

STORAGE NAME: h0137s2.brc

DATE: March 21, 2000

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

BILL #: CS/CS/HB 137

RELATING TO: Unlicensed Construction Contractors

SPONSOR(S): Committee on Business Regulation and Consumer Affairs, Committee on Crime & Punishment, 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	YEAS 7	NAYS 0
(4)	CRIMINAL JUSTICE APPROPRIATIONS		
(5)			

I. SUMMARY:

CS/CS/HB 137 increases from \$5,000 to \$10,000 the maximum amount the Department of Business and Professional Regulation may fine unlicensed contractors. Local jurisdictions which forward information resulting in the Construction Industry Licensing Board collecting an unlicensed contracting fine shall have 30% of the fine remitted to them.

It also requires the department to establish a webpage on its website, with that webpage being devoted to listing known information on unlicensed contractors. The increased fines will fund this webpage.

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 (CILB), under the Department of Business and Professional Regulation (DBPR or department). 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 489.132 provides administrative remedies for unlicensed contracting, providing that unlicensed contractors may be fined \$5,000 and reasonable investigation and prosecution costs.

Section 489.127, F.S., enumerates what activities amount to unlicensed contracting, and provides for criminal penalty remedies. The section 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 CILB 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
- Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

The section provides that 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.

C. EFFECT OF PROPOSED CHANGES:

The bill increases from \$5,000 to \$10,000 the maximum fine that DBPR may impose for each instance of unlicensed contracting by an unlicensed person. It also provides that the DBPR may waive up to one-half of the fine if the unlicensed contractor obtains a valid license within one year. Local jurisdictions which forward information which results in the CILB collecting an unlicensed contracting fine shall have 30% of the fine remitted to them.

A licensed contractor is guilty of unlicensed contracting if the he or she practices outside his or her job scope or geographical scope. The bill provides that a licensed contractor guilty of unlicensed contracting shall receive a notice of noncompliance for his first offense.

The bill also provides that the department shall establish a webpage on its Internet website, providing information on persons found to be unlicensed contractors.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 489.13, F.S., to increase the maximum fine available against unlicensed contractors and require the department to establish an unlicensed contracting webpage on its Internet website.

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:

None.

D. FISCAL COMMENTS:

The department may see an increase in revenue flowing to its CILB trust fund account, due to the increased fine capacity for unlicensed contracting.

Local jurisdictions may see an increase in revenues pursuant to the opportunity to receive 30% of any fines resulting from unlicensed contracting information provided to DBPR.

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:

None.

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.

On March 21, 2000, the Committee on Business Regulation and Consumer Affairs adopted one "strike everything" amendment and passed the bill as a committee substitute for committee substitute. The original bill and first committee substitute had sought to increase criminal penalties for unlicensed construction contracting. Instead of doing that, this committee substitute provides that:

- 1) The first offense for unlicensed contracting by a licensed contractor (a licensed contractor is guilty of unlicensed contracting by practicing outside his or her job scope or geographical scope) shall receive a notice of noncompliance;
- 2) The department may impose an administrative fine of up to \$10,000 for each instance of unlicensed contracting by an unlicensed person, but may waive up to one-half of the fine if the unlicensed contractor obtains a valid license within one year; and
- 3) Local jurisdictions, which forward information which results in the CILB collecting an unlicensed contracting fine, shall have 30% of the fine remitted to them.

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VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Shari Z. Whittier

Staff Director:

David M. Greenbaum

AS FURTHER REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND
CONSUMER AFFAIRS:

Prepared by:

Gip Arthur

Staff Director:

Rebecca R. Everhart