



CHAMBER ACTION

The Committee on Business Regulation recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to contracting; amending ss. 489.128 and 489.532, F.S.; clarifying that the prohibition on enforcement of construction contracts extends only to enforcement by the unlicensed contractor; clarifying the specific licensure status required and timing of licensure for purposes of determining the enforceability of a construction contract; clarifying the effect of an unenforceable contract on other contracts and obligations; clarifying that unlicensed contractors have no lien or bond rights; clarifying that sureties of unlicensed contractors have continuing bond obligations; amending s. 713.02, F.S., relating to liens for unlicensed contractors, subcontractors, or sub-subcontractors, to conform; amending s. 713.06, F.S., relating to liens of persons not in privity, to conform; amending s. 489.117, F.S.; specifying conditions under which a person may perform specialty contracting services without obtaining a local professional license; amending



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29 ss. 489.119 and 489.521, F.S.; revising license  
30 requirements for certain business organizations engaging  
31 in contracting; providing for retroactive application;  
32 providing legislative intent; providing severability;  
33 providing an effective date.  
34

35 Be It Enacted by the Legislature of the State of Florida:  
36

37 Section 1. Section 489.128, Florida Statutes, is amended  
38 to read:

39 489.128 Contracts entered into ~~performed~~ by unlicensed  
40 contractors unenforceable.--

41 (1) As a matter of public policy, contracts entered into  
42 on or after October 1, 1990, ~~and performed in full or in part~~ by  
43 an unlicensed ~~any~~ contractor ~~who fails to obtain or maintain a~~  
44 ~~license in accordance with this part~~ shall be unenforceable in  
45 law or in equity.

46 (a) For purposes of this section, an individual is  
47 unlicensed if the individual does not have a license required by  
48 this part concerning the scope of the work to be performed under  
49 the contract. A business organization is unlicensed if the  
50 business organization does not have a primary or secondary  
51 qualifying agent in accordance with this part concerning the  
52 scope of the work to be performed under the contract.

53 (b) For purposes of this section, an individual or  
54 business organization shall not be considered unlicensed for  
55 failing to have an occupational license certificate issued under  
56 the authority of chapter 205. A business organization shall not



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57 be considered unlicensed for failing to have a certificate of  
58 authority as required by ss. 489.119 and 489.127.

59 (c) For purposes of this section, a contractor shall be  
60 considered unlicensed only if the contractor was unlicensed on  
61 the effective date of the original contract for the work, if  
62 stated therein, or, if not stated, the date the last party to  
63 the contract executed it, if stated therein. If the contract  
64 does not establish such a date, the contractor shall be  
65 considered unlicensed only if the contractor was unlicensed on  
66 the first date upon which the contractor provided labor,  
67 services, or materials under the contract.

68 (2) Notwithstanding any other provision of law to the  
69 contrary, if a contract is rendered unenforceable under this  
70 section, no lien or bond claim shall exist in favor of the  
71 unlicensed contractor for any labor, services, or materials  
72 provided under the contract or any amendment thereto.

73 (3) This section shall not affect the rights of parties  
74 other than the unlicensed contractor to enforce contract, lien,  
75 or bond remedies. This section shall not affect the obligations  
76 of a surety that has provided a bond on behalf of an unlicensed  
77 contractor. It shall not be a defense to any claim on a bond or  
78 indemnity agreement that the principal or indemnitor is  
79 unlicensed for purposes of this section.

80 Section 2. Section 489.532, Florida Statutes, is amended  
81 to read:

82 489.532 Contracts entered into ~~performed~~ by unlicensed  
83 contractors unenforceable.--



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84        (1) As a matter of public policy, contracts entered into  
85 on or after October 1, 1990, ~~and performed in full or in part by~~  
86 ~~an unlicensed any contractor who fails to obtain or maintain his~~  
87 ~~or her license in accordance with this part~~ shall be  
88 unenforceable in law or in equity by the unlicensed contractor,  
89 ~~and the court in its discretion may extend this provision to~~  
90 ~~equitable remedies.~~

91        (a) For purposes of this section, an individual is  
92 unlicensed if the individual does not have a license required by  
93 this part concerning the scope of the work to be performed under  
94 the contract. A business organization is unlicensed if the  
95 business organization does not have a primary or secondary  
96 qualifying agent in accordance with this part concerning the  
97 scope of the work to be performed under the contract.

