



1 A bill to be entitled

2 An act relating to contracting; amending ss. 489.128 and  
3 489.532, F.S.; clarifying that the prohibition on  
4 enforcement of construction contracts extends only to  
5 enforcement by the unlicensed contractor; clarifying the  
6 specific licensure status required and timing of  
7 licensure for purposes of determining the enforceability  
8 of a construction contract; clarifying the effect of an  
9 unenforceable contract on other contracts and  
10 obligations; clarifying that unlicensed contractors have  
11 no lien or bond rights; clarifying that sureties of  
12 unlicensed contractors have continuing bond obligations;  
13 amending s. 713.02, F.S., relating to liens for  
14 unlicensed contractors, subcontractors, or sub-  
15 subcontractors, to conform; amending s. 489.113, F.S.;  
16 requiring certain swimming pool work to be subcontracted;  
17 revising provisions for the scope of work that a licensed  
18 general contractor may perform; amending s. 489.117,  
19 F.S.; specifying conditions under which a person may  
20 perform specialty contracting services without obtaining  
21 a local professional license; amending ss. 489.119 and  
22 489.521, F.S.; revising license requirements for certain  
23 business organizations engaging in contracting; providing  
24 for retroactive application; providing legislative  
25 intent; providing severability; providing an effective  
26 date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30  
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

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

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

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

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

(b) For purposes of this section, an individual or business organization shall not be considered unlicensed for failing to have an occupational license certificate issued under the authority of chapter 205. A business organization shall not be considered unlicensed for failing to have a certificate of authority as required by ss. 489.119 and 489.127.

(c) For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract



57 | does not establish such a date, the contractor shall be  
 58 | considered unlicensed only if the contractor was unlicensed on  
 59 | the first date upon which the contractor provided labor,  
 60 | services, or materials under the contract.

61 | (2) Notwithstanding any other provision of law to the  
 62 | contrary, if a contract is rendered unenforceable under this  
 63 | section, no lien or bond claim shall exist in favor of the  
 64 | unlicensed contractor for any labor, services, or materials  
 65 | provided under the contract or any amendment thereto.

66 | (3) This section shall not affect the rights of parties  
 67 | other than the unlicensed contractor to enforce contract, lien,  
 68 | or bond remedies. This section shall not affect the obligations  
 69 | of a surety that has provided a bond on behalf of an unlicensed  
 70 | contractor. It shall not be a defense to any claim on a bond or  
 71 | indemnity agreement that the principal or indemnitor is  
 72 | unlicensed for purposes of this section.

73 | Section 2. Section 489.532, Florida Statutes, is amended  
 74 | to read:

75 | 489.532 Contracts entered into ~~performed~~ by unlicensed  
 76 | contractors unenforceable.--

77 | (1) As a matter of public policy, contracts entered into  
 78 | on or after October 1, 1990, and performed in full or in part by  
 79 | an unlicensed ~~any contractor who fails to obtain or maintain his~~  
 80 | ~~or her license in accordance with this part~~ shall be  
 81 | unenforceable in law or in equity by the unlicensed contractor,  
 82 | ~~and the court in its discretion may extend this provision to~~  
 83 | ~~equitable remedies.~~



84           (a) For purposes of this section, an individual is  
85 unlicensed if the individual does not have a license required by  
86 this part concerning the scope of the work to be performed under  
87 the contract. A business organization is unlicensed if the  
88 business organization does not have a primary or secondary  
89 qualifying agent in accordance with this part concerning the  
90 scope of the work to be performed under the contract.

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

95           (c) For purposes of this section, a contractor shall be  
96 considered unlicensed only if the contractor was unlicensed on  
97 the effective date of the original contract for the work, if  
98 stated therein, or, if not stated, the date the last party to  
99 the contract executed it, if stated therein. If the contract  
100 does not establish such a date, the contractor shall be  
101 considered unlicensed only if the contractor was unlicensed on  
102 the first date upon which the contractor provided labor,  
103 services, or materials under the contract.

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

109           (3) This section shall not affect the rights of parties  
110 other than the unlicensed contractor to enforce contract, lien,  
111 or bond remedies. This section shall not affect the obligations



112 of a surety that has provided a bond on behalf of an unlicensed  
 113 contractor. It shall not be a defense to any claim on a bond or  
 114 indemnity agreement that the principal or indemnitor is  
 115 unlicensed for purposes of this section.

