

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1169 Unlicensed Contracting
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 0 N, As CS	Padgett	Hall
2) Regulatory Reform Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

All construction and electrical industry contractors in Florida are required to be licensed. The Department of Business and Professional Regulation (DBPR) is the agency charged with licensing and regulating various businesses and professions in the state, including construction and electrical contractors. A person may be licensed as a contractor either by certification or registration. Certified licenses are valid statewide and allow the contractor to work anywhere in Florida. Registered licenses are limited to certain local jurisdictions and only allow a contractor to work in the cities or counties where the contractor holds a certificate of competency.

Current law prohibits an unlicensed person from engaging in a variety of specified contracting activities, such as engaging in the business or acting in the capacity of a contractor, falsely claiming to be a licensed contractor, performing work without a building permit, and violating local ordinances relating to the licensing of contractors. An unlicensed person commits a first degree misdemeanor for engaging in such contracting activities. An unlicensed person who is convicted of a second or subsequent violation for unlicensed contracting commits a third degree felony. In addition to criminal prosecution, DBPR is authorized to levy administrative fines against an unlicensed person who engages in contracting work.

CS/HB 1169 increases the criminal penalty in specified circumstances if an unlicensed person engages in the business or acts in the capacity of a contractor. The criminal penalties for all other contracting activities unlawfully performed by an unlicensed person remain a first degree misdemeanor, or a third degree felony for a second or subsequent conviction.

The bill creates a tiered penalty structure where the punishment for unlicensed contracting increases with the contract price for the work the unlicensed person agrees to complete. If the contract price is:

- Less than \$1,000, the penalty remains a first degree misdemeanor.
- \$1,000 or more, but less than \$20,000, the penalty is a third degree felony.
- \$20,000 or more, but less than \$200,000, the penalty is a second degree felony.
- \$200,000 or more, the penalty is a first degree felony.

The bill may have a positive indeterminate prison bed impact by increasing the penalty for specified unlicensed contracting crimes from a misdemeanor to a felony.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Construction and Electrical Contractors

The Department of Business and Professional Regulation (DBPR) is the agency charged with licensing and regulating various businesses and professions in the state, including construction and electrical contractors.¹ The Construction Industry Licensing Board² (CILB) and the Electrical Contractors' Licensing Board³ (ECLB) are the regulatory bodies charged with implementing parts I and II of ch. 489, F.S., respectively, which provide regulations related to construction and electrical contracting.

All construction and electrical industry contractors in Florida are required to be licensed.⁴ A person may be licensed as a contractor either by certification or registration. DBPR must issue a certification or registration to each person qualified by the Board and upon receipt of the original license fee.⁵ Certified licenses are valid statewide and allow the contractor to work anywhere in Florida. Registered licenses are limited to certain local jurisdictions and only allow a contractor to work in the cities or counties where the contractor holds a certificate of competency.⁶ More specifically, licensure by registration is available when the applicant has taken and passed a local competency examination, which permits the licensee to practice within that specified locale,⁷ and licensure by certification is available when the applicant has taken and passed a state competency exam,⁸ which permits the certificateholder to engage in contracting in any jurisdiction in the state without being required to fulfill the competency requirements of that jurisdiction.⁹

Unlicensed Contractors

Current law prohibits an unlicensed person from:

- Falsely holding himself or herself or a business organization out as a licensee, certificateholder, or registrant;
- Falsely impersonating a certificateholder or registrant;
- Presenting another person's registration or certificate as his or her own;
- Knowingly giving false or forged evidence to the Board or to a Board member;
- Using or attempting to use a certificate or registration that has been suspended or revoked;
- Engaging in the business or acting in the capacity of a contractor or advertising himself or herself or a business organization as available to engage in the business or acting in the capacity of a contractor without being duly registered or certified;
- Operating 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.;

¹ "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. S. 489.105(3), F.S.

