

**STORAGE NAME:** h0671a.cp  
**DATE:** April 4, 1997

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CRIME AND PUNISHMENT  
BILL RESEARCH & 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 YEAS 7 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 6 NAYS 0
- (3)
- (4)
- (5)

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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.

This bill increases the penalties for some of the acts of contracting without a license. Unlicensed construction contractors are often able to undermine licensed contractors since they do not pay workers' compensation insurance and other such expenses borne by legitimate contractors who obtain licensure. The deficiencies of unlicensed contractors often harms consumers who rely on the solvency and insurance of contractors.

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.

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, the penalties do not apply to instances of construction projects having a value of \$1,000 or less, performed by unlicensed persons.

II. SUBSTANTIVE RESEARCH:

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. The specific violations relate mostly to the different ways a person may falsely hold himself or herself out to be a licensed contractor, and the investigation of such conduct.

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.

B. EFFECT OF PROPOSED CHANGES:

The bill adds the following general provision to the section that prohibits construction contracting without a license **and** to the section that prohibits electrical or alarm contracting without a license:

Any Unlicensed person who performs, offers to perform, or contracts to perform work which requires licensure under this part, and the value of which exceeds 1,000, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

This change increases the current penalty for contracting without a license from a first degree misdemeanor to a third degree felony. This felony offense will also apply to a person or business operating on an inactive or suspended license.

Because this offense is not ranked for the purposes of the sentencing guidelines, it would, by default, be considered a level one offense. Level one offenses rarely qualify a person for prison. The practical effect of making this offense a felony is that a felony conviction (as opposed to a withhold of adjudication) has many consequences, and a judge may impose five years of probation (and a jail term as well). A long term of probation may be necessary for this type of offense where there is a lot of restitution

owed and the defendant can not pay it within a year. For a first degree misdemeanor offense, the jail term and the probationary term combined may not exceed one year.

People who practice unlicensed contracting for less than \$1,000 remain exempted under this bill.

**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 RESEARCH:

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 RESEARCH & 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. Last year CJEC estimated the impact for the same bill as being insignificant.

The changing of the penalty from a misdemeanor to a felony will cause the supervision of these offender to change from county to state probation. Therefore, there could be a slight transfer of expenses from the county to the state.

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.

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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.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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