

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 369 Construction Contracting Regulation Exemption

**SPONSOR(S):** Rodriguez and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1212

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**FINAL HOUSE FLOOR ACTION:** 115 Y's      0 N's            **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 369 passed the House on April 1, 2021, and subsequently passed the Senate on April 14, 2021.

Construction Contractors are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law. For example, an unlicensed person may perform contracting work if it is casual, minor, or inconsequential in nature, and the total contract price for all labor and materials is less than \$2,500, subject to certain requirements.

“Chickees” are open sided wooden huts constructed with cypress logs and palm thatch leaves that are woven together by vines or thin ropes. Native Americans used chickees for housing during the Seminole wars when Native Americans were pursued by U.S. troops. Chickees are no longer used for actual housing, but chickees are still being built and used in the state. Members of certain Native American Tribes in Florida still build chickees for commercial and private interests.

Current law provides that chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida are exempt from the requirements of the Florida Building Code. However, current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe and the Miccosukee Tribe of Indians who build chickees. Some local jurisdictions require that a person hold a certain state certified contractor license in order to build a chickee.

The bill creates a contracting licensure exemption by providing that members of the Seminole Tribe of Florida and members of the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

The bill does not have a fiscal impact on state and local governments.

The bill was approved by the Governor on May 7, 2021, ch. 2021-22, L.O.F., and will become effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Current Situation**

##### *Construction Professional Licenses*

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.<sup>1</sup>

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.<sup>2</sup>

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.<sup>3</sup>

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.<sup>4</sup>

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee<sup>5</sup> of a certified or registered contractor, or fall under an exemption provided in current law.<sup>6</sup>

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<sup>1</sup> S. 489.107, F.S.

<sup>2</sup> S. 489.105, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Ss. 489.105, & 489.117, F.S.

<sup>5</sup> "Employee" means 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. S. 489.103(2)(b), F.S.

<sup>6</sup> Ss. 489.103(2), & 489.113, F.S.

The CILB licenses the following types of contractors:<sup>7</sup>

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none"> <li>• Air Conditioning- Classes A, B, and C</li> <li>• Building</li> <li>• General</li> <li>• Internal Pollutant Storage Tank Lining Applicator</li> <li>• Mechanical</li> <li>• Plumbing</li> <li>• Pollutant Storage Systems</li> <li>• Pool/Spa- Classes A, B, and C</li> <li>• Precision Tank Tester</li> <li>• Residential</li> <li>• Roofing</li> <li>• Sheet Metal</li> <li>• Solar</li> <li>• Underground Excavation</li> </ul>	<ul style="list-style-type: none"> <li>• Drywall</li> <li>• Demolition</li> <li>• Gas Line</li> <li>• Glass and Glazing</li> <li>• Industrial Facilities</li> <li>• Irrigation</li> <li>• Marine</li> <li>• Residential Pool/Spa Servicing</li> <li>• Solar Water Heating</li> <li>• Structure</li> <li>• Swimming Pool Decking</li> <li>• Swimming Pool Excavation</li> <li>• Swimming Pool Finishes</li> <li>• Swimming Pool Layout</li> <li>• Swimming Pool Piping</li> <li>• Swimming Pool Structural</li> <li>• Swimming Pool Trim</li> <li>• Tower</li> </ul>

The CILB is divided into the following two divisions with separate jurisdictions:<sup>8</sup>

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
  - General contractors are unlimited as to the type of work they may do, such as contracting to build high-rise buildings, and may perform any work requiring licensure, except as otherwise expressly provided in current law.<sup>9</sup>
  - Building contractors may construct commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and remodel, repair, or improve any size building if the services do not affect the structure of the building.<sup>10</sup>
  - Residential Contractors may construct, remodel, repair, or improve one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story.<sup>11</sup>
- 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 CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

<sup>7</sup> S. 489.105(a)-(q), F.S.; Rule 61G4-15.015-040, F.A.C.

<sup>8</sup> S. 489.107(4), F.S.

<sup>9</sup> S. 489.105(3)(a), F.S.

<sup>10</sup> S. 489.105(3)(b), F.S.

<sup>11</sup> S. 489.105(3)(c), F.S.

- A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.<sup>12</sup>

In order to become a construction contractor, an applicant must meet the following criteria:<sup>13</sup>

- be of good moral character;
- be at least 18 years of age;
- successfully pass the certification examination; and
- meet eligibility requirements according to a combination of education and experience as approved by the board, which generally includes four years of education and/or experience depending on the license with at least one year being experience.

