

STORAGE NAME: h0671.brc
DATE: March 13, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 671
RELATING TO: Contracting
SPONSOR(S): Representative Livingston
STATUTE(S) AFFECTED: Sections 489.127 and 489.531, F.S.
COMPANION BILL(S): SB 694 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS
(2) CRIME AND PUNISHMENT
(3)
(4)
(5)

I. SUMMARY:

Chapter 489, F.S., regulates contracting in Florida, and is divided into two parts. Part I relates to construction contracting, and part II relates to electrical contracting and alarm contracting.

Unlicensed construction contracting has become a huge problem in Florida, with many unlicensed contractors being able to offer services at cut-rate prices since they do not pay workers' compensation insurance and other such expenses borne by legitimate contractors who obtain licensure. The bill is intended to address that problem by imposing criminal penalties sufficiently harsh to deter persons from choosing to operate in an unlicensed fashion.

The bill changes many instances of "unlicensed contracting" to a third degree felony. Presently, most instances of unlicensed contracting (including the first offense in almost all cases) are first degree misdemeanors, and only a few limited circumstances of unlicensed contracting amount to a felony violation.

It should be noted that the new felony penalties imposed by this bill do not apply to all activities of "unlicensed contracting." The new felony penalties apply only to unlicensed persons doing unlicensed contracting (theoretically, a licensed contractor can perform unlicensed contracting by straying across the various jurisdictional lines between contractor categories [i.e., a licensed plumber doing electrical work]). Also, they do not apply to instances of construction projects having a value of \$1,000 or less, performed by unlicensed persons. The new felony penalties also do not apply to violations of all of the paragraphs of the subsection in each part (ss. 489.127[1], F.S., and 489.531[1], F.S.) which set forth the actual activities generally considered to encompass "unlicensed contracting." The purpose of these exceptions is to focus only on the areas of unlicensed contracting that are most likely to harm the consumer.

Section 921.001(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The CJEC will review this bill.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 489, F.S., regulates contracting in Florida, and is divided into two parts. Part I contains provisions relating to construction contracting. Part II contains provisions relating to electrical contracting and alarm contracting.

“Unlicensed construction contracting,” as generally understood, is actually a set of nine specific violations set forth as specific paragraphs under s. 489.127(1), F.S.

“Unlicensed electrical or alarm contracting,” as generally understood, is actually a set of ten specific violations set forth as specific paragraphs under s. 489.531(1), F.S.

Presently, most instances of unlicensed contracting (including the first offense in almost all cases) are first degree misdemeanors, and only a few limited circumstances of unlicensed contracting amount to a felony violation. The circumstances under which it is presently a felony to commit unlicensed contracting are:

- (1) Unlicensed construction, electrical, or alarm contracting, if you have previously been convicted of unlicensed contracting (i.e., a second offense);
- (2) Unlicensed construction contracting during a declared state of emergency; or
- (3) Unlicensed construction contracting as a pollutant storage systems contractor, precision tank tester, or pollutant storage tank lining applicator.

A first degree misdemeanor is punishable by a term of imprisonment of up to one year, and a fine of up to \$1,000.

A third degree felony is punishable by a term of imprisonment of up to 5 years and a fine of up to \$5,000. In addition, many professions (and, in fact, many jobs) use a conviction of any felony as a disqualification from licensure or an opportunity to become employed.

B. EFFECT OF PROPOSED CHANGES:

The bill changes the penalty for many instances of unlicensed contracting from a first degree misdemeanor to a third degree felony.

Unlicensed construction contracting has become a huge problem in Florida, with many unlicensed contractors being able to offer services at cut-rate prices since they do not pay workers' compensation insurance and other such expenses borne by legitimate contractors who obtain licensure. The bill is intended to address that problem by imposing criminal penalties sufficiently harsh to deter persons from choosing to operate in an unlicensed fashion.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 489.127, F.S., in part I of the chapter, increasing the penalty in many instances for unlicensed construction contracting from a misdemeanor to a felony of the third degree. The new felony penalties apply only to unlicensed persons performing unlicensed contracting (theoretically, a licensed contractor can perform unlicensed contracting by straying across the various jurisdictional lines between contractor categories). Also, they do not apply to instances of construction projects having a value of \$1,000 or less, performed by unlicensed persons. The new felony penalties also do not apply to violations of all of the paragraphs of the subsection in each part (ss. 489.127[1], F.S., and 489.531[1], F.S.) which set forth the actual activities generally considered to encompass "unlicensed contracting."

Section 2. Amends s. 489.531, F.S. (in part II of the chapter), conforming it to the new provisions in part I, except that these provisions apply to electrical and alarm contractors. Those in part I apply to all other types of contractors (i.e., "construction" contractors).

Section 3. Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate; probably none. See section IV of this analysis.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Section 921.001(9)(b), F.S., requires the Criminal Justice Estimating Conference (CJEC) to review any legislation that creates or modifies a criminal penalty to determine the bill's impact on the state prison system. The CJEC will review this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require local governments to take action requiring the expenditure of funds. The CJEC review will determine extent of impact. However, the provisions in the bill which may establish such a mandate are exempt from the provision of Article VII, Section 18 of the Florida Constitution because they amend criminal laws.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not impair local government revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not significantly reduce the amount of state tax shared with local governments.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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