

By the Committee on Regulated Industries; and Senator Clary

315-1986-03

1 A bill to be entitled
2 An act relating to contracting; amending ss.
3 489.128, 489.532, F.S.; clarifying that the
4 prohibition on enforcement of construction
5 contracts extends only to enforcement by the
6 unlicensed contractor; clarifying the specific
7 licensure status required and timing of
8 licensure for purposes of determining the
9 enforceability of a construction contract;
10 clarifying the effect of an unenforceable
11 contract on other contracts and obligations;
12 clarifying that unlicensed contractors have no
13 lien or bond rights; clarifying that sureties
14 of unlicensed contractors have continuing bond
15 obligations; repealing s. 713.02(7), F.S.,
16 relating to liens for unlicensed contractors,
17 subcontractors, or sub-subcontractors; amending
18 s. 713.06, F.S.; revising licensure
19 requirements for certain business organizations
20 engaging in contracting; amending s. 489.117,
21 F.S.; specifying conditions under which a
22 person may perform specialty contracting
23 services without obtaining a local professional
24 license; amending ss. 489.119, 489.521, F.S.;
25 revising license requirements for certain
26 business organizations engaging in contracting;
27 providing for retroactive application;
28 providing legislative intent; providing
29 severability; providing an effective date.
30
31 Be It Enacted by the Legislature of the State of Florida:

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

3 489.128 Contracts entered into ~~performed~~ by unlicensed
4 contractors unenforceable.--

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

11 (a) For purposes of this section, an individual is
12 unlicensed if the individual fails to obtain or maintain a
13 license required by this part concerning the scope of the work
14 to be performed under the contract. A business organization is
15 unlicensed if the business organization fails to obtain or
16 maintain a primary or secondary qualifying agent in accordance
17 with this part concerning the scope of the work to be
18 performed under the contract.

19 (b) For purposes of this section, an individual or
20 business organization shall not be considered unlicensed for
21 failing to have an occupational license certificate issued
22 under the authority of chapter 205. A business organization
23 shall not be considered unlicensed for failing to have a
24 certificate of authority as required by ss. 489.119 and
25 489.127.

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

1 be considered unlicensed only if the contractor was unlicensed
2 on the first date upon which the contractor provided labor,
3 services, or materials under the contract.

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

9 (3) This section shall not affect the rights of
10 parties other than the unlicensed contractor to enforce
11 contract, lien, or bond remedies. This section shall not
12 affect the obligations of a surety that has provided a bond on
13 behalf of an unlicensed contractor. It shall not be a defense
14 to any claim on a bond or indemnity agreement that the
15 principal or indemnitor is unlicensed for purposes of this
16 section.

17 Section 2. Section 489.532, Florida Statutes, is
18 amended to read:

19 489.532 Contracts entered into ~~performed~~ by unlicensed
20 contractors unenforceable.--

21 (1) As a matter of public policy, contracts entered
22 into on or after October 1, 1990, and performed in full or in
23 part by an unlicensed any contractor who fails to obtain or
24 maintain his or her license in accordance with this part shall
25 be unenforceable in law or in equity by the unlicensed
26 contractor, and the court in its discretion may extend this
27 provision to equitable remedies.

28 (a) For purposes of this section, an individual is
29 unlicensed if the individual fails to obtain or maintain a
30 license required by this part concerning the scope of the work
31 to be performed under the contract. A business organization is

1 unlicensed if the business organization fails to obtain or
2 maintain a primary or secondary qualifying agent in accordance
3 with this part concerning the scope of the work to be
4 performed under the contract.

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

9 (c) For purposes of this section, a contractor shall
10 be considered unlicensed only if the contractor was unlicensed
11 on the effective date of the original contract for the work,
12 if stated therein, or, if not stated, the date the last party
13 to the contract executed it, if stated therein. If the
14 contract does not establish such a date, the contractor shall
15 be considered unlicensed only if the contractor was unlicensed
16 on the first date upon which the contractor provided labor,
17 services, or materials under the contract.

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

23 (3) This section shall not affect the rights of
24 parties other than the unlicensed contractor to enforce
25 contract, lien, or bond remedies. This section shall not
26 affect the obligations of a surety that has provided a bond on
27 behalf of an unlicensed contractor. It shall not be a defense
28 to any claim on a bond or indemnity agreement that the
29 principal or indemnitor is unlicensed for purposes of this
30 section.

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1 Section 3. Subsection (7) of section 713.02, Florida
2 Statutes, is repealed.

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

5 713.06 Liens of persons not in privity; proper
6 payments.--

7 (1) A materialman or laborer, either of whom is not in
8 privity with the owner, or a subcontractor or
9 sub-subcontractor who complies with the provisions of this
10 part and is subject to the limitations thereof, has a lien on
11 the real property improved for any money that is owed to him
12 or her for labor, services, or materials furnished in
13 accordance with his or her contract ~~and with the direct~~
14 ~~contract~~ and for any unpaid finance charges due under the
15 lienor's contract. A materialman or laborer, either of whom is
16 not in privity with the owner, or a subcontractor or
17 sub-subcontractor who complies with the provisions of this
18 part and is subject to the limitations thereof, also has a
19 lien on the owner's real property for labor, services, or
20 materials furnished to improve public property if the
21 improvement of the public property is furnished in accordance
22 with his or her contract ~~and with the direct contract~~. The
23 total amount of all liens allowed under this part for
24 furnishing labor, services, or material covered by any certain
25 direct contract must not exceed the amount of the contract
26 price fixed by the direct contract except as provided in
27 subsection (3). No person may have a lien under this section
28 except those lienors specified in it, as their designations
29 are defined in s. 713.01.

