

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.)

BILL: CS/CS/SB 1284

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee, Regulated Industries Committee and Senator Dyer

SUBJECT: Contractors/Judgments

DATE: March 23, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Martin</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends Chapter 489, F.S., regulating contracting. It mandates that the Department of Business and Professional Regulation initiate disciplinary proceedings against contractors and electrical contractors, and the Department of Health initiate disciplinary proceedings against septic tank contractors, upon the filing of a complaint by a judgment creditor of a contractor involving unsatisfied judgments arising from the contractor's licensed activities.

This bill creates the following sections of the Florida Statutes: 489.13, 489.5334 and 489.5591.

II. Present Situation:

Chapter 489, F.S., has separate parts relating to contractors, electrical contractors and septic tank contractors. A licensed contractor can face disciplinary proceedings for failure to satisfy the terms of a civil judgment obtained against the licensee, relating to the practice of the contractor's profession, within a reasonable period of time. *See*, §489.129(1)(q), F.S., 1998 Supplement. Similarly, if an electrical contractor fails to pay or comply with the terms of a judgment obtained against the electrical contractor and relating to the practice of contracting within 18 months, then that contractor also faces discipline. *See*, §489.533(1)(m)4., F.S., 1998 Supplement.

Such disciplinary proceedings against contractors and electrical contractors licensed under Chapter 489, F.S., currently follow the same procedure through the Department of Business and Professional Regulation (DBPR) and either the Construction Industry Licensing Board (CILB) or the Electrical Contractors' Licensing Board (ECLB). The procedure includes intake of some form of initial complaint, written or verbal, assignment of an investigator, and performance of an investigation by DBPR. This procedure can take several months, and it can be well over a year after the receipt of the initial complaint before a determination is made as to whether or not to file a formal complaint against the licensee. There have been concerns raised that the complainant never learns what actions the boards take in many instances.

The Department of Health (DOH) regulates septic tank contractors pursuant to Part III of chapter 489, F.S. Contractors desiring to be registered by the department are required to meet qualifications set by this Part and the department.

III. Effect of Proposed Changes:

This bill creates a simplified, expedited procedure for disciplining contractors who has an unsatisfied judgement in violation of s. 489.129(1)(g), F.S., 1998 Supplement, which relates to “mismanagement or misconduct ... that causes financial harm to a customer.”

Section 1 creates s. 489.13, F.S., to establish the procedure for actions against construction contractors. DBPR would be required to initiate disciplinary proceedings involving an unsatisfied judgment when a judgment creditor filed the proper complaint, a certified copy of the recorded judgment, and an affidavit stating that the judgment arises from the practice of the judgment debtor’s profession licensed under Part I of chapter 489, F.S.

Within 20 days after the date that DBPR receives the required materials, it must issue and serve an order for the contractor to show cause why the contractor’s license should not be suspended until the judgment is satisfied. The contractor must respond in writing under oath within 20 days after the date of service. If the contractor fails to respond within the 20 days, or if the contractor responds to the order and does not dispute the allegations in the complaint, the case is referred to the board for final action. If the board finds that the contractor has committed “mismanagement or misconduct ... that causes financial harm to a customer,” the board must suspend the contractor’s license until the judgment has been satisfied, unless it finds that aggregating or mitigating factors support a different penalty.

If the contractor responds within the 20 day period and disputes the allegations in the complaint and requests a hearing, the department must refer the case to an investigator. The board must notify the licensee and the judgement creditor when and where the board will consider action on the complaint, and provide them copies of all actions taken in the disciplinary proceeding.

Section 2 creates s. 489.5534, F.S., to establish a parallel procedure for actions against electrical contractors.

Section 3 subjects septic tank contractors to disciplinary action for “mismanagement or misconduct ... that causes financial harm to a customer,” pursuant to §489.129(1)(q), F.S., 1998 Supplement, and subjects them to the disciplinary proceedings set out in section 1 of the bill. The Department of Health regulates septic tank contractors and would be responsible for enforcing this section.

Section 4 provides that the act will take effect July 1, 1999, and shall apply to judgments entered on or after that date.

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:

This bill may have some impact on the business community and on any citizen customers of contractors, electrical contractors and septic tank contractors. The simplified, expedited process provided in the bill should favor quicker resolution of disputes arising from nonpayment. It could lessen the commission of mismanagement or misconduct in the practice of contracting that causes financial harm to customers.

C. Government Sector Impact:

The impact on DBPR, the CILB and the ECLB, and the DOH is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 1284 is a companion to HB 929.

VIII. Amendments:

None.