² The CILB oversees the following license categories: air conditioning, building, internal pollutant storage tank lining applicator, mechanical, plumbing, pollutant storage systems, pool/spa, precision tank tester, residential, roofing, sheet metal, solar, specialty, underground utility and excavation.

³ The ECLB oversees the following license categories: electrical contractor, alarm system contractor I and II, specialty and electrical contractor.

⁴ S. 489.115(1), F.S.

⁵ S. 489.115(2)(a), F.S.

⁶ Department of Business and Professional Regulation, Construction Industry Licensing Board, *Definition of Occupation and Class Codes*, <http://www.myfloridalicense.com/DBPR/construction-industry/> (last visited Mar. 22, 2021).

⁷ *Id.*

⁸ See s. 489.111, F.S.

⁹ S. 489.115(2)(b), F.S.

- Commencing or performing work for which a building permit is required under part IV of chapter 553, F.S., without such building permit; or
- Willfully or deliberately disregarding or violating any municipal or county ordinance relating to uncertified or unregistered contractors.

An unlicensed person who violates any of these provisions commits a:

- First degree misdemeanor¹⁰ for a first conviction.
- Third degree felony¹¹ for a second or subsequent conviction.
- Third degree felony if a person commits a violation during a state of emergency declared by executive order of the Governor.¹²

In addition to criminal prosecution, DBPR can levy administrative fines of up to \$10,000 against an unlicensed person who performs contracting services.¹³

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.¹⁴ If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.¹⁵ A felony conviction for unlicensed contracting is unranked and defaults to a Level 1 offense on the OSRC.¹⁶

Effect of Proposed Changes

CS/HB 1169 increases the criminal penalty in specified circumstances if an unlicensed person engages in the business or acts in the capacity of a contractor. The criminal penalties for all other contracting activities unlawfully performed by an unlicensed person remains a first degree misdemeanor, or a third degree felony for a second or subsequent conviction.

The bill creates a tiered penalty structure where the punishment for unlicensed contracting increases with the contract price for the work the unlicensed person agrees to complete. If the contract price is:

- Less than \$1,000, the penalty remains a first degree misdemeanor.
- \$1,000 or more, but less than \$20,000, the penalty is a third degree felony.¹⁷
- \$20,000 or more, but less than \$200,000, the penalty is a second degree felony.¹⁸
- \$200,000 or more, the penalty is a first degree felony.¹⁹

Under the bill, "contract price" is defined as the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and must be increased or diminished by the price of extras or change orders, or by any amounts attributable to changes in the scope of the work or defects in workmanship or materials or any other breaches of the contract; but no penalty or liquidated damages between the owner and a contractor diminishes the

¹⁰ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. *Id.*

¹² S. 489.127(2), F.S.

¹³ S. 455.228, F.S.

¹⁴ S. 921.0022, F.S.

¹⁵ S. 921.0023, F.S.

¹⁶ *Id.*

¹⁷ The crime is not ranked and defaults to a Level 1 offense on the OSRC. S. 921.0023, F.S.

¹⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S. The crime is unranked and defaults to a Level 4 offense on the OSRC. S. 921.0023, F.S.

¹⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S. The crime is unranked and defaults to a Level 7 offense on the OSRC. S. 921.0023, F.S.

contract price as to any other lienor. If no price is agreed upon by the contracting parties, this term means the value of all labor, services, or materials covered by their contract, with any increases and diminutions, as provided in this subsection. Allowance items are a part of the contract when accepted by the owner.

The bill provides an effective date of October 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 489.127, F.S., relating to prohibitions; penalties.

Section 2: Reenacts s. 489.13, F.S., relating to unlicensed contracting; notice of noncompliance; fine; authority to issue or receive a building permit; web page.

Section 3: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate prison bed impact by increasing the penalty for specified unlicensed contracting crimes from a misdemeanor to a felony.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that only an unlicensed person who engages in the business or acts in the capacity as a contractor without being certified is subject to the enhanced penalties in the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.