

STORAGE NAME: h0137s1.brc

DATE: March 20, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: CS/HB 137

RELATING TO: Unlicensed Construction Contractors

SPONSOR(S): Committee on Crime & Punishment and Representative Ritter and others

TIED BILL(S):

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

(1)	CRIME & PUNISHMENT	YEAS 5	NAYS 0
(2)	GOVERNMENTAL RULES & REGULATIONS	YEAS 7	NAYS 0
(3)	BUSINESS REGULATION AND CONSUMER AFFAIRS		
(4)	CRIMINAL JUSTICE APPROPRIATIONS		
(5)			

I. SUMMARY:

CS/HB 137 increases criminal penalties for unlicensed contracting in the field of construction. It changes violations for unlicensed contracting from a first degree misdemeanor to a third degree felony. It changes other violations for unlicensed contracting (e.g., repeat offenses) that were a third degree felony to a second degree felony.

The Committee on Crime and Punishment made HB 137 into a Committee Substitute (CS). The Committee on Governmental Rules & Regulations adopted two amendments affecting penalties for licensed contractors. They are traveling with the bill.

The bill does not have a significant impact on state or local governments, or upon private industry.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Part I of Chapter 489, F.S., deals with construction contracting. Construction contractors are governed by the Construction Industry Licensing Board, under the Department of Business and Professional Regulation. Section 489.115, F.S., provides that no person may engage in the business of contracting in the state without first being certified or registered in the proper classification. Section 489.127, F.S., provides that no person shall:

- Falsely hold himself or herself or a business organization out as a licensee, certificate holder, or registrant;
- Falsely impersonate a certificate holder or registrant;
- Present as his or her own the certificate, registration, or certificate of authority of another;
- Knowingly give false or forged evidence to the board¹ or a member thereof;
- Use or attempt to use a certificate, registration, or certificate of authority which has been suspended or revoked;
- Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority;
- Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in ss. 489.119 and 489.1195, F.S.;
- Commence or perform work for which a building permit is required pursuant to part VII of chapter 553 without such building permit being in effect; or

¹ "Board" is defined as the Construction Industry Licensing Board which is created within the Department of Business & Professional Regulation. s. 489.107(1), F.S.

- Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

The section provides that a person or business organization operating on an inactive or suspended certificate, registration, or certificate of authority is not duly certified or registered and is considered unlicensed.

Any unlicensed person who violates any of the above provisions commits a first degree misdemeanor. Any unlicensed person who commits a violation of any of the above provisions after having been previously found guilty of such a violation commits a third degree felony. Any unlicensed person who commits a violation of one of the above provisions during the existence of a state of emergency declared by executive order of the Governor commits a third degree felony, and any person who operates as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator in violation of the above provisions commits a third degree felony.

Under the Criminal Punishment Code, any non-capital felony offender can be sentenced up to the statutory maximum sentence for an offense. A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine (s. 775.082[3][c]). A third degree felony is punishable by up to five years in prison and a \$5,000 fine (s.775.082[3][d] and s. 775.083). A misdemeanor of the first degree is punishable by up to one year in jail and a \$1,000 fine. (s. 775.082[4][a]).

Section 489.127, F.S., also provides that a certified or registered contractor, or contractor authorized by a local construction regulation board to do contracting, may not enter into an agreement or knowingly allow his or her certification number or registration number to be used by a person who is not certified or registered as provided for in chapter 489, or used by a business organization that is not duly qualified as provided for in this chapter to engage in the business, or act in the capacity, of a contractor. Also, a certified or registered contractor may not apply for or obtain a building permit for construction work unless the contractor or business organization duly qualified by said contractor has entered into a contract to make improvements to, or perform the contracting at the real property specified in the application or permit. A person who violates this subsection commits a first degree misdemeanor. A person who violates this subsection after having previously been found guilty of such a violation commits a third degree felony.

