed contractors unenforceable.—**

(1) As a matter of public policy, contracts entered into on or after October 1, 1990, by an unlicensed contractor shall be unenforceable in law or in equity by the unlicensed contractor.

(a) For purposes of this section, an individual is unlicensed if the individual does not have a license required by this part concerning the scope of the work to be performed under the contract. A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract. For purposes of this section, if a state license is not required for the scope of work to be performed under the contract, the individual performing that work is not considered unlicensed.

(b) For purposes of this section, an individual or business organization may not be considered unlicensed for failing to have a business tax receipt issued under the authority of chapter 205.

(c) For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.

(2) Notwithstanding any other provision of law to the contrary, if a contract is rendered unenforceable under this section, no lien or bond claim shall exist in favor of the unlicensed contractor for any labor, services, or materials provided under the contract or any amendment thereto.

(3) This section shall not affect the rights of parties other than the unlicensed contractor to enforce contract,

lien, or bond remedies. This section shall not affect the obligations of a surety that has provided a bond on behalf of an unlicensed contractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed for purposes of this section.

**History.**—s. 30, ch. 90-228; s. 11, ch. 91-201; s. 4, ch. 91-429; s. 17, ch. 93-166; s. 486, ch. 97-103; s. 35, ch. 2000-372; s. 1, ch. 2003-257; s. 2, ch. 2006-154; s. 118, ch. 2007-5; ss. 33, 34, ch. 2009-195.

#### **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, 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 \$10,000 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 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) 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.

(e) Knowingly combining or conspiring with an uncertified or unregistered person by allowing his or her certificate or registration 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 or her 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.

(f) 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.

(g) 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.

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

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

(j) 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.

(k) 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.

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

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

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

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

(p) 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.

(q) 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. A contractor does not commit a

violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property on the part of the building official, in a proceeding under chapter 120.

(2) If a registrant or certificateholder disciplined under subsection (1) is a qualifying agent or financially responsible officer for a business organization and the violation was performed in connection with a construction project undertaken by that business organization, the board may impose an additional administrative fine not to exceed \$5,000 per violation against the business organization or against any partner, officer, director, trustee, or member if such person participated in the violation or knew or should have known of the violation and failed to take reasonable corrective action.

(3) The board may specify by rule the acts or omissions which constitute violations of this section.

(4) In recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

(5) The board may not reinstate the certification or registration of, or cause a certificate or registration to be issued to, a person who or business organization which the board has determined is unqualified or whose certificate or registration 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 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.

(b) Venue for all actions to enforce any fine levied by the board shall be in Duval County. The board is authorized to enter into contracts with private businesses or attorneys to collect such fines with payment for such collections made on a contingent fee basis. All such contracts shall be publicly advertised and competitively awarded based upon responses submitted to a request for proposals developed by the board.

(7) The board shall not issue or renew a certificate or registration to any person or business organization that has been assessed a fine, interest, or costs associated with investigation and prosecution, or has been ordered to pay restitution, until such fine, interest, 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.

(8) If the board finds any certified or registered contractor guilty of a violation, the board may, as part of its disciplinary action, require such contractor to obtain

continuing education in the areas of contracting affected by such violation.

(9) Any person certified or registered pursuant to this part who has had his or her license revoked shall not be eligible to be a partner, officer, director, or trustee of a business organization defined by this section or be employed in a managerial or supervisory capacity for a 5-year period. Such person shall also be ineligible to reapply for certification or registration under this part for a period of 5 years after the effective date of the revocation.

(10) If a business organization or any of its partners, officers, directors, trustees, or members is or has previously been fined for violating subsection (2) or s. 489.132, the board may, on that basis alone, revoke, suspend, place on probation, or deny issuance of a certificate or registration to a qualifying agent or financially responsible officer of that business organization.

(11)(a) Notwithstanding the provisions of chapters 120 and 455, upon receipt of a legally sufficient consumer complaint alleging a violation of this part, the department may provide by rule for binding arbitration between the complainant and the certificateholder or registrant, provided the following conditions exist:

1. There is evidence that the complainant has suffered or is likely to suffer monetary damages resulting from the violation of this part;

2. The certificateholder or registrant does not have a history of repeated or similar violations;

3. Reasonable grounds exist to believe that the public interest will be better served by arbitration than by disciplinary action; and

4. The complainant and certificateholder or registrant have not previously entered into private arbitration, and no civil court action based on the same transaction has been filed.

(b) The certificateholder or registrant and the complainant may consent in writing to binding arbitration within 15 days following notification of this process by the department. The department may suspend all action in the matter for 45 days when notice of consent to binding arbitration is received by the department. If the arbitration process is successfully concluded within the 60-day period, the department may close the case file with a notation of the disposition and the licensee's record shall reflect only that a complaint was filed and resolved through arbitration.

(c) Where a complaint meets the criteria for arbitration set forth in paragraph (a) and the damages at issue are less than \$2,500, the department shall refer the complaint for mandatory arbitration.

(d) The arbitrator's order shall become a final order of the board if not challenged by the complainant or the certificateholder or registrant within 30 days after filing. The board's review of the arbitrator's order shall operate in the manner of the review of recommended orders pursuant to s. 120.57(1) and shall not be a de novo review.

(12) When an investigation of a contractor is undertaken, the department shall promptly furnish to the contractor or the contractor's attorney a copy of the complaint or document that resulted in the initiation of

the investigation. The department shall make the complaint and supporting documents available to the contractor. The complaint or supporting documents shall contain information regarding the specific facts that serve as the basis for the complaint. The contractor may submit a written response to the information contained in such complaint or document within 20 days after service to the contractor of the complaint or document. The contractor's written response shall be considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chair of the board or the chair of the probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to a contractor if the act under investigation is a criminal offense.