98        (b) For purposes of this section, an individual or  
99 business organization shall not be considered unlicensed for  
100 failing to have an occupational license certificate issued under  
101 the authority of chapter 205.

102        (c) For purposes of this section, a contractor shall be  
103 considered unlicensed only if the contractor was unlicensed on  
104 the effective date of the original contract for the work, if  
105 stated therein, or, if not stated, the date the last party to  
106 the contract executed it, if stated therein. If the contract  
107 does not establish such a date, the contractor shall be  
108 considered unlicensed only if the contractor was unlicensed on  
109 the first date upon which the contractor provided labor,  
110 services, or materials under the contract.



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111 (2) Notwithstanding any other provision of law to the  
 112 contrary, if a contract is rendered unenforceable under this  
 113 section, no lien or bond claim shall exist in favor of the  
 114 unlicensed contractor for any labor, services, or materials  
 115 provided under the contract or any amendment thereto.

116 (3) This section shall not affect the rights of parties  
 117 other than the unlicensed contractor to enforce contract, lien,  
 118 or bond remedies. This section shall not affect the obligations  
 119 of a surety that has provided a bond on behalf of an unlicensed  
 120 contractor. It shall not be a defense to any claim on a bond or  
 121 indemnity agreement that the principal or indemnitor is  
 122 unlicensed for purposes of this section.

123 Section 3. Subsection (7) of section 713.02, Florida  
 124 Statutes, is amended to read:

125 713.02 Types of lienors and exemptions.--

126 (7) Notwithstanding any other provision of this part, no  
 127 lien shall exist in favor of any contractor, subcontractor, or  
 128 sub-subcontractor who is unlicensed as provided in s. 489.128  
 129 ~~unless such contractor, subcontractor, or sub-subcontractor is~~  
 130 ~~licensed, if required to be licensed, as a contractor pursuant~~  
 131 ~~to the laws of the jurisdiction within which she or he is doing~~  
 132 ~~business.~~

133 Section 4. Subsection (1) of section 713.06, Florida  
 134 Statutes, is amended to read:

135 713.06 Liens of persons not in privity; proper payments.--

136 (1) A materialman or laborer, either of whom is not in  
 137 privity with the owner, or a subcontractor or sub-subcontractor  
 138 who complies with the provisions of this part and is subject to



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139 the limitations thereof, has a lien on the real property  
 140 improved for any money that is owed to him or her for labor,  
 141 services, or materials furnished in accordance with his or her  
 142 contract ~~and with the direct contract~~ and for any unpaid finance  
 143 charges due under the lienor's contract. A materialman or  
 144 laborer, either of whom is not in privity with the owner, or a  
 145 subcontractor or sub-subcontractor who complies with the  
 146 provisions of this part and is subject to the limitations  
 147 thereof, also has a lien on the owner's real property for labor,  
 148 services, or materials furnished to improve public property if  
 149 the improvement of the public property is furnished in  
 150 accordance with his or her contract ~~and with the direct~~  
 151 ~~contract~~. The total amount of all liens allowed under this part  
 152 for furnishing labor, services, or material covered by any  
 153 certain direct contract must not exceed the amount of the  
 154 contract price fixed by the direct contract except as provided  
 155 in subsection (3). No person may have a lien under this section  
 156 except those lienors specified in it, as their designations are  
 157 defined in s. 713.01.

158 Section 5. Paragraph (e) of subsection (4) of section  
 159 489.117, Florida Statutes, is amended to read:

160 489.117 Registration; specialty contractors.--

161 (4)

162 (e) Any person who is not required to obtain registration  
 163 or certification pursuant to s. 489.105(3)(d)-(o) may perform  
 164 specialty contracting services for the construction, remodeling,  
 165 repair, or improvement of single-family residences, including a  
 166 townhouse as defined in the Florida Building Code, without



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167 obtaining a local professional license if such person is under  
168 the supervision of a certified or registered general, building,  
169 or residential contractor. As used in this paragraph,  
170 supervision shall not be deemed to require the existence of a  
171 direct contract between the certified or registered general,  
172 building, or residential contractor and the person performing  
173 specialty contracting services.

