



HB 1277

2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A bill to be entitled
 An act relating to the enforceability of construction contracts performed by unlicensed contractors; amending ss. 255.05, 489.128, 489.532, and 713.02, F.S.; clarifying that the prohibition on enforcement of construction contracts extends only to enforcement by the unlicensed contractor; clarifying the parties who may invoke unenforceability; clarifying that unlicensed contractors have no construction lien or payment bond rights; clarifying that sureties of unlicensed contractors have continuing payment and performance bond obligations; clarifying the effect of an unenforceable contract on other contracts and obligations; clarifying the definition of an "unlicensed contractor"; limiting statute to state licensure; providing for retroactive effect; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.--

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the prescribed time in this paragraph within which an action to enforce any claim against a payment bond provided pursuant to this section may be commenced by recording in the clerk's office a notice in substantially the following form:



HB 1277

2003

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ... (Name and address of claimant) ...

You are notified that the undersigned contests your notice of nonpayment, dated _____, _____, and served on the undersigned on _____, _____, and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on _____, _____.

Signed:... (Contractor or Attorney) ...

The claim of any claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service is complete upon mailing.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for



HB 1277

2003

61 protection. A claimant who is not in privity with the contractor
 62 and who has not received payment for his or her labor,
 63 materials, or supplies shall deliver to the contractor and to
 64 the surety written notice of the performance of the labor or
 65 delivery of the materials or supplies and of the nonpayment. The
 66 notice of nonpayment may be served at any time during the
 67 progress of the work or thereafter but not before 45 days after
 68 the first furnishing of labor, services, or materials, and not
 69 later than 90 days after the final furnishing of the labor,
 70 services, or materials by the claimant or, with respect to
 71 rental equipment, not later than 90 days after the date that the
 72 rental equipment was last on the job site available for use. No
 73 action for the labor, materials, or supplies may be instituted
 74 against the contractor or the surety unless both notices have
 75 been given. Notices required or permitted under this section may
 76 be served in accordance with s. 713.18. An action, except for an
 77 action exclusively for recovery of retainage, must be instituted
 78 against the contractor or the surety on the payment bond or the
 79 payment provisions of a combined payment and performance bond
 80 within 1 year after the performance of the labor or completion
 81 of delivery of the materials or supplies. An action exclusively
 82 for recovery of retainage must be instituted against the
 83 contractor or the surety within 1 year after the performance of
 84 the labor or completion of delivery of the materials or
 85 supplies, or within 90 days after receipt of final payment (or
 86 the payment estimate containing the owner's final reconciliation
 87 of quantities if no further payment is earned and due as a
 88 result of deductive adjustments) by the contractor or surety,
 89 whichever comes last. A claimant may not waive in advance his or
 90 her right to bring an action under the bond against the surety.



HB 1277

2003

91 In any action brought to enforce a claim against a payment bond
92 under this section, the prevailing party is entitled to recover
93 a reasonable fee for the services of his or her attorney for
94 trial and appeal or for arbitration, in an amount to be
95 determined by the court, which fee must be taxed as part of the
96 prevailing party's costs, as allowed in equitable actions. The
97 time periods for service of a notice of nonpayment or for
98 bringing an action against a contractor or a surety shall be
99 measured from the last day of furnishing labor, services, or
100 materials by the claimant and shall not be measured by other
101 standards, such as the issuance of a certificate of occupancy or
102 the issuance of a certificate of substantial completion.

103 3. Notwithstanding any other provision of this section, no
104 bond claim shall exist in favor of any contractor,
105 subcontractor, or sub-subcontractor unless such contractor,
106 subcontractor, or sub-subcontractor is licensed, if required to
107 be licensed, as a contractor pursuant to the license
108 requirements established and governed by chapter 489. Any
109 claimant whose primary or secondary qualifying agent is licensed
110 under chapter 489 has satisfied the licensing provisions of this
111 subparagraph. This subparagraph does not affect the contract or
112 bond claim rights of other parties, other than the unlicensed
113 contractor, receiving or supplying labor, services, or materials
114 to the same project, or the obligations of a surety as defined
115 by part XII of chapter 627, who has provided a bond on behalf of
116 the unlicensed contractor. An occupational license certificate
117 issued under the authority of chapter 205 is not a license for
118 purposes of this subparagraph.