**History.**—ss. 12, 17, ch. 79-200; s. 371, ch. 81-259; ss. 2, 3, ch. 81-318; s. 7, ch. 83-160; ss. 87, 119, ch. 83-329; s. 9, ch. 87-74; ss. 14, 20, 21, ch. 88-156; s. 13, ch. 89-162; s. 34, ch. 89-374; s. 24, ch. 90-109; s. 40, ch. 90-228; s. 39, ch. 91-137; s. 4, ch. 91-429; s. 63, ch. 92-149; s. 18, ch. 93-166; s. 9, ch. 96-298; s. 73, ch. 96-388; s. 226, ch. 96-410; s. 1129, ch. 97-103; s. 12, ch. 97-228; s. 146, ch. 98-166; s. 67, ch. 98-287; s. 9, ch. 98-419; s. 27, ch. 99-254; s. 205, ch. 2000-160; s. 3, ch. 2005-227; s. 35, ch. 2009-195.

**489.13 Unlicensed contracting; notice of non-compliance; fine; authority to issue or receive a building permit; web page.—**

(1) Any person performing an activity requiring licensure under this part as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity, regardless of whether he or she holds a local construction contractor license or local certificate of competency. Persons working outside the geographical scope of their registration are guilty of unlicensed activity for purposes of this part.

(2) For a first offense, any person who holds a state or local construction license and is found guilty of unlicensed contracting under this section shall be issued a notice of noncompliance pursuant to s. 489.131(7).

(3) Notwithstanding s. 455.228, the department may impose an administrative fine of up to \$10,000 on any unlicensed person guilty of unlicensed contracting. In addition, the department may assess reasonable investigative and legal costs for prosecution of the violation against the unlicensed contractor. The department may waive up to one-half of any fine imposed if the unlicensed contractor complies with certification or registration within 1 year after imposition of the fine under this subsection.

(4)(a) Any fines collected under this section shall be first used to cover the investigative and legal costs of prosecution.

(b) Any local governing body that forwards information relating to any person who is an unlicensed contractor shall collect 30 percent of the fine collected, after deduction of the investigative and legal costs of prosecution.

(c) The balance of any fines collected under this section shall be used to maintain the department's

unlicensed contractor website page, as specified in subsection (6), and to fund the Florida Homeowners' Construction Recovery Fund. Nothing in this paragraph shall be construed to permit recovery from the Construction Industries Recovery Fund if the contractor is unlicensed.

(5) A local building department shall not issue a building permit to any contractor, or to any person representing himself or herself as a contractor, who does not hold a valid active certificate or registration in the appropriate category. Possession of a local certificate of competency or local construction license is not sufficient to lawfully obtain a building permit as a construction contractor if the activity in question requires licensure under this part. Nothing in this section shall be construed as prohibiting a local building department from issuing a building permit to a locally licensed or certified contractor for an activity that does not require licensure under this part.

(6) The department shall create a web page, accessible through its Internet website, dedicated solely to listing any known information concerning unlicensed contractors. The information shall be provided in such a way that any person with computer online capabilities can access information concerning unlicensed contractors by name or by county. The department shall recognize that persons found guilty of unlicensed contracting do not have the same rights and privileges as licensees, and the department shall not restrict the quality or quantity of information on the web page required by this subsection, unless otherwise required by law.

(7) The remedies set forth in this section are not exclusive and may be imposed in addition to the remedies set forth in s. 489.127(2). In addition, nothing in this section is intended to prohibit the department or any local governing body from filing a civil action or seeking criminal penalties against an unlicensed contractor.

*History.—*s. 22, ch. 99-254; s. 1, ch. 2001-211; s. 9, ch. 2004-84.

#### **489.131 Applicability.—**

(1) This part applies to all contractors, including, but not limited to, those performing work for the state or any county or municipality. Officers of the state or any county or municipality shall determine compliance with this part before awarding any contract for construction, improvement, remodeling, or repair.

(2) The state or any county or municipality shall require that bids submitted for construction, improvement, remodeling, or repair on public projects be accompanied by evidence that the bidder holds an appropriate certificate or registration, unless the work to be performed is exempt under s. 489.103.

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

(a) To regulate the quality and character of work performed by contractors through a system of permits, fees, and inspections which is designed to secure compliance with and aid in the implementation of state and local building laws.

(b) To enforce other laws for the protection of the public health and safety.

(c) To collect business 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 business tax receipts. However, nothing in this part shall be construed to require general contractors, building contractors, or residential contractors to obtain additional business tax receipts 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.

(d) To adopt any system of permits requiring submission to and approval by the municipality or county of plans and specifications for work to be performed by contractors before commencement of the work.

(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 Florida Building Code 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 Florida Homeowners' Construction Recovery Fund 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.

(f) To refuse to issue permits or issue permits with specific conditions to a contractor who has committed multiple violations, when he or she has been disciplined for each of them by the board and when each disciplinary action has involved revocation or suspension of a license, imposition of an administrative fine of at least \$1,000, or probation; or to issue permits with specific conditions to a contractor who, within the previous 12 months, has had disciplinary action other than a citation or letter of guidance taken against him or her by the department or by a local board or agency which licenses contractors and has reported the action pursuant to paragraph (6)(c), for engaging in the business or acting in the capacity of a contractor without a license. However, this subsection does not supersede the provisions of s. 489.113(4), and no county or municipality may require any certificateholder to obtain a local professional license or pay a local professional license fee as a condition of performing any services within the scope of the certificateholder's statewide license as established under this part.

