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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION
ANALYSIS**

BILL #: HB 165
RELATING TO: Construction Contracting
SPONSOR(S): Representative(s) Ritter

TIED BILL(S):

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

- (1) BUSINESS REGULATION YEAS 10 NAYS 0
- (2) CRIME PREVENTION, CORRECTIONS, & SAFETY
- (3) FISCAL POLICY & RESOURCES
- (4) SMARTER GOVERNMENT COUNCIL
- (5)

I. SUMMARY:

This bill is designed to create a funding mechanism to assist the Department of Business and Professional Regulation (DBPR) programs against unlicensed construction activity. The bill authorizes the DBPR to impose a \$10,000 administrative fine against unlicensed persons who are found guilty of unlicensed contracting.

A portion of the revenues collected are authorized to be deducted by the DBPR to cover costs of prosecution of unlicensed persons. Additionally, the bill specifies that funds are authorized to be distributed from this revenue source to local government departments in the amount of thirty percent of the fine collected after deducting state costs for prosecuting. These disbursements are authorized if the local government body provides information relating to unlicensed activity by construction contractors.

The bill requires the use of the balance of these fine revenues to support the use of the internet by DBPR, as an additional tool, to combat unlicensed activity by construction contractors and to assist in funding the Construction Industries Recovery Fund.

The bill provides that a licensed contractor found guilty of unlicensed contracting shall receive a notice of noncompliance for a first offense.

The fiscal impact of the provisions of the bill are not anticipated to be insignificant.

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., addresses construction contracting. Contractors are governed by the Construction Industry Licensing Board (CILB), under the DBPR. "Contracting" essentially means building or altering a structure, for compensation. Several specific varieties of contracting are set forth in the chapter, each with a license that may be obtained for that activity. 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 one or more of the defined contracting categories. The reference to the term license is often statutorily used interchangeably with the terms certificate or registration.

Individuals who practice contracting in Florida must be certified by or registered with the CILB. Certification allows an individual to practice contracting in any jurisdiction in the state. A "certificate" may be issued to a person who makes application, shows appropriate education and experience and passes a state examination. "Registration" allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. The registration is issued by the DBPR upon proof of local licensure. Proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. The state has no input in, or control over, the licensure standards utilized by local jurisdictions. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and have no experience or examination requirements.

Currently, the CILB has sole authority to discipline state certified contractors. Local jurisdictions can discipline contractors holding locally issued licenses. In theory, the discipline is then reported to the CILB, who may act against the state registration.

"Unlicensed construction contracting," as generally understood, is actually a set of nine specific violations set forth as paragraphs under s. 489.127(1), F.S. This 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; and
- 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 s. 489.119 and s. 489.1195, F.S.;
- Commence or perform work for which a building permit is required pursuant to part VII of chapter 553, F.S., 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.

This section also provides criminal penalties for unlicensed activity. An 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 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. A third degree felony is punishable by a term of imprisonment of up to 5 years and a fine of up to \$5,000.

The criminal penalties apply only to unlicensed persons performing unlicensed contracting. Theoretically, a licensed contractor can perform unlicensed contracting without incurring criminal liability by straying across the various jurisdictional lines between contractor categories or operating outside their registered geographical area.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to s. 455.228, F.S. The DBPR may impose administrative penalties including fines in an amount not to exceed \$5,000 against any person not licensed by the DBPR or a regulatory Board within the DBPR and who violates a regulatory statute.

Currently, s. 489.127(6), F.S., allows local building departments to collect fines imposed on state certified and registered licensees by the CILB. The local unit may retain 25% of the amount collected and must submit the remainder to the state. There is no similar provision for local government to share in penalty revenues if the local unit assists in providing information that allows the state to successfully prosecute violators.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 489.13, F.S., to create an administrative fine that DBPR may impose for each instance of unlicensed contracting by an unlicensed person. The fine may not exceed \$10,000. The bill authorizes the DBPR to deduct legal costs for prosecution from any fine revenues collected under this section.

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

The bill authorizes the distribution of a portion of the fine revenues collected under this section to local government in the amount of thirty percent of the fine amount collected after deducting state costs. These disbursements are authorized if the local government body provides information relating to unlicensed activity by construction contractors.

The bill requires the use of the balance of fine revenues to support the use of the Internet by DBPR as an additional tool to combat unlicensed activity by construction contractors and to assist in funding the Construction Industries Recovery Fund.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 489.13, F.S., to create a \$10,000 administrative fine to be imposed by the DBPR for unlicensed construction activity. Requires a notice of non-compliance be issued by the DBPR for a first offense of unlicensed contracting by a licensed contractor. Provides for the distribution of certain revenues to local government, DBPR's web page, and the Construction Industries Recovery Fund.

Section 2. Provides the bill shall take effect July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Preliminary research by DBPR was unsuccessful in identifying actual revenues generated by fines imposed and collected by DBPR for unlicensed activity. Based on the history of prosecutions in this area, collection of revenues under the provisions of the bill could be expected to be minor.

2. Expenditures:

It could be anticipated that current staffing would absorb the workload contemplated by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not expected to be significant.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates the potential for payment of fines in the amount of \$10,000. Lesser fine amounts may be negotiated by the DBPR. These penalties are authorized to combat those who would practice construction contracting in violation of the unlicensed activity laws.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None noted.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION:

Prepared by:

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