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

118 713.02 Types of lienors and exemptions.--

119 (7) Notwithstanding any other provision of this part, no  
 120 lien shall exist in favor of any contractor, subcontractor, or  
 121 sub-subcontractor who is unlicensed as provided in s. 489.128 or  
 122 s. 489.532 unless such contractor, subcontractor, or sub-  
 123 subcontractor is licensed, if required to be licensed, as a  
 124 contractor pursuant to the laws of the jurisdiction within which  
 125 she or he is doing business.

126 Section 4. Paragraphs (c) and (d) of subsection (3) of  
 127 section 489.113, Florida Statutes, are amended to read:

128 489.113 Qualifications for practice; restrictions.--

129 (3) A contractor shall subcontract all electrical,  
 130 mechanical, plumbing, roofing, sheet metal, swimming pool, and  
 131 air-conditioning work, unless such contractor holds a state  
 132 certificate or registration in the respective trade category,  
 133 however:

134 (c) A general contractor shall not be required to  
 135 subcontract structural swimming pool work. All other swimming  
 136 pool work shall be subcontracted to an appropriately licensed  
 137 certified or registered swimming pool contractor.

138 (d) A general contractor, ~~on new site development work,~~  
 139 ~~site redevelopment work, mobile home parks, and commercial~~



140 ~~properties,~~ shall not be required to subcontract the  
141 construction of a ~~the~~ main sanitary sewer collection system, ~~the~~  
142 storm collection system, or ~~and the~~ water distribution system,  
143 not including the continuation of utility lines from the mains  
144 to the buildings, and may perform any of the services, on public  
145 or private property, for which a license as an underground  
146 utility and excavation contractor is required under this part.

147 Section 5. Paragraph (e) of subsection (4) of section  
148 489.117, Florida Statutes, is amended to read:

149 489.117 Registration; specialty contractors.--

150 (4)

151 (e) Any person who is not required to obtain registration  
152 or certification pursuant to s. 489.105(3)(d)-(o) may perform  
153 specialty contracting services for the construction, remodeling,  
154 repair, or improvement of single-family residences, including a  
155 townhouse as defined in the Florida Building Code, without  
156 obtaining a local professional license if such person is under  
157 the supervision of a certified or registered general, building,  
158 or residential contractor. As used in this paragraph,  
159 supervision shall not be deemed to require the existence of a  
160 direct contract between the certified or registered general,  
161 building, or residential contractor and the person performing  
162 specialty contracting services.

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

165 489.119 Business organizations; qualifying agents.--

166 (8)(a) A business organization proposing to engage in  
167 contracting is not required to apply for or obtain authorization



168 under this part to engage in contracting if:

169 1. The business organization employs one or more  
170 registered or certified contractors licensed in accordance with  
171 this part who are responsible for obtaining permits and  
172 supervising all of the business organization's contracting  
173 activities;

174 2. The business organization engages only in contracting  
175 on property owned by the business organization or by its parent,  
176 subsidiary, or affiliated entities; and

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

180 (b) Any business organization engaging in contracting  
181 under this subsection shall provide the board with the name and  
182 license number of each registered or certified contractor  
183 employed by the business organization to supervise its  
184 contracting activities. The business organization is not  
185 required to post a bond or otherwise evidence any financial or  
186 credit information except as necessary to demonstrate compliance  
187 with paragraph(a).

188 (c) A registered or certified contractor employed by a  
189 business organization to supervise its contracting activities  
190 under this subsection shall not be required to post a bond or  
191 otherwise evidence any personal financial or credit information  
192 so long as the individual performs contracting activities  
193 exclusively on behalf of a business organization meeting all of  
194 the requirements of paragraph (a).



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

197 489.521 Business organizations; qualifying agents.--

198 (10)(a) A business organization proposing to engage in  
199 contracting is not required to apply for or obtain authorization  
200 under this part to engage in contracting if:

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

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

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

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

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





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

227 Section 8. Sections 1, 2, 3, and 4 are intended to be  
228 remedial in nature and to clarify existing law. Sections 1, 2,  
229 3, and 4 shall apply retroactively to all actions, including any  
230 action on a lien or bond claim, initiated on or after, or  
231 pending as of, the effective date of this act. If the  
232 retroactivity of any provision of section 1, section 2, section  
233 3, or section 4, or its retroactive application to any person or  
234 circumstance, is held invalid, the invalidity does not affect  
235 the retroactivity or retroactive application of other provisions  
236 of sections 1, 2, 3, and 4.

237 Section 9. If any provision of this act or its application  
238 to any person or circumstance is held invalid, the invalidity  
239 does not affect other provisions or applications of the act  
240 which can be given effect without the invalid provision or  
241 application, and to this and the provisions of this act are  
242 severable.

243 Section 10. This act shall take effect upon becoming a  
244 law.