(4) Nothing in this part shall be construed to waive any requirement of any ordinance or resolution existing on October 1, 1979, of a board of county commissioners regulating the type of work required to be performed by a specialty contractor.

(5) Any official authorized to issue building or other related permits shall, before issuing a permit, ascertain that the applicant contractor is certified or is registered in the area where the construction is to take place.

(6)(a) No municipality or county may require the holder of a certificate issued pursuant to this part to sit for examination to operate within the scope of such certificate.

(b) To engage in contracting in the territorial area, an applicant shall also be registered with the board, as required by s. 489.117.

(c) Each local board or agency that licenses contractors must transmit quarterly to the board a report of any disciplinary action taken against contractors and of any administrative or disciplinary action taken against unlicensed persons for engaging in the business or acting in the capacity of a contractor including any cease and desist orders issued pursuant to s. 489.113(2)(b) and any fine issued pursuant to s. 489.127(5).

(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) 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 or her 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) 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 or her rights to appeal, and the consequences should he or she 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) 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) 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)1. The department may investigate any complaint which is made with the department. However, the department may not initiate or pursue any complaint against a registered contractor who is not also a certified contractor where a local jurisdiction enforcement body has jurisdiction over the complaint, unless summary procedures are initiated by the secretary pursuant to s. 455.225(8), or unless the local jurisdiction enforcement body has failed to investigate and prosecute a complaint, or make a finding of no violation, within 6 months of receiving the complaint. The department shall refer the complaint to the local jurisdiction enforcement body for investigation, and if appropriate, prosecution. However, the department may investigate such complaints to the extent necessary to determine whether summary procedures should be initiated.

2. Upon a recommendation by the department, the board may make conditional, suspend, or rescind its determination of the adequacy of the local government enforcement body's disciplinary procedures granted under s. 489.117(2).

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

(8) A local enforcement board may petition the secretary of the department for issuance of a summary order against a certificateholder or registrant for any violation of this part.

(9) The right to create local boards in the future by any municipality or county is preserved.

(10) No municipal or county government may issue any certificate of competency or license for any contractor defined in s. 489.105(3)(a)-(o) after July 1, 1993, unless such local government exercises disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in subsection (7). Each local board that licenses and disciplines contractors must have at least two consumer representatives on that board. If the board has seven or more members, at least three of those members must be consumer representatives. The consumer representative may be any resident of the local jurisdiction who is not, and has never been, a member or practitioner of a profession regulated by the board or a member of any closely related profession.

(11) Any municipal or county government which enters or has in place a reciprocal agreement which accepts a certificate of competency or license issued by another municipal or county government in lieu of its own certificate of competency or license allowing contractors defined in s. 489.105(3)(a)-(o), shall file a certified copy of such agreement with the board not later than 60 days after July 1, 1993, or 30 days after the effective date of such agreement.

(12) Unless specifically provided, the provisions of this part shall not be construed to create a civil cause of action.

**History.**—ss. 10, 17, ch. 79-200; s. 372, ch. 81-259; ss. 2, 3, ch. 81-318; s. 1, ch. 87-152; ss. 15, 20, 21, ch. 88-156; s. 30, ch. 89-289; s. 35, ch. 89-374; s. 40, ch. 91-137; s. 4, ch. 91-429; s. 6, ch. 92-55; ss. 64, 70, ch. 92-149; s. 19, ch. 93-166; s. 265, ch. 94-119; s. 4, ch. 95-240; s. 10, ch. 96-298; s. 73, ch. 96-388; s. 51, ch. 97-98; s. 1130, ch. 97-103; s. 13, ch. 97-228; s. 24, ch. 98-287; s. 10, ch. 98-419; s. 125, ch. 2000-141; s. 36, ch. 2000-154; s. 35, ch. 2001-186; s. 4, ch. 2001-372; s. 10, ch. 2004-84; s. 119, ch. 2007-5.

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

(1) No uncertified or unregistered person associated with a contracting firm qualified by the licensee under this chapter shall:

(a) Conceal or cause to be concealed, or assist in concealing, from the primary qualifying agent, any material activities or information about the contracting firm;

(b) Exclude or facilitate the exclusion of any aspect of the contracting firm's financial or other business activities from the primary qualifying agent;

(c) Knowingly cause any part of the contracting firm's activities, financial or otherwise, to be conducted without the primary qualifying agent's supervision; or

(d) Assist or participate with any certificateholder or registrant in the violation of any provision of this chapter.

(2) The department shall cause an investigation of any incident where it appears that any uncertified or unregistered person associated with a contracting firm

is in violation of this section. When, after investigation, the department finds there is probable cause to believe this section has been violated, the department shall prepare and file an administrative complaint which shall be served on the uncertified or unregistered person. The department shall prosecute the complaint pursuant to chapter 120.

(3) Upon a finding of a violation of this section, the department is authorized to impose a fine of not more than \$5,000 and assess reasonable investigative and legal costs for the prosecution of the violation against the violator. Any such fine and assessments shall be paid within 30 days of the filing of the final order with the department. In the event of an appeal, the time for payment of any fine and assessments shall be stayed until a final order is rendered upholding the department decision.

(4) In the event any fine and assessments imposed by the department are not paid within the time provided for payment, the department may bring action as provided in s. 489.129(6)(b) in the appropriate circuit court of the state for enforcement of the final order, and the circuit court shall not rehear the merit of those matters included in the final order of the department.