### *Exceptions to Construction Professional Licensure*

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 23 exemptions provided in current law, including:<sup>14</sup>

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than \$2,500, subject to certain requirements. This is referred to as the handyman exemption;
- an owner who is building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed \$75,000, subject to certain requirements;
- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;
- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and
- An employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

### *The Florida Building Code*

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within DBPR, implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.<sup>15</sup>

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act), which provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from

<sup>12</sup> For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. *See* Fla. Admin. Code Rule 61G4-15.032.

<sup>13</sup> S. 489.111(2)(c), F.S.

<sup>14</sup> S. 489.103, F.S.

<sup>15</sup> S. 553.73(7), F.S.

jurisdiction to jurisdiction.<sup>16</sup> The Building Code is adopted, updated, and interpreted by the Commission, and is enforced by local governments.<sup>17</sup>

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.<sup>18</sup>

### *The Seminole Tribe of Florida and The Miccosukee Tribe of Indians of Florida*

Seminole history begins with bands of Creek Indians from Georgia and Alabama who migrated to Florida in the 1700s. Conflicts with Europeans and other tribes caused them to seek new lands to live in peace.<sup>19</sup> Based on their movement to Florida, these Native Americans collectively became known as Seminole, a name meaning "wild people" or "runaway." In addition to Creeks, Seminoles included Yuchis, Yamasses and other tribes that had lived and hunted all over the Florida peninsula for thousands of years. The population also included runaway slaves who found refuge among the Native Americans.<sup>20</sup>

On July 21, 1957, tribal members voted in favor of a Seminole Constitution which established the Seminole Tribe of Florida, and the U.S. government formally recognized them as a Native American Tribe in the same year.<sup>21</sup>

In order to be a member of the Seminole Tribe of Florida, a person must meet the following three requirements:<sup>22</sup>

- Have a minimum of one-quarter Florida Seminole blood (one of the person's grandparents must have been a full-blooded Florida Seminole);
- Be able to prove (with written documentation) that he or she is directly related to a Florida Seminole who was listed on the 1957 Tribal Roll, which is the Base Roll of the Seminole Tribe of Florida; and
- Be sponsored for enrollment by someone who is currently a member of the Seminole Tribe of Florida.

The Miccosukee Tribe of Indians of Florida was originally part of the same group of Native Americans as the Seminoles. However, they separated from the Seminole Tribe and became an independent tribe. The U.S. government formally recognized them as a Native American Tribe on January 11, 1962.<sup>23</sup>

In order to a member of the Miccosukee Tribe of Indians of Florida, a person must have a Miccosukee mother and not be enrolled in any other Tribe.<sup>24</sup>

### *Chickees*

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<sup>16</sup> See s. 553.72(1), F.S.

<sup>17</sup> Ss. 553.72, and 553.73, F.S.

<sup>18</sup> Florida Building Commission, *Advanced Florida Building Code Principals*, [http://www.floridabuilding.org/Upload/Courses\\_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf](http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf) (last visited Feb. 9, 2021).

<sup>19</sup> Florida Department of State, *Seminole History*, <https://dos.myflorida.com/florida-facts/florida-history/seminole-history/> (last visited Feb. 9, 2021).

<sup>20</sup> *Id.*; Seminole Tribe of Florida, *Frequently Asked Questions*, <https://www.semtribe.com/stof/helpful-linksmain/helpful-links> (last visited on Feb. 8, 2021).

<sup>21</sup> *Id.* Seminole Tribe of Florida, *History*, <https://www.semtribe.com/stof/history/timeline> (last visited Feb. 9, 2021).

<sup>22</sup> Seminole Tribe of Florida, *Frequently Asked Questions*, <https://www.semtribe.com/stof/helpful-linksmain/helpful-links> (last visited on Feb. 8, 2021).

<sup>23</sup> Florida Department of Transportation, *Miccosukee Tribe of Indians of Florida*, <https://www.fdot.gov/environment/na-website-files/miccosukee.shtm> (last visited Feb. 8, 2021); Miccosukee Tribe of Indians of Florida, *History*, <https://tribe.miccosukee.com/> (last visited Feb. 8, 2021).