C. EFFECT OF PROPOSED CHANGES:

The bill increases criminal penalties for unlicensed construction contracting. It changes violations for unlicensed contracting that were a first degree misdemeanor to a third degree felony. It changes violations for unlicensed contracting that were a third degree felony (e.g., repeat offenses) to a second degree felony.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 489.127, F.S., to increase penalties applicable to unlicensed construction contracting. It increases the degree of crime for the offenses listed in subsection 1 of section 489.127, F.S., as follows:

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- increases a violation of any of the provisions of the section by an unlicensed person from a first degree misdemeanor to a third degree felony and increases a second or subsequent violation from a third degree felony to a second degree felony;
- increases a violation of any of the list of acts which is committed during the existence of a state of emergency from a third degree felony to a second degree felony; and
- increases a violation by a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator from a third degree felony to a second degree felony.

In each of the above situations, the section provides that willfully or deliberately disregarding or violating any municipal or county ordinance relating to uncertified or unregistered contractors would remain the same degree of offense as it is in the current statute. For example, while a violation of any of the other provisions of subsection (1) of section 489.127, F.S., by an unlicensed contractor is increased from a first degree misdemeanor to a third degree felony, a willful or deliberate violation of a municipal or county ordinance relating to uncertified or unregistered contractors would remain a first degree misdemeanor.

Further, the section increases the degree of crime for a contractor who enters into an agreement or allows his or her certification or registration number to be used by a person who is not certified or registered from a first degree misdemeanor to a third degree felony for a first offense and from a third degree felony to a second degree felony for a subsequent violation.

The section also increases the degree of crime for a contractor who obtains a building permit for construction work without having entered into a contract to make improvements to the real property specified in the permit from a first degree misdemeanor to a third degree felony for a first offense and from a third degree felony to a second degree felony for a subsequent offense.

Section 2: Provides an effective date of October 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined that the bill will have an indeterminate but likely insignificant prison bed impact on the Department of Corrections. The increase of several offenses from a first degree misdemeanor to a third degree felony also may have a slight impact on the supervised population. According to the Department of Business and Professional Regulation, this bill will not have a fiscal impact on the department.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Sentences are calculated for felony offenses under the Criminal Punishment Code based on the level of offense in the Offense Severity Ranking Chart (s. 921.002, F.S.). The felony crimes contained in section s. 489.127, F.S., are not ranked in the Offense Severity Ranking Chart. The bill also does not rank the offenses. An unranked third degree felony is ranked by default as a level one offense. An unranked second degree felony is ranked by default as a level four offense. A judge is not required to impose a prison sentence for a level four or a level one offense if the defendant does not have prior convictions. While the Criminal Punishment Code does authorize a prison sentence of up to 15 years for a level four offense that is a second degree felony (and up to five years for a level one offense that is a third degree felony), it is unlikely that a defendant would receive a prison sentence for that offense, particularly if the defendant is a first time offender and the offense is the only crime being scored. Thus, while the bill will increase the maximum possible sentence that a judge can impose for the offenses involved, the minimum possible sentence is not increased.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2000, the Committee on Crime & Punishment adopted an amendment to provide that willfully or deliberately disregarding or violating any municipal or county ordinance relating to uncertified or unregistered contractors would remain the same degree of offense as it is in the current statute. For example, while a violation of any of the other provisions of subsection (1) of section 489.127, F.S., by an unlicensed contractor is increased from a first degree misdemeanor to a third degree felony by the bill, as a result of the amendment, a willful or deliberate violation of a municipal or county ordinance relating to uncertified or unregistered contractors would remain a first degree misdemeanor. The bill, as amended, was made a committee substitute.

On March 8, 2000, the Committee on Governmental Rules & Regulations adopted two amendments which changed the penalty for a licensed contractor beginning work before a permit is in effect from a third degree felony to a "third" degree misdemeanor. NOTE: These two amendments both contain significant errors that would require corrective action.

Business Regulation & Consumer Affairs Committee: Correction of the two amendments by the Governmental Rules & Regulations Committee will not be necessary since the sponsor has indicated that a different approach will be taken in a "strike everything" amendment being prepared by House Bill Drafting for March 21, 2000, committee meeting.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

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Staff Director:

David De La Paz

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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