(5) The department may suspend, revoke, or deny issuance or renewal of a certificate or registration 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.

**History.**—ss. 36, 41, ch. 89-374; s. 4, ch. 91-429; s. 20, ch. 93-166; s. 14, ch. 97-228; s. 36, ch. 2009-195.

#### **489.133 Pollutant storage systems specialty contractors; definitions; certification; restrictions.**

(1) As used in this part:

(a) "Registered internal pollutant storage tank lining applicator" means any person who has registered with the department pursuant to subsection (3). This registration is exempt from the provisions of prior municipality, county, or development district registration, as required under s. 489.117, and is on a statewide basis.

(b) "Registered precision tank tester" means any person who has registered with the department pursuant to subsection (2).

(2) The board shall adopt rules providing standards for registration of precision tank testers who precision test a pollutant storage tank. The Department of Environmental Protection shall approve the methodology, procedures, and equipment used and shall approve the applicant as being eligible for registration as a registered precision tank tester. A registered precision tank tester is subject to the provisions of ss. 489.129 and 489.132 and is considered a contractor operating as a primary qualifying agent for the business entity employing him or her, which is considered a contracting firm for the purposes of ss. 489.129 and 489.132. A person who registers under this subsection is exempt

from municipal, county, or development district registration under s. 489.117 and may operate as a precision tank tester statewide.

(3) The board shall adopt rules providing standards for registration of internal pollutant storage tank lining applicators who internally line pollutant storage tanks as a method of upgrading or repairing pollutant storage tanks to prevent discharge of pollutants. The Department of Environmental Protection shall approve the methodology, procedures, and equipment used and shall approve the applicant as being eligible for registration as a registered internal pollutant storage tank lining applicator. A registered internal pollutant storage tank lining applicator is subject to the provisions of ss. 489.129 and 489.132, and shall be considered a contractor operating as a primary qualifying agent for the business entity employing him or her, which entity shall be considered a contracting firm for the purposes of ss. 489.129 and 489.132.

(4) The board shall adopt rules providing standards for certification of pollutant storage systems specialty contractors, including persons who remove such systems. The board shall provide the proposed rules to the Department of Environmental Protection for review and comment prior to adoption. The rules shall include, but not be limited to:

(a) Standards for operating as a pollutant storage systems specialty contractor.

(b) Requirements for certification as a pollutant storage systems specialty contractor.

(c) Requirements for certification without examination of pollutant storage systems specialty contractors for any person who has passed a local licensure examination, a licensure examination in another state, or a licensure examination of a national organization, which is at least as stringent as the examination adopted by the board.

(5)(a) Notwithstanding any provision of this part to the contrary, no person shall engage in contracting as a pollutant storage systems specialty contractor unless such person is certified as a pollutant storage systems specialty contractor pursuant to this part, nor shall any official authorized to issue building or other related permits issue a permit or permits for the installation or removal of a pollutant storage tank unless such official ascertains that the applicant for such permit or permits is certified as a pollutant storage systems specialty contractor.

(b) Any person installing a pollutant storage tank shall perform such installation in accordance with the standards adopted pursuant to s. 376.303.

(6) Any person who operates as a pollutant storage systems specialty contractor, precision tank tester, or internal pollutant storage tank lining applicator in violation of this section or any person who violates subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—ss. 16, 21, ch. 88-156; s. 37, ch. 89-374; s. 41, ch. 91-137; s. 43, ch. 91-305; s. 4, ch. 91-429; s. 30, ch. 93-166; s. 457, ch. 94-356; s. 487, ch. 97-103; s. 37, ch. 2000-154.

**489.134 Authority of licensed job scope.**—A licensee under this part need not have a license

under part II to perform work within the scope of his or her license under this part.

**History.**—s. 35, ch. 90-228; s. 11, ch. 91-201; s. 4, ch. 91-429; s. 488, ch. 97-103.

**489.140 Florida Homeowners' Construction Recovery Fund.**—There is created the Florida Homeowners' Construction Recovery Fund as a separate account in the Professional Regulation Trust Fund. The recovery fund shall be funded out of the receipts deposited in the Professional Regulation Trust Fund from the one-half cent per square foot surcharge on building permits collected and disbursed pursuant to s. 468.631.

**History.**—s. 21, ch. 93-166; s. 31, ch. 98-419; s. 38, ch. 2000-154; s. 1, ch. 2004-84.

**489.1401 Legislative intent.**—

(1) It is the intent of the Legislature that actions taken by the Construction Industry Licensing Board with respect to contractor sanctions and pursuant to this chapter are an exercise of the department's regulatory power for the protection of public safety and welfare.

(2) It is the intent of the Legislature that the sole purpose of the Florida Homeowners' Construction Recovery Fund is to compensate any aggrieved claimant who contracted for the construction or improvement of the residence located within this state and who has obtained a final judgment in any court of competent jurisdiction, was awarded restitution by the Construction Industry Licensing Board, or received an award in arbitration against a licensee on grounds of financial mismanagement or misconduct, abandoning a construction project, or making a false statement with respect to a project and arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under s. 489.129(1)(g), (j) or (k) on the homeowner's residence.

(3) It is the intent of the Legislature that Division I contractors set apart funds for the specific objective of participating in the fund.

