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CHAMBER ACTION

The Committee on Judiciary 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. 489.113, F.S.; revising provisions for the scope of work that a licensed general contractor may perform; amending s. 489.117, F.S.; specifying conditions



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29 | under which a person may perform specialty contracting
30 | services without obtaining a local professional license;
31 | amending ss. 489.119 and 489.521, F.S.; revising license
32 | requirements for certain business organizations engaging
33 | in contracting; providing for retroactive application;
34 | providing legislative intent; providing severability;
35 | providing an effective date.

36

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

38

39 | Section 1. Section 489.128, Florida Statutes, is amended
40 | to read:

41 | 489.128 Contracts entered into ~~performed~~ by unlicensed
42 | contractors unenforceable.--

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

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

55 | (b) For purposes of this section, an individual or
56 | business organization shall not be considered unlicensed for



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57 failing to have an occupational license certificate issued under
58 the authority of chapter 205. A business organization shall not
59 be considered unlicensed for failing to have a certificate of
60 authority as required by ss. 489.119 and 489.127.

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

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

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

82 Section 2. Section 489.532, Florida Statutes, is amended
83 to read:



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84 489.532 Contracts entered into ~~performed~~ by unlicensed
85 contractors unenforceable.--

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

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

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

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



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111 the first date upon which the contractor provided labor,
112 services, or materials under the contract.

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

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

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

127 713.02 Types of lienors and exemptions.--

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

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

137 713.06 Liens of persons not in privity; proper payments.--



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

160 Section 5. Paragraph (d) of subsection (3) of section
161 489.113, Florida Statutes, is amended to read:

162 489.113 Qualifications for practice; restrictions.--

163 (3) A contractor shall subcontract all electrical,
164 mechanical, plumbing, roofing, sheet metal, swimming pool, and
165 air-conditioning work, unless such contractor holds a state



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166 certificate or registration in the respective trade category,
167 however:

168 (d) A general contractor, ~~on new site development work,~~
169 ~~site redevelopment work, mobile home parks, and commercial~~
170 ~~properties,~~ shall not be required to subcontract the
171 construction of a ~~the~~ main sanitary sewer collection system, ~~the~~
172 storm collection system, or ~~and the~~ water distribution system,
173 not including the continuation of utility lines from the mains
174 to the buildings, and may perform any of the services, on public
175 or private property, for which a license as an underground
176 utility and excavation contractor is required under this part.

177 Section 6. Paragraph (e) of subsection (4) of section
178 489.117, Florida Statutes, is amended to read:

179 489.117 Registration; specialty contractors.--

180 (4)

181 (e) Any person who is not required to obtain registration
182 or certification pursuant to s. 489.105(3)(d)-(o) may perform
183 specialty contracting services for the construction, remodeling,
184 repair, or improvement of single-family residences, including a
185 townhouse as defined in the Florida Building Code, without
186 obtaining a local professional license if such person is under
187 the supervision of a certified or registered general, building,
188 or residential contractor. As used in this paragraph,
189 supervision shall not be deemed to require the existence of a
190 direct contract between the certified or registered general,
191 building, or residential contractor and the person performing
192 specialty contracting services.



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193 Section 7. Subsection (8) is added to section 489.119,
194 Florida Statutes, to read:

195 489.119 Business organizations; qualifying agents.--

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

199 1. The business organization employs one or more
200 registered or certified contractors licensed in accordance with
201 this part who are responsible for obtaining permits and
202 supervising all of the business organization's contracting
203 activities;

204 2. The business organization engages only in contracting
205 on property owned by the business organization or by its parent,
206 subsidiary, or affiliated entities; and

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

210 (b) Any business organization engaging in contracting
211 under this subsection shall provide the board with the name and
212 license number of each registered or certified contractor
213 employed by the business organization to supervise its
214 contracting activities. The business organization is not
215 required to post a bond or otherwise evidence any financial or
216 credit information except as necessary to demonstrate compliance
217 with paragraph(a).

218 (c) A registered or certified contractor employed by a
219 business organization to supervise its contracting activities
220 under this subsection shall not be required to post a bond or



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221 otherwise evidence any personal financial or credit information
222 so long as the individual performs contracting activities
223 exclusively on behalf of a business organization meeting all of
224 the requirements of paragraph (a).

225 Section 8. Subsection (10) is added to section 489.521,
226 Florida Statutes, to read:

227 489.521 Business organizations; qualifying agents.--

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

231 1. The business organization employs one or more
232 registered or certified contractors licensed in accordance with
233 this part who are responsible for obtaining permits and
234 supervising all of the business organization's contracting
235 activities;

236 2. The business organization engages only in contracting
237 on property owned by the business organization or by its parent,
238 subsidiary, or affiliated entities; and

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

242 (b) Any business organization engaging in contracting
243 under this subsection shall provide the board with the name and
244 license number of each registered or certified contractor
245 employed by the business organization to supervise its
246 contracting activities. The business organization is not
247 required to post a bond or otherwise evidence any financial or



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248 credit information except as necessary to demonstrate compliance
249 with paragraph(a).

250 (c) A registered or certified contractor employed by a
251 business organization to supervise its contracting activities
252 under this subsection shall not be required to post a bond or
253 otherwise evidence any personal financial or credit information
254 so long as the individual performs contracting activities
255 exclusively on behalf of a business organization meeting all of
256 the requirements of paragraph (a).

257 Section 9. Sections 1, 2, 3, and 4 are intended to be
258 remedial in nature and to clarify existing law. Sections 1, 2,
259 3, and 4 shall apply retroactively to all actions, including any
260 action on a lien or bond claim, initiated on or after, or
261 pending as of, the effective date of this act. If the
262 retroactivity of any provision of section 1, section 2, section
263 3, or section 4, or its retroactive application to any person or
264 circumstance, is held invalid, the invalidity does not affect
265 the retroactivity or retroactive application of other provisions
266 of sections 1, 2, 3, and 4.

267 Section 10. If any provision of this act or its
268 application to any person or circumstance is held invalid, the
269 invalidity does not affect other provisions or applications of
270 the act which can be given effect without the invalid provision
271 or application, and to this and the provisions of this act are
272 severable.

273 Section 11. This act shall take effect upon becoming a
274 law.