

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1284

SPONSOR: Regulated Industries Committee and Senator Dyer

SUBJECT: Contractors/Judgments

DATE: March 11, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Martin</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends Chapter 489, Florida Statutes, regulating contracting. It mandates that the Department of Business and Professional Regulation initiate disciplinary proceedings against contractors, electrical contractors and septic tank contractors upon the filing of a complaint by a judgment creditor of a contractor involving unsatisfied judgments arising from the contractor's licensed activities. In addition, the bill establishes a simplified, expedited procedure for initiating and prosecuting these types of proceedings. The bill requires that the appropriate regulatory board notify both the contractor and the judgment creditor of when and where action will be taken on the disciplinary proceeding, as well as providing them with copies of all actions taken by the board.

This bill creates the following sections of the Florida Statutes: 489.13, 489.5334 and 489.5591.

II. Present Situation:

Chapter 489, Florida Statutes, has separate parts relating to contractors, electrical contractors and septic tank contractors. A licensed contractor can face disciplinary proceedings for failure to satisfy the terms of a civil judgment obtained against the licensee, relating to the practice of the contractor's profession, within a reasonable period of time. *See*, §489.129(1)(q), F.S. Similarly, if an electrical contractor fails to pay or comply with the terms of a judgment obtained against the electrical contractor and relating to the practice of contracting within 18 months, then that contractor also faces discipline. *See*, §489.533(1)(m)4, F.S.

Such disciplinary proceedings against contractors and electrical contractors licensed under Chapter 489, Florida Statutes, currently follow the same procedure through the Department of Business and Professional Regulation (DBPR) and either the Construction Industry Licensing Board (CILB) or the Electrical Contractors' Licensing Board (ECLB). The procedure includes intake of some form of initial complaint, written or verbal, assignment of an investigator, and performance of an investigation by DBPR. This procedure can take several months, and it can be

well over a year after the receipt of the initial complaint before a determination is made as to whether or not to file a formal complaint against the licensee. There have been concerns raised that the complainant never learns what actions the boards take in many instances.

III. Effect of Proposed Changes:

This bill creates a simplified, expedited procedure for certain types of licensure violations. It requires the complainant to fill out a complaint form prescribed by the CILB or, in the case of electrical contractors, by the ECLB and file it, along with specific attachments, with DBPR. If this filing meets the requirements of the statute, then DBPR is mandated to initiate proceedings against the licensee. DBPR must use an expedited process involving orders to show cause within set time periods and must refer the case immediately after all responses are received to the CILB or the ECLB for consideration as to whether or not a violation has occurred. If the board determines that a violation has occurred, it must suspend the contractor's license until the judgment has been satisfied and the contractor reimburses the board for the costs of prosecuting the case. In all instances, the board would be required to give the contractor and the judgment creditor notice of when and where the board hearing would be, as well as notify them as to any actions taken by the board in connection with the disciplinary proceedings.

In the first two sections of the bill, this procedure is prescribed in two separate instances. In Section 1 of the bill, the procedure would be set in place for Construction Contracting. In Section 2 of the bill, it would be established for Electrical and Alarm System Contracting. In both types of professions, the procedure would be the same.

DBPR would be required to initiate disciplinary proceedings involving an unsatisfied judgment when a judgment creditor filed the proper complaint, a certified copy of the recorded judgment, and an affidavit stating that the judgment arises from the practice of the judgment debtor's profession licensed under the appropriate part of the statute.

Within 10 days after the date that DBPR receives the required materials, it must issue and serve an order for the contractor to show cause why the contractor's license should not be suspended until the judgment is satisfied. The contractor must respond in writing under oath within 20 days after the date of service. If the contractor fails to respond within the 20 days, the board must enter an order immediately suspending the contractor's license until the judgment is satisfied and the contractor pays DBPR the costs incurred in connection with processing the complaint. If the contractor does respond to the order to show cause, a copy of the response shall be provided to the judgment creditor.

The procedure would then require DBPR to forward the complaint and the contractor's response, to the appropriate board for that board to determine whether the contractor violated the provisions of the pertinent portion of Chapter 489, Florida Statutes. The board would give the contractor and the judgment creditor notice of when and where it would be taking action on the complaint. If the board finds that a violation has occurred, the board must suspend the contractor's license until the judgment has been satisfied and the costs of processing the complaint have been reimbursed to the board. The board may also impose any other penalties it considers appropriate, consistent with its penalty guidelines. Copies of all actions taken by the board must be provided to the judgment creditor and the contractor.

Section 3 of the bill relates to septic tank contractors licensed under Part III of Chapter 489, Florida Statutes by making a cross reference to the existing §489.129(1)(q) and the new §489.13 created by Section 1 of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may have some impact on the business community and on any citizen customers of contractors, electrical contractors and septic tank contractors. The simplified, expedited process provided in the bill should favor quicker resolution of disputes arising from nonpayment. It could lessen the commission of mismanagement or misconduct in the practice of contracting that causes financial harm to customers.

C. Government Sector Impact:

The impact on DBPR, the CILB and the ECLB would be indeterminate at this point in time. We are awaiting fiscal impact information from the department.

VI. Technical Deficiencies:

Because septic tank contractors are not licensed under Part III of Chapter 489, F.S., the proposed changes in section 3 of the bill will not be enforceable (existing law merely requires that septic tank contractors to register with DBPR). There is no licensing board that has jurisdiction over septic tank contractors, and there are no licenses to suspend.

VII. Related Issues:

CS/SB 1284 is a companion to HB 929.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