**History.**—s. 2, ch. 2004-84.

**489.1402 Homeowners' Construction Recovery Fund; definitions.**—

(1) The following definitions apply to ss. 489.140-489.144:

(a) "Arbitration" means alternative dispute resolution entered into between a claimant and a contractor either pursuant to a construction contract that contains a mandatory arbitration clause or through any binding arbitration under the Florida Arbitration Code.

(b) "Board" means the Construction Industry Licensing Board.

(c) "Claimant" means a homeowner.

(d) "Contractor" means a Division I contractor performing services described in s. 489.105(3)(a)-(c).

(e) "Court of competent jurisdiction" means a civil or criminal court in the State of Florida, or a bankruptcy court.

(f) "Homeowner" means the owner of an owner-occupied residence, including a trustee based upon a trust instrument granting a person a beneficial interest for life in the residence.

(g) "Licensee" means a contractor, financially responsible officer, or business organization licensed under this part at the time the violation was committed.

(h) "Notice" means service as described in s. 455.275.

(i) "Residence" means an individual residential condominium or cooperative unit or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.

(j) "Recovery fund" means the Florida Homeowners' Construction Recovery Fund.

(k) "Same transaction" means a contract, or any series of contracts, between a claimant and a contractor or qualified business, when such contract or contracts involve the same property or contiguous properties and are entered into either at one time or serially.

(l) "Valid and current license," for the purpose of s. 489.141(2)(d), means any license issued pursuant to this part to a licensee, including a license in an active, inactive, delinquent, or suspended status.

(2) The following definitions apply to claims made prior to July 1, 2007, when the contract was executed and the violation occurred on or before January 1, 2005.

(a) "Claimant" means a natural person.

(b) "Licensee" means a contractor, financially responsible officer, or business organization licensed under this part at the time the violation was committed.

*History.—s. 3, ch. 2004-84.*

#### **489.141 Conditions for recovery; eligibility.—**

(1) Any claimant is eligible to seek recovery from the recovery fund after having made a claim and exhausting the limits of any available bond, cash bond, surety, guarantee, warranty, letter of credit, or policy of insurance, provided that each of the following conditions is satisfied:

(a) The claimant has received final judgment in a court of competent jurisdiction in this state or has received an award in arbitration or the Construction Industry Licensing Board has issued a final order directing the licensee to pay restitution to the claimant. The board may waive this requirement if:

1. The claimant is unable to secure a final judgment against the licensee due to the death of the licensee; or

2. The claimant has sought to have assets involving the transaction that gave rise to the claim removed from the bankruptcy proceedings so that the matter might be heard in a court of competent jurisdiction in this state and, after due diligence, the claimant is precluded by action of the bankruptcy court from securing a final judgment against the licensee.

(b) The judgment, award, or restitution is based upon a violation of s. 489.129(1)(g), (j), or (k) or s. 713.35.

(c) The violation was committed by a licensee.

(d) The judgment, award, or restitution order specifies the actual damages suffered as a consequence of such violation.

(e) The contract was executed and the violation occurred on or after July 1, 1993, and provided that:

1. The claimant has caused to be issued a writ of execution upon such judgment, and the officer executing the writ has made a return showing that no personal or real property of the judgment debtor or licensee liable to be levied upon in satisfaction of the judgment can be found or that the amount realized on the sale of the judgment debtor's or licensee's property pursuant to such execution was insufficient to satisfy the judgment;

2. If the claimant is unable to comply with subparagraph 1. for a valid reason to be determined by the board, the claimant has made all reasonable searches and inquiries to ascertain whether the judgment debtor or licensee is possessed of real or personal property or other assets subject to being sold or applied in satisfaction of the judgment and by his or her search has discovered no property or assets or has discovered property and assets and has taken all necessary action and proceedings for the application thereof to the judgment but the amount thereby realized was insufficient to satisfy the judgment; and

3. The claimant has made a diligent attempt, as defined by board rule, to collect the restitution awarded by the board.

(f) A claim for recovery is made within 1 year after the conclusion of any civil, criminal, or administrative action or award in arbitration based on the act. This paragraph applies to any claim filed with the board after October 1, 1998.

(g) Any amounts recovered by the claimant from the judgment debtor or licensee, or from any other source, have been applied to the damages awarded by the court or the amount of restitution ordered by the board.

(h) The claimant is not a person who is precluded by this act from making a claim for recovery.

(2) A claimant is not qualified to make a claim for recovery from the recovery fund, if:

(a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse;

(b) The claimant is a licensee who acted as the contractor in the transaction which is the subject of the claim;

(c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee;

(d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract;

(e) The claimant was associated in a business relationship with the licensee other than the contract at issue;

(f) The claimant has suffered damages as the result of making improper payments to a contractor as defined in part I of chapter 713; or

(g) The claimant has contracted with a licensee to perform a scope of work described in s. 489.105(3)(d)-(q).

(3) The board may determine by rule documentation that is required to complete a claim.

*History.—s. 21, ch. 93-166; s. 266, ch. 94-119; s. 489, ch. 97-103; s. 32, ch. 98-419; s. 39, ch. 2000-154; s. 4, ch. 2004-84.*

#### **489.142 Board powers relating to recovery; conduct of hearings and service.—**

(1) With respect to actions for recovery from the recovery fund, the board may intervene, enter an appearance, file an answer, defend the action, or take any action it deems appropriate and may take recourse through any appropriate method of review on behalf of the State of Florida. The board may delegate to the department by rule the authority to close any case when a claimant is not qualified to make a claim for recovery from the recovery fund under s. 489.141(2); when after notice the claimant has failed to provide documentation in support of the claim as required by the board; or when the licensee has reached the aggregate limit.