119 Section 2. Section 489.128, Florida Statutes, is amended
120 to read:



HB 1277

2003

121 489.128 Contracts performed by unlicensed contractors
122 unenforceable.--As a matter of public policy, contracts entered
123 into on or after October 1, 1990, and performed ~~in full or in~~
124 ~~part~~ by any individual contractor who fails to obtain or
125 maintain a license as required by this part or a business
126 organization contractor who fails to obtain or maintain a
127 primary or secondary qualifying agent's license in accordance
128 with this part shall be unenforceable in law or in equity by the
129 unlicensed contractor. An "unlicensed contractor," for the
130 purpose of this section, is an individual contractor who fails
131 to obtain or maintain a license in accordance with this part or
132 a business organization contractor who fails to obtain or
133 maintain a primary or secondary qualifying agent's license under
134 this part or engages in contracting as a business organization,
135 including any partnership, corporation, business trust, or other
136 legal entity, and fails to obtain or maintain a certified or
137 registered qualifying agent. A contractor whose primary or
138 secondary qualifying agent is licensed under chapter 489 has
139 satisfied the licensing provisions of this section. This section
140 shall not apply to any other licensing requirements except those
141 specifically established and governed by this chapter. Any
142 business organization contractor that fails to obtain or
143 maintain a qualifying business license or certificate of
144 authority as required by ss. 489.119 or 489.127 shall not be
145 considered an unlicensed contractor for purposes of this
146 section. An occupational license certificate issued under the
147 authority of chapter 205 is not a license for purposes of this
148 section. This section does not affect either the right to
149 enforce contract, lien, or bond remedies of parties other than
150 the unlicensed contractor receiving or supplying labor,



HB 1277

2003

151 services, or materials to the same project, or the obligations
152 of a surety as defined by part XII of chapter 627, who has
153 provided a bond on behalf of the unlicensed contractor. It shall
154 not be a defense to any claim on a payment bond, performance
155 bond, bid bond, or indemnity agreement that the principal on the
156 bond or its indemnitor is an unlicensed contractor.

157 Section 3. Section 489.532, Florida Statutes, is amended
158 to read:

159 489.532 Contracts performed by unlicensed contractors
160 unenforceable.--As a matter of public policy, contracts entered
161 into on or after October 1, 1990, and performed ~~in full or in~~
162 ~~part~~ by any individual contractor who fails to obtain or
163 maintain a license as required by this part or a business
164 organization contractor who fails to obtain or maintain a
165 primary or secondary qualifying agent's license in accordance
166 with this part shall be unenforceable in law or in equity by the
167 unlicensed contractor. An "unlicensed contractor," for the
168 purpose of this section, is an individual contractor who fails
169 to obtain or maintain a license in accordance with this part or
170 a business organization contractor who fails to obtain or
171 maintain a primary or secondary qualifying agent's license under
172 this part or engages in contracting as a business organization,
173 including any partnership, corporation, business trust, or other
174 legal entity, and fails to obtain or maintain a certified or
175 registered qualifying agent. A contractor whose primary or
176 secondary qualifying agent is licensed under chapter 489 has
177 satisfied the licensing provisions of this section. This section
178 shall not apply to any other licensing requirements except those
179 specifically established and governed by this chapter. Any
180 business organization contractor that fails to obtain or



HB 1277

2003

181 maintain a qualifying business license or certificate of
182 authority shall not be considered an unlicensed contractor for
183 purposes of this section. An occupational license certificate
184 issued under the authority of chapter 205 is not a license for
185 purposes of this section. This section does not affect either
186 the right to enforce contract, lien, or bond remedies of parties
187 other than the unlicensed contractor receiving or supplying
188 labor, services, or materials to the same project, or the
189 obligations of a surety, as defined by part XII of chapter 627,
190 who has provided a bond on behalf of the unlicensed contractor.
191 It shall not be a defense to any claim on a payment bond,
192 performance bond, bid bond, or indemnity agreement that the
193 principal on the bond or its indemnitor is an unlicensed
194 ~~contractor who fails to obtain or maintain his or her license in~~
195 ~~accordance with this part shall be unenforceable in law, and the~~
196 ~~court in its discretion may extend this provision to equitable~~
197 ~~remedies.~~

198 Section 4. Subsection (7) of section 713.02, Florida
199 Statutes, is amended to read:

200 713.02 Types of lienors and exemptions.--

201 (7) Notwithstanding any other provision of this part, no
202 lien shall exist in favor of any contractor, subcontractor, or
203 sub-subcontractor unless such contractor, subcontractor, or sub-
204 subcontractor is licensed, if required to be licensed, as a
205 contractor pursuant to the license requirements established and
206 governed by chapter 489. Any lienor whose primary or secondary
207 qualifying agent is licensed under chapter 489 has satisfied the
208 licensing provisions of this subsection. This subsection does
209 not affect the contract, lien, or bond claim rights of other
210 parties, other than the unlicensed contractor receiving or



HB 1277

2003

211 supplying labor, services, or materials to the same project, or
212 the obligations of a surety as defined by part XII of chapter
213 627 who has provided a bond on behalf of the unlicensed
214 contractor. An occupational license certificate issued under the
215 authority of chapter 205 is not a license for purposes of this
216 subsection ~~laws of the jurisdiction within which she or he is~~
217 ~~doing business.~~

218 Section 5. Sections 2, 3, and 4 of this act are intended
219 to be remedial in nature and to clarify existing law. Sections 2
220 and 3 shall apply retroactively to all contracts entered into on
221 or after October 1, 1990. Section 4 shall apply retroactively to
222 all actions initiated on or after, and to all actions pending as
223 of, the effective date of this act.

224 Section 6. If any provision of this act or its application
225 to any person or circumstance is held invalid, the invalidity
226 does not affect other provisions or applications of the act
227 which can be given effect without the invalid provision or
228 application, and to this end the provisions of this act are
229 severable.

230 Section 7. This act shall take effect upon becoming a law.