

STORAGE NAME: h0929.brc

DATE: March 14, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 929

RELATING TO: Contracting

SPONSOR(S): Representative Jeff Miller

COMPANION BILL(S): SB 1284(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (2) JUDICIARY
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill creates a simplified, expedited disciplinary procedure for contractor licensure violations involving a construction lien or an unsatisfied civil judgment. Under the expedited procedure, the Department of Business and Professional Regulation (DBPR) would be required to initiate disciplinary proceedings when a lienor or judgment creditor files the proper complaint, a certified copy of either the recorded construction lien or the recorded judgment, and an affidavit.

The current disciplinary procedure includes: (1) Intake of initial written or verbal complaint; (2) Assignment of an investigator; and (3) Performance of an investigation by DBPR. This procedure can take several months, and it can, in extreme circumstances, 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.

The bill has no significant impact on state or local governments, or on the private sector.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 489, F.S., establishes regulation of construction contractors (in part I), electrical contractors (in part II), and septic tank contractors (in part III). Parts I and II of the chapter are administered by the DBPR and contain extensive grounds for disciplining the contractor for: (1) Failure to satisfy a civil judgement in a reasonable time, and (2) Committing mismanagement by not removing a lien from the customer's property in a timely fashion. Part III, regarding septic tank contractors, is administered by the Department of Health (rather than the DBPR), and does not have such extensive or detailed disciplinary grounds.

The current disciplinary procedure for any disciplinary case conducted by the DBPR includes: (1) Intake of initial written or verbal complaint; (2) Assignment of an investigator; and (3) Performance of an investigation by DBPR. This procedure can take several months. It can, in extreme circumstances, 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 are currently no statutory grounds for the Department of Health to prosecute disciplinary cases against septic tank contractors for lien or civil judgement violations.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a simplified, expedited disciplinary procedure for certain types of lien or civil judgement licensure violations. It requires the complainant to fill out a complaint form prescribed by the appropriate board 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. The 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 board 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 lien or the judgment has been satisfied and the contractor reimburses the board for the costs of prosecuting the case.

The bill establishes those procedures in parts I and II of chapter 489, F.S. Provisions which the bill places in part III of the chapter provide that lien or civil judgement violations are grounds for discipline, and adopt the procedures being placed in part I, by reference.

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?

N/A

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. STATUTE(S) AFFECTED:

Sections 489.13, 489.5334 and 489.5591, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 489.13, F.S., to establish an expedited disciplinary procedure for construction contractor licensure violations involving a construction lien or an unsatisfied civil judgment.

Section 2. Creates s. 489.5334, F.S., to establish an expedited disciplinary procedure for electrical and alarm system contractor licensure violations involving a construction lien or an unsatisfied civil judgment.

Section 3. Creates s. 489.5591, F.S., to establish an expedited disciplinary procedure for septic tank contractor licensure violations involving a construction lien or an unsatisfied civil judgment.

Section 4. Provides that the act shall take effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The expedited procedure established in the bill could save the department an indeterminate amount in disciplinary costs due to the fact that investigatory costs would be less. However, it is also possible that the expedited procedures could simultaneously cause an increase in the *number* of disciplinary cases. In effect, the department could experience a lower cost-per-case, but more cases. So, the department could wind up experiencing *greater* disciplinary costs.

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:

None.

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:

This bill may have some impact on the business community and on any citizen customers of construction contractors, electrical contractors and septic tank contractors. The simplified, expedited process provided in the bill should favor quicker resolution of disputes arising from contracting activities. It could potentially remove liens from customers' property more quickly and lessen the commission of mismanagement or misconduct in the practice of contracting that causes financial harm to the customer. On the other hand, the portion of the bill that treats liens in the same fashion as judgments might put contractors at a disadvantage in that the liens have never been foreclosed. Therefore, unlike the situation with final civil judgments, the claims of the lienor have not been liquidated, nor has the contractor been given the opportunity to raise legitimate defenses and otherwise be allowed to defend the matter in a court of law prior to having the professional's license threatened.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

The bill has a flaw. Some of the provisions the bill places in parts I and II of the chapter refer to an expedited disciplinary process for both lien law claims and civil judgement claims. However, at a key juncture, when the complaints are forwarded to the board for a determination as to whether the contractor is in violation, the only determination the statutes direct the board to make is whether the contractor is in violation of the lien law disciplinary provision. Direction is missing from the bill regarding determination by the board of whether the contractor is in violation of the civil judgement disciplinary provision. Failure to include such a provision means that although the expedited procedure regarding civil judgement claims would be in place, the ability of the board to effectively act on the issue would be absent.

In addition, the DBPR provided the following comments regarding their concerns:

- The DBPR's Bureau of Investigative Services has a complaint form which is presently used. It is unclear from the language in ss. 489.13(2)(a) and (3)(a), F.S., as well as ss. 489.5334(2)(a) and 3(a), F.S., whether the boards will develop a separate form, and what will become of the present procedures used by investigative services.
- The time frames stipulated in sections 489.13(4), (5) and (6), and 489.5334(4), (5) and (6), F.S., will be very difficult for both the DBPR and the licensee to meet.
- Sections 489.13(5) and 489.5334(5), F.S., state that, "If the contractor fails to respond under oath to the order to show cause within the 20-day period, the board shall immediately enter a final order suspending the contractor's license until the contractor satisfies the lien or judgement and pays the department the cost incurred in connection with processing the complaint." The Construction Industry Licensing Board meets approximately every 30 days and the Electrical Contractors Licensing Board meets approximately every 60 days. It will be virtually impossible for the boards to enter into an immediate final order. It is unclear in ss. 489.13(7) and 489.5334(7), F.S., whether this is an actual complaint and whether within 20 days the department's attorneys will present the case before the boards. Additionally, suspension of a contractor's license normally occurs as a result of a final order which is rendered approximately 30 days after a board meeting. Is the intent to transfer this responsibility to the boards for immediate action or should this continue to go through the complaint process, thereby offering contractors due process and time to challenge the allegations?

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- It is unclear whether what is proposed is the formal complaint process or a separate process, which is only coming to the board for handling. Additionally, the question arises as to whether the process is contrary to Chapters 120 and 455, F.S.
- The Construction Industry Licensing Board (CILB) is opposed to this bill. They feel that the present complaint/disciplinary process offers contractors an opportunity to due process which the CILB feels will be negated with the implementation of this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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