(2) Notwithstanding any other provision of law, the board shall cause a notice of hearing to be served 14 days in advance of the hearing on the claimant and on the licensee whose license is subject to suspension by s. 489.143. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under s. 120.569, s. 120.57, or s. 120.68; shall indicate the procedure that must be followed to obtain the hearing or judicial review; and shall state the time limits that apply. Service of the notice on the licensee shall be made in accordance with s. 455.275. Service of the notice on the claimant shall be by regular United States mail at the address provided on the claim. The service of notice in accordance with this section is complete upon expiration of 14 days after deposit in the United States mail. Proof of service of a notice shall be made by entry in the records of the department that the notice was given. The entry shall be admissible in judicial and administrative proceedings of this state and shall constitute sufficient proof that notice was given.

(3) Notwithstanding any other provision of law, board hearings on claims shall be conducted in accordance with ss. 120.569 and 120.57(2). All claim hearings shall be conducted at the board's regular meeting at the place, date, and time published. Orders of the board denying or awarding funds to a claimant constitute final orders that may be appealed in accordance with s. 120.68. Orders awarding or denying claims shall be served in the same manner as notices of hearing in this section.

*History.—*s. 21, ch. 93-166; s. 33, ch. 98-419; s. 5, ch. 2004-84.

#### **489.1425 Duty of contractor to notify residential property owner of recovery fund.—**

(1) Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500. The written statement must be substantially in the following form:

#### **FLORIDA HOMEOWNERS' CONSTRUCTION RECOVERY FUND**

PAYMENT MAY BE AVAILABLE FROM THE  
FLORIDA HOMEOWNERS' CONSTRUCTION  
RECOVERY FUND IF YOU LOSE MONEY ON  
A PROJECT PERFORMED UNDER CONTRACT,  
WHERE THE LOSS RESULTS FROM SPECIFIED  
VIOLATIONS OF FLORIDA LAW BY A LICENSED  
CONTRACTOR. FOR INFORMATION ABOUT

#### **THE RECOVERY FUND AND FILING A CLAIM, CONTACT THE FLORIDA CONSTRUCTION IN- DUSTRY LICENSING BOARD AT THE FOLLOW- ING TELEPHONE NUMBER AND ADDRESS:**

The statement shall be immediately followed by the board's address and telephone number as established by board rule.

(2)(a) Upon finding a first violation of subsection (1), the board may fine the contractor up to \$500, and the moneys must be deposited into the recovery fund.

(b) Upon finding a second or subsequent violation of subsection (1), the board shall fine the contractor \$1,000 per violation, and the moneys must be deposited into the recovery fund.

*History.—*s. 5, ch. 95-240; s. 11, ch. 96-298; s. 73, ch. 96-388; s. 6, ch. 2004-84.

#### **489.143 Payment from the fund.—**

(1) The fund shall be disbursed as provided in s. 489.141 on a final order of the board.

(2) Any claimant who meets all of the conditions prescribed in s. 489.141 may apply to the board to cause payment to be made to a claimant from the recovery fund in an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant. Payment from the fund for other costs related to or pursuant to civil proceedings such as postjudgment interest, attorney's fees, court costs, medical damages, and punitive damages is prohibited. The recovery fund is not obligated to pay any judgment, award, or restitution order, or any portion thereof, which is not expressly based on one of the grounds for recovery set forth in s. 489.141. Beginning January 1, 2005, for each contract entered after July 1, 2004, payment from the recovery fund shall be subject to a \$50,000 maximum payment.

(3) Upon receipt by a claimant under subsection (2) of payment from the recovery fund, the claimant shall assign his or her additional right, title, and interest in the judgment, award, or restitution order, to the extent of such payment, to the board, and thereupon the board shall be subrogated to the right, title, and interest of the claimant; and any amount subsequently recovered on the judgment, award, or restitution order, to the extent of the right, title, and interest of the board therein, shall be for the purpose of reimbursing the recovery fund.

(4) Payments for claims arising out of the same transaction shall be limited, in the aggregate, to the lesser of the judgment, award, or restitution order or the maximum payment allowed, regardless of the number of claimants involved in the transaction.

(5) Payments for claims against any one licensee shall not exceed, in the aggregate, \$100,000 annually, up to a total aggregate of \$250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of \$100,000 up to the total aggregate cap of \$250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual

or per claimant limits under law. Beginning January 1, 2005, for each contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of \$500,000.

(6) Claims shall be paid in the order filed, up to the aggregate limits for each transaction and licensee and to the limits of the amount appropriated to pay claims against the fund for the fiscal year in which the claims were filed.

(7) If the annual appropriation is exhausted with claims pending, such claims shall be carried forward to the next fiscal year. Any moneys in excess of pending claims remaining in the recovery fund at the end of the fiscal year shall be paid as provided in s. 468.631.

(8) Upon the payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee as described in s. 489.141, the license of such licensee shall be automatically suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee shall not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund. A discharge of bankruptcy does not relieve a person from the penalties and disabilities provided in this section.

(9) Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, who aids, abets, solicits, or conspires with any person to knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under this act is guilty of a third-degree felony, punishable as provided in s. 775.082 or s. 775.084 and by a fine not exceeding \$30,000, unless the value of the fraud exceeds \$30,000 in which event the fine may not exceed double the value of the fraud.

(10) All payments and disbursements from the recovery fund shall be made by the Chief Financial Officer upon a voucher signed by the secretary of the department or the secretary's designee.

