

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.)

Date: March 24, 1998 Revised: \_\_\_\_\_

Subject: Contracting/Unlicensed Violations

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill amends parts I and II of chapter 489, F.S., relating to the regulation of contractors, to change unlicensed contracting for contracts valued at greater than \$1,000 from a first degree misdemeanor to a third degree felony.

This bill substantially amends sections 489.127 and 489.531 of the Florida Statutes.

**II. Present Situation:**

Part I of ch. 489, F.S., provides for the regulation of construction contractors by the Construction Industry Licensing Board within the Department of Business and Professional Regulation (DBPR). Construction contractors include general, building, and residential contractors, as well as several types of subcontractors, including plumbing, roofing, sheet metal, mechanical, air conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors. Part II of ch. 489, F.S., provides for the regulation of two additional types of subcontractors, electrical and alarm system contractors, by the Electrical Contractors Licensing Board within the DBPR.

Section 489.103, F.S., relating to the regulation of construction contractors, provides numerous exemptions from the part, including, among others, owners of property, the sale or installation of finished products, architects or engineers acting within the scope of their license, the sale or installation of certain air conditioning units, and the sale or installation of water conditioning units. In addition, s. 489.103, F.S., provides an exemption from licensure for persons performing contracting work with a value of less than \$1,000 (commonly referred to as the "handyman"

exemption). Section 489.503, F.S., relating to the regulation of electrical and alarm system contractors, provides similar exemptions, although it does not include the “handyman” exemption.

Contractors may be either certified or registered. Certified means the contractor has met uniform experience requirements and has passed a state examination. Certified contractors may contract anywhere in the state without having to meet additional local requirements. Registered means the contractor has met local experience and examination requirements for the applicable contracting category. A state registration is issued based on the local license. Registered contractors may practice only in the geographical area in which they are licensed.

Section 489.115, F.S., prohibits persons from engaging in the business of contracting in this state without first being certified or registered in the proper classification. Section 489.513, F.S., similarly requires certification or registration to engage in the business of electrical or alarm contracting in the state.

Section 489.127, F.S., makes unlicensed contracting a first degree misdemeanor, punishable by a maximum \$1,000 fine and a maximum 1 year in jail, except in certain circumstances. Unlicensed contracting in a geographic area in which the Governor has declared an emergency, unlicensed contracting as a pollutant storage contractor, and a second violation for unlicensed contracting are designated as third degree felonies, punishable by a maximum \$5,000 fine and a maximum 5 years in jail. Section 489.531, F.S., makes unlicensed electrical or alarm system contracting a first degree misdemeanor, with no exceptions.

In addition to criminal penalties for unlicensed contracting, s. 455.228, F.S., authorizes DBPR to prosecute unlicensed activity for all the professions under its jurisdiction by seeking a court injunction to stop the activity and imposing an administrative penalty not to exceed \$5,000 per incident. DBPR may enforce the penalty through a civil court action.

### **III. Effect of Proposed Changes:**

The bill changes unlicensed contracting (for construction contracting regulated under part I of ch. 489, F.S., and electrical and alarm system contracting regulated under part II of ch. 489, F.S.) from a first degree misdemeanor to a third degree felony. The increased penalties apply only to contracts valued at greater than \$1,000, consistent with the “handyman” exemption from licensure. In addition, the increased penalties apply only to individuals who do not hold a license.

The bill provides that unlicensed contracting involving contracts of any value is a third degree felony for the second violation and in a declared emergency for electrical and alarm systems contractors, as well as construction contractors. In addition, unlicensed contracting, involving contracts of any value, as a pollutant storage contractor remains a third degree felony under part I of ch. 489, F.S.

For electrical and alarm system contractors only, the bill specifically states that certified or registered contractors practicing outside of their authorized scope and registered contractors

practicing outside their geographic area are guilty of a first degree misdemeanor. Under existing law, contractors licensed under part I of ch. 489, F.S., are subject to disciplinary action for these offenses.

The bill is effective October 1, 1998.

**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:

Individuals engaging in unlicensed contracting will be subject to greater penalties (both fines and imprisonment) under the bill.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not reviewed this bill for the 1998 session. Last year, the estimating conference reviewed an identical House bill (HB 671) and determined the impact to be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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