

STORAGE NAME: h0929s1a.jud

DATE: March 31, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 929

RELATING TO: Contractors/Judgments

SPONSOR(S): Committee on Business Regulation & Consumer Affairs and Rep. J. Miller

COMPANION BILL(S): SB 1284(s)

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 7 NAYS 0
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a simplified, expedited disciplinary procedure for contractor licensure violations involving 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 judgment creditor files the proper complaint, a certified copy of 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.

The bill has an effective date of July 1, 1999.

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, including failure to satisfy a civil judgement in a reasonable time. 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 civil judgement violations.

B. EFFECT OF PROPOSED CHANGES:

This bill creates a simplified, expedited disciplinary procedure for certain types of civil judgement licensure violations. These procedures would be:

- The complainant must 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 judgment has been satisfied and the contractor reimburses the board for the costs of prosecuting the case.
- The board shall provide the licensee and the creditor with notice of when and where the board will consider taking action on the complaint. The licensee may attend the hearing.
- The board shall provide the licensee and the judgment creditor with copies of all actions taken by the board in connection with 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 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?

Yes. The bill will increase the authority of DBPR and the Department of Health to conduct disciplinary proceedings involving unsatisfied civil judgments in an expeditious manner.

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

The bill will require DBPR and the Department of Health to serve show cause orders on licensees who have not satisfied civil judgments under certain circumstances. The agencies may also have to conduct hearings on the show cause orders.

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

Licensees are entitled to a show cause order under certain circumstances.

- 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?

The bill does not eliminate or reduce any agency or program.

- (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?

The bill does not purport to provide services to families or children.

- (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?

The bill does not create or change a program providing services to families or children.

- (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 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 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 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.

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 DBPR expressed several concerns regarding the bill in its original form. However, this Committee Substitute's (CS) deletion of provisions relating to lien claims has addressed most of the concerns of the DBPR. The sponsor is working with the DBPR to craft language to address the remaining concerns, at the bill's next committee of reference.

By using the term "Board" in place of the Department, the Senate version more clearly identifies the unit of government that has authority over the contractors. By limiting the application of the law to judgments that are entered into on or after the effective date of the law, the Senate version will prevent long past due judgments from being "collected" by judgment creditors and filed with the state.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Provisions relating to establishing an expedited disciplinary procedure for lien law violations were deleted from the CS.

The Committee on Judiciary adopted one amendment, which is traveling with the bill. The amendment is a strike everything, and essentially conforms the House version to the Senate bill, CS/SB 1284. In that regard, the amendment extends the time period for the agency to serve the show cause order from 10 to 20 days. It also limits the application of the bill to judgments that are entered on or after the effective date of the law. The amendment provides that the Construction Industry Licensing Board to take action if the contractor fails to respond to the show cause order or fails to dispute the facts contained in the show cause order. The Board is also charged with providing notice to the judgment creditor and contractor of the time and place for the Board's consideration of a complaint. The amendment also provides that the order to show cause must be filed according to s. 489.124(3), F.S., and contains various other technical amendments.

VI. SIGNATURES:

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