**History.**—s. 21, ch. 93-166; s. 267, ch. 94-119; s. 12, ch. 96-298; s. 73, ch. 96-388; s. 1131, ch. 97-103; s. 1, ch. 98-162; s. 34, ch. 98-419; s. 7, ch. 2004-84.

**489.144 Investment of the fund.**—The funds in the recovery fund may be invested by the Chief Financial Officer under the same limitations as apply to the investment of other state funds, and the interest earned thereon shall be deposited to the credit of the recovery fund and shall be available for the same purposes as other moneys deposited in the recovery fund.

**History.**—s. 21, ch. 93-166; s. 509, ch. 2003-261; s. 8, ch. 2004-84.

**489.145 Guaranteed energy, water, and wastewater performance savings contracting.**—

(1) **SHORT TITLE.**—This section may be cited as the “Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act.”

(2) **LEGISLATIVE FINDINGS.**—The Legislature finds that investment in energy, water, and wastewater efficiency and conservation measures in agency facilities can reduce the amount of energy and water consumed and wastewater produced and produce immediate and long-term savings. It is the policy of this state to encourage each agency to invest in energy,

water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings. It is further the policy of this state to encourage agencies to reinvest any savings resulting from energy, water, and wastewater efficiency and conservation measures in additional energy, water, and wastewater efficiency and conservation measures.

(3) **DEFINITIONS.**—As used in this section, the term:

(a) “Agency” means the state, a municipality, or a political subdivision.

(b) “Energy, water, and wastewater efficiency and conservation measure” means a training program incidental to the contract, facility alteration, or equipment purchase to be used in new construction, including an addition to existing facilities or infrastructure, which reduces energy or water consumption, wastewater production, or energy-related operating costs and includes, but is not limited to:

1. Insulation of the facility structure and systems within the facility.

2. Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

3. Automatic energy control systems.

4. Heating, ventilating, or air-conditioning system modifications or replacements.

5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.

6. Energy recovery systems.

7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

8. Energy conservation measures that reduce British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh) consumed or provide long-term operating cost reductions.

9. Renewable energy systems, such as solar, biomass, or wind systems.

10. Devices that reduce water consumption or sewer charges.

11. Energy storage systems, such as fuel cells and thermal storage.

12. Energy-generating technologies, such as micro-turbines.

13. Any other repair, replacement, or upgrade of existing equipment.

(c) “Energy, water, or wastewater cost savings” means a measured reduction in the cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance.

(d) "Guaranteed energy, water, and wastewater performance savings contract" means a contract for the evaluation, recommendation, and implementation of energy, water, or wastewater efficiency or conservation measures, which, at a minimum, shall include:

1. The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.

2. The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract and may include allowable cost avoidance if determined appropriate by the Chief Financial Officer.

3. The finance charges incurred by the agency over the life of the contract.

(e) "Guaranteed energy, water, and wastewater performance savings contractor" means a person or business that is licensed under chapter 471, chapter 481, or this chapter and is experienced in the analysis, design, implementation, or installation of energy, water, and wastewater efficiency and conservation measures through energy performance contracts.

(f) "Investment grade energy audit" means a detailed energy, water, and wastewater audit, along with an accompanying analysis of proposed energy, water, and wastewater conservation measures, and their costs, savings, and benefits prior to entry into an energy savings contract.

#### (4) PROCEDURES.—

(a) An agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor to reduce energy or water consumption, wastewater production, or energy-related operating costs of an agency facility through one or more energy, water, or wastewater efficiency or conservation measures.

(b) Before design and installation of energy, water, or wastewater efficiency and conservation measures, the agency must obtain from a guaranteed energy, water, and wastewater performance savings contractor a report that summarizes the costs associated with the energy, water, or wastewater efficiency and conservation measures or energy-related operational cost-saving measures and provides an estimate of the amount of the cost savings. The agency and the guaranteed energy, water, and wastewater performance savings contractor may enter into a separate agreement to pay for costs associated with the preparation and delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of energy, water, and wastewater cost savings being equal to or greater than the total projected costs of the design and installation of the report's energy conservation measures.

(c) The agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor if the agency finds that the amount the agency would spend on the energy, water, and wastewater efficiency and conservation measures will not likely exceed the amount of the

cost savings for up to 20 years from the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the cost savings will meet or exceed the costs of the system. However, actual computed cost savings must meet or exceed the estimated cost savings provided in each agency's program approval. Baseline adjustments used in calculations must be specified in the contract. The contract may provide for installment payments for a period not to exceed 20 years.

(d) A guaranteed energy, water, and wastewater performance savings contractor must be selected in compliance with s. 287.055; except that if fewer than three firms are qualified to perform the required services, the requirement for agency selection of three firms, as provided in s. 287.055(4)(b), and the bid requirements of s. 287.057 do not apply.

(e) Before entering into a guaranteed energy, water, and wastewater performance savings contract, an agency must provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

(f) A guaranteed energy, water, and wastewater performance savings contract may provide for financing, including tax-exempt financing, by a third party. The contract for third-party financing may be separate from the energy, water, and wastewater performance contract. A separate contract for third-party financing under this paragraph must include a provision that the third-party financier must not be granted rights or privileges that exceed the rights and privileges available to the guaranteed energy, water, and wastewater performance savings contractor.

(g) Financing for guaranteed energy, water, and wastewater performance savings contracts may be provided under the authority of s. 287.064.

(h) The Office of the Chief Financial Officer shall review proposals from state agencies to ensure that the most effective financing is being used.

(i) Annually, the agency that has entered into the contract shall provide the Department of Management Services and the Chief Financial Officer the measurement and verification report required by the contract to validate that savings have occurred.

