

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 428
 SPONSOR: Senator Dyer
 SUBJECT: Construction Contracting
 DATE: February 23, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	RI	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill increases the maximum administrative fine that the Department of Business and Professional Regulation (DBPR) may impose for each instance of unlicensed contracting from \$5,000 to \$10,000. Any fines collected are to be used first to pay the investigative and legal costs, second, after deduction of these costs, to pay 30 percent of the amount collected to any local governing body that forwards information relating to any person who is an unlicensed contractor, and third, to maintain DBPR's unlicensed contractor site on the World Wide Web and to fund the Construction Industries Recovery Fund.

The bill substantially amends section 489.13, Florida Statutes.

II. Present Situation:

Part I of Chapter 489 of the Florida Statutes deals with construction contracting. Construction contractors are governed by 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 prohibits:

- Falsely holding out one's business or one's self as a licensee, certificate holder, or registrant;
- Falsely impersonating a certificate holder or registrant;
- Presenting the certificate, registration, or certificate of authority of another, as one's own;
- Knowingly giving false or forged evidence to the Construction Industry Licensing Board or a member thereof;
- Using or attempting to use a certificate, registration, or certificate of authority that has been suspended or revoked;

- Engaging in the business or acting in the capacity of a contractor or advertising one's business or one's self as available to so act without being duly registered or certified or having a certificate of authority;
- Operating a business organization engaged in contracting more than 60 days after 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.;
- Commencing or performing 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 disregarding or violating 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 second 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.

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, F.S., 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.

Section 455.228, F.S., authorizes DBPR to impose an administrative penalty of up to \$5,000 for unlicensed practice of a profession, plus costs and attorneys fees. Part I of Chapter 489, F.S., deals with construction contracting. 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, F.S., provides administrative remedies for unlicensed contracting, providing that unlicensed contractors may be fined \$5,000 and reasonable investigation and prosecution costs.

III. Effect of Proposed Changes:

A licensed contractor is guilty of unlicensed contracting if the contractor practices outside the contractor's job scope or geographical scope. The bill provides that for a first offense, a licensed contractor guilty of unlicensed contracting is to receive a notice of noncompliance.

The bill increases from \$5,000 to \$10,000 the maximum administrative fine that DBPR may impose for each subsequent instance of unlicensed contracting. Additionally, DBPR may assess reasonable investigative and legal costs for prosecution of a violation against an unlicensed contractor. The department may waive up to one-half of the fine if the unlicensed contractor obtains a valid license within one year after imposition of the fine.

Any fines collected are to be used first to cover investigative and legal costs. Then, any local governing body that forwards information relating to any person who is an unlicensed contractor can collect 30 percent of the remainder of the fine. The balance of the fines is to be used to maintain DBPR's unlicensed contractor page on the World Wide Web, which the bill requires DBPR to create and maintain, and to fund the Construction Industries Recovery Fund.

The bill requires DBPR to establish a page on its Internet website to be dedicated solely to listing any known information on unlicensed contractors, accessible by name or county.

The bill takes effect July 1, 2001

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:

Larger fines and more publicity relating to infractions may deter unlicensed activity.

C. Government Sector Impact:

There may be an increase in revenue to local governments and to the Construction Industries Recovery Fund. Providing for increased administrative sanctions may promote efficient enforcement by giving DBPR an additional option for handling serious violations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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