174 Section 6. Subsection (8) is added to section 489.119,  
175 Florida Statutes, to read:

176 489.119 Business organizations; qualifying agents.--

177 (8)(a) A business organization proposing to engage in  
178 contracting is not required to apply for a certificate of  
179 authority through a qualifying agent if:

180 1. The business organization employs one or more  
181 registered or certified contractors licensed in accordance with  
182 this part who are responsible for obtaining permits and  
183 supervising all of the business organization's contracting  
184 activities;

185 2. The business organization engages only in contracting  
186 on property owned by the business organization or by its parent,  
187 subsidiary, or affiliated entities; and

188 3. The business organization, or its parent entity if the  
189 business organization is a wholly owned subsidiary, maintains a  
190 minimum net worth of \$20 million.

191 (b) Any business organization engaging in contracting  
192 under this subsection shall provide the board with the name and  
193 license number of each registered or certified contractor  
194 employed by the business organization to supervise its



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195 contracting activities. The business organization is not  
196 required to post a bond or otherwise evidence any financial or  
197 credit information except as necessary to demonstrate compliance  
198 with paragraph(a).

199 (c) A registered or certified contractor employed by a  
200 business organization to supervise its contracting activities  
201 under this subsection shall not be required to post a bond or  
202 otherwise evidence any personal financial or credit information  
203 so long as the individual performs contracting activities  
204 exclusively on behalf of a business organization meeting all of  
205 the requirements of paragraph (a).

206 Section 7. Subsection (10) is added to section 489.521,  
207 Florida Statutes, to read:

208 489.521 Business organizations; qualifying agents.--

209 (10)(a) A business organization proposing to engage in  
210 contracting is not required to apply for a certificate of  
211 authority through a qualifying agent if:

212 1. The business organization employs one or more  
213 registered or certified contractors licensed in accordance with  
214 this part who are responsible for obtaining permits and  
215 supervising all of the business organization's contracting  
216 activities;

217 2. The business organization engages only in contracting  
218 on property owned by the business organization or by its parent,  
219 subsidiary, or affiliated entities; and

220 3. The business organization, or its parent entity if the  
221 business organization is a wholly owned subsidiary, maintains a  
222 minimum net worth of \$20 million.





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223        (b) Any business organization engaging in contracting  
224 under this subsection shall provide the board with the name and  
225 license number of each registered or certified contractor  
226 employed by the business organization to supervise its  
227 contracting activities. The business organization is not  
228 required to post a bond or otherwise evidence any financial or  
229 credit information except as necessary to demonstrate compliance  
230 with paragraph(a).

231        (c) A registered or certified contractor employed by a  
232 business organization to supervise its contracting activities  
233 under this subsection shall not be required to post a bond or  
234 otherwise evidence any personal financial or credit information  
235 so long as the individual performs contracting activities  
236 exclusively on behalf of a business organization meeting all of  
237 the requirements of paragraph (a).

238        Section 8. Sections 1, 2, 3, and 4 are intended to be  
239 remedial in nature and to clarify existing law. Sections 1, 2,  
240 3, and 4 shall apply retroactively to all actions, including any  
241 action on a lien or bond claim, initiated on or after, or  
242 pending as of, the effective date of this act. If the  
243 retroactivity of any provision of section 1, section 2, section  
244 3, or section 4, or its retroactive application to any person or  
245 circumstance, is held invalid, the invalidity does not affect  
246 the retroactivity or retroactive application of other provisions  
247 of sections 1, 2, 3, and 4.

248        Section 9. If any provision of this act or its application  
249 to any person or circumstance is held invalid, the invalidity  
250 does not affect other provisions or applications of the act



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251 | which can be given effect without the invalid provision or  
252 | application, and to this and the provisions of this act are  
253 | severable.

254 |       Section 10. This act shall take effect upon becoming a  
255 | law.