

1987

Session Law 87-152

Florida Senate & House of Representatives

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STORAGE NAME: 87-h0114GSA

Date: February 23, 1984
Revised: May 7, 1987
Final: June 8, 1987

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMUNITY AFFAIRS
STAFF ANALYSIS

BILL #: CS/HB 0114
RELATING TO: Contracting; state and local building codes
SPONSOR(S): Representative Hargrett
EFFECTIVE DATE: Upon becoming a law
COMPANION BILL(S): None
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

I. SUMMARY:

This bill amends section 489.131(3) and section 489.537(3), Florida Statutes (1986) by allowing local governments to require a bond for construction contractors and electrical contractors conditioned upon compliance with state and local building codes. The code compliance bond would ensure that reconstruction and repair of defective work and/or material is performed to the satisfaction of local building officials.

Presently, when a complaint is filed against a contractor, the Department of Professional Regulation (DPR), conducts an investigation and reports its findings to a probable cause panel composed of various members of the Construction Industry Licensing Board (CILB) or the Electrical Contractors' Licensing Board (ECLB), whichever is appropriate. Within 30 days of receipt of the findings from DPR, the probable cause panel is required to make a determination on whether the facts establish sufficient probable cause to warrant prosecution.

If probable cause is found, the panel may direct DPR to issue an administrative complaint against the contractor and prosecute. If the contractor elects to proceed to a formal hearing, the case is assigned to a hearing officer from the Division of Administrative Hearings of the Department of Administration. Once the hearing officer issues a recommended order to the CILB or ECLB, the board makes a determination and issues a final order. This process could take up to a year before discipline is imposed.

Only after the issuance of the final order does the board have the authority to discipline the contractor. The board may choose to simply reprimand or censure the violator, or to revoke, suspend or deny the contractor's license. In lieu of all other discipline the

board may impose an administrative fine of not more than \$1,000 per violation. The board does not have the authority to order the contractor to immediately correct the violation or make restitution to the aggrieved consumer.

The proposed legislation allows cities and counties to require construction contractors and electrical contractors to purchase a \$5,000 code compliance bond before a permit to erect, install, renovate or repair any structure is issued. The bond would cost approximately \$55, would be payable to the Governor of the state of Florida, and would be reciprocal throughout the state.

The code compliance bond requirement provides a method through which local governments can more effectively enforce immediate correction of building code violations instead of being relegated to only using the DPR disciplinary process. Sections 489.131(3)(a) and 489.537(3)(a) are primarily concerned with the regulation of the quality of work performed by contractors through the use of permits, fees and inspections. This bill allows local governments to take the next step, i.e., enforcement. Although the DPR disciplinary process remains a viable and necessary method of regulating the work performance of contractors, the requirement of a code compliance bond would provide a mechanism for cities and counties to attempt to effectuate enforcement at the local level.

II. ECONOMIC IMPACT:

A. Public:

All persons, firms or corporations licensed as construction contractors and electrical contractors would be required to pay approximately \$55 for the purchase of a \$5,000 bond.

B. Government:

This bill could have a positive impact on state government by reducing the number of complaints filed through the DPR disciplinary process.

III. STATE COMPREHENSIVE PLAN IMPACT:

This bill would have no direct impact upon the State Comprehensive Plan. However, it would have an indirect, positive impact because it requires compliance with state minimum building codes.

IV. COMMENTS:

It should be noted that the third and fourth whereas clauses of this proposal indicate that the intent of this bill is to provide protection for the consumer. When a contractor fails to respond to a building official's order to correct a code violation, it appears that the consumer is to be allowed to file a claim against the \$5,000 bond. Bonding contracts are generally made between two parties, the principal and the bonding company. If it is the intent of this bill to provide the consumer with the right to make a direct claim against

the bonding company, the language should be amended to expressly state that intent.

An identical bill was filed during the 1986 legislative session as HB 888. It was referred to the House Committee on Community Affairs and the House Committee on Appropriations, but was withdrawn from both on May 9, 1986.

The following amendments may be offered:

On page 1, line 4, insert the word "construction" between the words "a" and "contractor."

On page 1, line 26, strike "contractor" and insert "contractor."

On page 2, line 10, insert: (f) Any owner of property which has been determined to be in violation of state and local building codes shall be entitled to file a direct claim against the surety of the contractor for the amount necessary to correct the violation. In no event shall this amount exceed the total value of the bond.

On page 2, line 21, insert: (e) Any owner of property which has been determined to be in violation of state and local building codes shall be entitled to file a direct claim against the surety of the contractor for the amount necessary to correct the violation. In no event shall this amount exceed the total value of the bond.

V. AMENDMENTS:

This bill passed full committee and was adopted as a committee substitute with four amendments and one amendment to amendment No. 3. Amendments No. 1 and No. 2 are technical amendments. Amendments No. 3 and No. 4 are identical. These amendments make it clear that the code compliance bond should be available to all contractors regardless of tenure, certification, registration or financial responsibility requirements. The amendment to amendment No. 3 exempts contractors from bonding where a third party warranty policy is obtained.

VI. END OF SESSION UPDATE:

The Committee Substitute for House Bill 114 passed the House with Committee amendments on May 27, 1987; and was passed by the Senate and ordered enrolled on June 3, 1987. The bill became a law on June 30, 1987. See chapter 87-152, Laws of Florida.

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