(j) In determining the amount the agency will finance to acquire the energy, water, and wastewater efficiency and conservation measures, the agency may reduce such amount by the application of any grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy, water, and wastewater performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

#### (5) CONTRACT PROVISIONS.—

(a) A guaranteed energy, water, and wastewater performance savings contract must include a written guarantee that may include, but is not limited to the form of, a letter of credit, insurance policy, or corporate guarantee by the guaranteed energy, water, and

wastewater performance savings contractor that annual cost savings will meet or exceed the amortized cost of energy, water, and wastewater efficiency and conservation measures.

(b) The guaranteed energy, water, and wastewater performance savings contract must provide that all payments, except obligations on termination of the contract before its expiration, may be made over time, but not to exceed 20 years from the date of complete installation and acceptance by the agency, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy, water, and wastewater performance savings contract.

(c) The guaranteed energy, water, and wastewater performance savings contract must require that the guaranteed energy, water, and wastewater performance savings contractor to whom the contract is awarded provide a 100-percent public construction bond to the agency for its faithful performance, as required by s. 255.05.

(d) The guaranteed energy, water, and wastewater performance savings contract may contain a provision allocating to the parties to the contract any annual cost savings that exceed the amount of the cost savings guaranteed in the contract.

(e) The guaranteed energy, water, and wastewater performance savings contract shall require the guaranteed energy, water, and wastewater performance savings contractor to provide to the agency an annual reconciliation of the guaranteed energy or associated cost savings. If the reconciliation reveals a shortfall in annual energy or associated cost savings, the guaranteed energy, water, and wastewater performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in annual cost savings, the excess savings may be allocated under paragraph (d) but may not be used to cover potential energy or associated cost savings shortages in subsequent contract years.

(f) The guaranteed energy, water, and wastewater performance savings contract must provide for payments of not less than one-twentieth of the price to be paid within 2 years from the date of the complete installation and acceptance by the agency using straight-line amortization for the term of the loan, and the remaining costs to be paid at least quarterly, not to exceed a 20-year term, based on life cycle cost calculations.

(g) The guaranteed energy, water, and wastewater performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 years, subject to the agency making sufficient annual appropriations based upon continued realized energy, water, and wastewater savings.

(h) The guaranteed energy, water, and wastewater performance savings contract must stipulate that it does not constitute a debt, liability, or obligation of the state.

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the Office of the Chief

Financial Officer, shall, within available resources, provide technical content assistance to state agencies contracting for energy, water, and wastewater efficiency and conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy, water, and wastewater performance contracting by state agencies. The Department of Management Services shall review the investment-grade audit for each proposed project and certify that the cost savings are appropriate and sufficient for the term of the contract. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall, within available resources, develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy, water, and wastewater performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval. A proposed contract or lease shall include:

(a) Supporting information required by s. 216.023(4)(a)9. in ss. 287.063(5) and 287.064(11). For contracts approved under this section, the criteria may, at a minimum, include the specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals shall be evaluated.

(b) Documentation supporting recurring funds requirements in ss. 287.063(5) and 287.064(11).

(c) Approval by the head of the agency or his or her designee.

(d) An agency measurement and verification plan to monitor cost savings.

(7) FUNDING SUPPORT.—For purposes of consolidated financing of deferred payment commodity contracts under this section by an agency, any such contract must be supported from available funds appropriated to the agency in an appropriation category, as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

The Office of the Chief Financial Officer shall not approve any contract submitted under this section from a state agency that does not meet the requirements of this section.

**History.**—s. 1, ch. 94-112; s. 1, ch. 2001-81; s. 510, ch. 2003-261; s. 99, ch. 2008-227; s. 59, ch. 2009-21.

#### **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 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;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) 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.

**History.**—s. 15, ch. 97-228; s. 25, ch. 98-287; s. 37, ch. 2009-195.

**Note.**—Section 69, ch. 2002-194, repealed s. 20.171, which created the Department of Labor and Employment Security.

**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.

**History.**—s. 16, ch. 97-228; s. 85, ch. 2005-2.

**PART II**

**ELECTRICAL AND ALARM SYSTEM CONTRACTING**

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**489.501 Purpose.**—The Legislature deems it necessary in the interest of public health, safety, and welfare to regulate the electrical and alarm system contractors in this state. This regulation seeks to enable qualified persons to obtain licensure, while ensuring that applicants have sufficient technical experience in the applicable trade prior to licensure, are tested on technical and business matters, and upon licensure are made subject to disciplinary procedures and effective policing of the profession.

**History.**—ss. 1, 17, ch. 79-272; ss. 2, 3, ch. 81-318; ss. 1, 14, ch. 87-254; ss. 21, 23, ch. 88-149; s. 4, ch. 91-429; s. 269, ch. 94-119; s. 21, ch. 2000-332.

**489.503 Exemptions.**—This part does not apply to:

(1) Any employee of a certificateholder, registrant, or business organization authorized to engage in contracting who is acting within the scope of the license held by that certificateholder or registrant and with the knowledge and permission of the licenseholder. However:

(a) If the employer is not a certificateholder or registrant in that type of contracting, and the employee performs any of the following, the employee is not exempt:

- 1. Holds himself or herself or his or her employer out to be licensed or qualified by a licensee;
- 2. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
- 3. Performs any of the acts which constitute contracting.

(b) The legislative intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

For the purpose of this part, "employee" is defined as a person who receives compensation from, and is under the supervision and control of, an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law.