<sup>24</sup> *Id.*

Current law defines chickees as “an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.”<sup>25</sup>

"Chickee" is the word Seminoles use for "house." The chickee style of architecture - palmetto thatch over a cypress log frame - was born during the Seminole wars (1817-1858) when Native Americans, pursued by U.S. troops, needed fast, disposable shelter while on the run.<sup>26</sup>

Currently, chickees are no longer used for actual housing. Members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida still build chickees for commercial and private interests.<sup>27</sup> Generally, members of the Seminole Tribe of Florida who build chickees for commercial and private interests learn how to build chickees from their ancestors.<sup>28</sup>

In the Miccosukee Tribe of Indians of Florida, members are taught to build chickees at a young age by experienced Tribal elders. The Tribe maintains a list of expert builders, which is maintained by the Miccosukee Business Council.<sup>29</sup> Tribal elders decide when a person is ready to be on the list, and the Miccosukee Business Council may add them to the list or determine that they need more instruction.<sup>30</sup>

When members of the public contact the Tribe about building a chickee, they are referred to the members on the list of expert builders.<sup>31</sup>

Currently, chickees can be constructed in a matter of hours instead of days because of improvements in technology and equipment. Nails, chainsaws and four wheelers are now used to haul heavy logs replacing the old method when Native Americans would either use manpower or wait until a thunderstorm would flood the area were logs had been cut down so they could be hauled out to the location of the new camp.<sup>32</sup>

#### *Chickee Exemption from the Florida Building Code*

Current law exempts chickees built by members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida from the requirements of the Building Code. Chickees that are exempt from these requirements may not have any electrical, plumbing, or other nonwood features. However, such chickees may have nonwood items underneath them such as plastic or aluminum chairs, countertops, or food and beverages.<sup>33</sup>

#### *Contracting Licensure Requirement*

Current law does not provide an exemption from the contractor licensing requirements for members of the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida who construct chickees.

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<sup>25</sup> S. 553.73(10)(i), F.S.

<sup>26</sup> Seminole Tribe of Florida, Chickee, <https://www.semtribe.com/stof/culture/chickee> (last visited Feb. 8, 2021).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; WGPU Public Media, *Chickees*, (Sep. 29, 2010) <https://www.youtube.com/watch?v=ipuIUXK2exQ> (last visited Feb. 11, 2021).

<sup>29</sup> The Miccosukee Business Council consists of five elected members.

<sup>30</sup> Jeanine Bennett, In-House General Counsel for the Miccosukee Tribe of Indians of Florida, Miccosukee Chickee Bill (Feb. 10, 2021).

<sup>31</sup> *Id.*

<sup>32</sup> Ernie Tiger, *Chickees Provided Early Housing*, <https://www.semtribe.com/stof/culture/chickee> (last visited Feb. 9, 2021).

<sup>33</sup> See The Petition for Declaratory Statement of Plaza Beach Motel, Inc., Case No. 2018-012 (Fla. Building Commission) (Apr. 20, 2018).

In 2013, the CILB issued a declaratory statement stating that members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are not exempt from contractor licensure requirements when building chickees for consumers outside the boundaries of their reservations.<sup>34</sup>

Some local governments in Florida require the builder of chickee to obtain a permit and comply with all zoning and environmental regulations, local ordinances and regulations, and the Department of Health drainage requirements.<sup>35</sup>

In order to obtain a permit to build a chickee, some local governments are requiring members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to be licensed contractors or employees of a licensed contractor. Some local governments are requiring anyone wishing to build a chickee to be a licensed Division I contractor or an employee of a licensed Division I contractor.<sup>36</sup>

### **The Bill**

The bill creates a contractor licensure exemption by providing that members of the Seminole Tribe of Florida and members of the Miccosukee Tribe of Indians of Florida are not required to be licensed as a contractor or be an employee of a licensed contractor when constructing chickees.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>34</sup> See The Petition for Declaratory Statement of City of Port St. Lucie Building Department, Case No. 2013-091(Fla. DBPR) (Dec. 23, 2013).

<sup>35</sup> Kathleen Croteau, Building Official, Sarasota County, Important Notice Bulletin #2017-0001 (Feb. 7, 2017) <https://www.scgov.net/Home/ShowDocument?id=33926> (last visited Feb. 8, 2021); Charlotte County, Chickee Structures, <https://www.charlottecountyfl.gov/departments/community-development/notices/chickee-structures.stml> (last visited Feb. 8, 2021); Sara Matthis, *City Addresses Rash of Unpermitted Tiki Huts*, Keys Weekly (Jan. 14, 2019) <https://keysweekly.com/42/city-addresses-rash-of-unpermitted-tiki-huts/>; Miami-Dade, File Contractor Complaints, <https://www.miamidade.gov/building/contractor-complaints.asp> (last visited Feb. 8, 2021); Miami-Dade, Permit Exemptions, <https://www.miamidade.gov/permits/exemptions.asp> (last visited Feb. 8, 2021).

<sup>36</sup> *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing members of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida to construct chickees without having to obtain a license or work for a licensed contractor.

D. FISCAL COMMENTS:

None.