30 Section 5. Paragraph (e) of subsection (4) of section
31 489.117, Florida Statutes, is amended to read:

1 489.117 Registration; specialty contractors.--

2 (4)

3 (e) Any person who is not required to obtain
4 registration or certification pursuant to s. 489.105(3)(d)-(o)
5 may perform specialty contracting services for the
6 construction, remodeling, repair, or improvement of
7 single-family residences, including a townhouse as defined in
8 the Florida Building Code, without obtaining a local
9 professional license if such person is under the supervision
10 of a certified or registered general, building, or residential
11 contractor, including such persons who are directly or
12 indirectly supervised by a certified or registered general,
13 building, or residential contractor through any tier of
14 subcontract.

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

17 489.119 Business organizations; qualifying agents.--

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

21 1. The business organization employs one or more
22 registered or certified contractors licensed in accordance
23 with this part who are responsible for obtaining permits and
24 supervising all of the business organization's contracting
25 activities;

26 2. The business organization engages only in
27 contracting on property owned by the business organization or
28 by its parent, subsidiary, or affiliated entities; and

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

1 (b) Any business organization engaging in contracting
2 under this subsection shall provide the board with the name
3 and license number of each registered or certified contractor
4 employed by the business organization to supervise its
5 contracting activities. The business organization is not
6 required to post a bond or otherwise evidence any financial or
7 credit information except as necessary to demonstrate
8 compliance with paragraph (a).

9 (c) A registered or certified contractor employed by a
10 business organization to supervise its contracting activities
11 under this subsection shall not be required to post a bond or
12 otherwise evidence any personal financial or credit
13 information so long as the individual performs contracting
14 activities exclusively on behalf of a business organization
15 meeting all of the requirements of paragraph (a).

16 Section 7. Subsection (10) is added to section
17 489.521, Florida Statutes, to read:

18 489.521 Business organizations; qualifying agents.--

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

22 1. The business organization employs one or more
23 registered or certified contractors licensed in accordance
24 with this part who are responsible for obtaining permits and
25 supervising all of the business organization's contracting
26 activities;

27 2. The business organization engages only in
28 contracting on property owned by the business organization or
29 by its parent, subsidiary, or affiliated entities; and
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1 3. The business organization, or its parent entity if
2 the business organization is a wholly owned subsidiary,
3 maintains a minimum net worth of \$20 million.

4 (b) Any business organization engaging in contracting
5 under this subsection shall provide the board with the name
6 and license number of each registered or certified contractor
7 employed by the business organization to supervise its
8 contracting activities. The business organization is not
9 required to post a bond or otherwise evidence any financial or
10 credit information except as necessary to demonstrate
11 compliance with paragraph (a).

12 (c) A registered or certified contractor employed by a
13 business organization to supervise its contracting activities
14 under this subsection shall not be required to post a bond or
15 otherwise evidence any personal financial or credit
16 information so long as the individual performs contracting
17 activities exclusively on behalf of a business organization
18 meeting all of the requirements of paragraph (a).

19 Section 8. Sections 1, 2, 3, and 4 are intended to be
20 remedial in nature and to clarify existing law. Sections 1, 2,
21 3, and 4 shall apply retroactively to all actions, including
22 any action on a lien or bond claim, initiated on or after, or
23 pending as of, the effective date of this act. If the
24 retroactivity of any provision of section 1, section 2,
25 section 3, or section 4, or its retroactive application of any
26 person or circumstance, is held invalid, the invalidity does
27 not affect the retroactivity or retroactive application of
28 other provisions of sections 1, 2, 3, and 4.

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

1 the act which can be given effect without the invalid
2 provision or application, and to this and the provisions of
3 this act are severable.

4 Section 10. This act shall take effect upon becoming a
5 law.

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 SB 1382

10 The Committee Substitute amends ss. 489.128 and 489.532, F.S.,
11 to make unenforceable in law or equity contracts that are
12 entered into on or after October 1, 1990, by a contractor who
13 fails to obtain or maintain a license under parts I and II of
14 ch. 489, F.S. It defines when a person or business
15 organization is unlicensed for purposes of this section. The
16 committee substitute provides for the affect of a contract
17 rendered unenforceable under the bill on the lien, or bond
18 remedies of parties. The committee substitute amends the
19 provisions in s. 489.117, F.S., relating to specialty
20 contractor services by persons not required to register or
21 certify under s. 489.105(3)(d)-(o), F.S. The committee
22 substitute amends the provisions in ch. 489.119, F.S., to
23 provide conditions, including bond and disclosure
24 requirements, for business organizations proposing to engage
25 in contracting without applying for a certificate of authority
26 through a qualifying agent. The committee substitute provides
27 for the retroactive application of sections 1,2,3, and 4, and
28 further provides for the affect of invalidity. The committee
29 substitute would take affect upon becoming a law.
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