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1 A bill to be entitled

2 An act relating to construction contracting; amending s.
3 255.05, F.S.; making certain restrictions in bonds issued
4 for public works projects unenforceable; deleting obsolete
5 language; amending ss. 489.129 and 489.533, F.S.;
6 increasing an administrative fine under certain
7 disciplinary proceeding provisions; amending s. 713.015,
8 F.S.; revising a direct contract provision requirement;
9 providing that failure to include such provision in such
10 contracts limits certain lien rights under the contract;
11 providing construction relating to validity and
12 enforceability; preserving lien rights of certain persons;
13 amending s. 713.02, F.S.; protecting the rights of certain
14 persons to enforce certain contract, lien, or bond
15 remedies or contractual obligations under certain
16 circumstances; precluding certain defenses; amending s.
17 713.04, F.S.; revising certain final payment requirements;
18 amending s. 713.08, F.S.; requiring a claim of lien to be
19 served on an owner; amending s. 713.13, F.S.; clarifying
20 use of a payment bond as a transfer bond; amending s.
21 713.135, F.S., revising certain notice of commencement and
22 applicability of lien requirements for certain authorities
23 issuing building permits; amending s. 713.24, F.S.;
24 preserving certain lien rights when filing a transfer bond
25 after commencing certain lien enforcement proceedings;
26 amending s. 713.345, F.S.; increasing certain criminal
27 penalties for misapplication of construction funds;
28 providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31

32 Section 1. Paragraph (a) of subsection (1) and subsection
33 (5) of section 255.05, Florida Statutes, are amended to read:

34 255.05 Bond of contractor constructing public buildings;
35 form; action by materialmen.--

36 (1)(a) Any person entering into a formal contract with the
37 state or any county, city, or political subdivision thereof, or
38 other public authority, for the construction of a public
39 building, for the prosecution and completion of a public work,
40 or for repairs upon a public building or public work shall be
41 required, before commencing the work or before recommencing the
42 work after a default or abandonment, to execute, deliver to the
43 public owner, and record in the public records of the county
44 where the improvement is located, a payment and performance bond
45 with a surety insurer authorized to do business in this state as
46 surety. A public entity may not require a contractor to secure a
47 surety bond under this section from a specific agent or bonding
48 company. The bond must state on its front page: the name,
49 principal business address, and phone number of the contractor,
50 the surety, the owner of the property being improved, and, if
51 different from the owner, the contracting public entity; the
52 contract number assigned by the contracting public entity; and a
53 description of the project sufficient to identify it, such as a
54 legal description or the street address of the property being
55 improved, and a general description of the improvement. Such
56 bond shall be conditioned upon the contractor's performance of
57 the construction work in the time and manner prescribed in the
58 contract and promptly making payments to all persons defined in

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59 s. 713.01 who furnish labor, services, or materials for the
60 prosecution of the work provided for in the contract. Any
61 claimant may apply to the governmental entity having charge of
62 the work for copies of the contract and bond and shall thereupon
63 be furnished with a certified copy of the contract and bond. The
64 claimant shall have a right of action against the contractor and
65 surety for the amount due him or her, including unpaid finance
66 charges due under the claimant's contract. Such action shall not
67 involve the public authority in any expense. When such work is
68 done for the state and the contract is for \$100,000 or less, no
69 payment and performance bond shall be required. At the
70 discretion of the official or board awarding such contract when
71 such work is done for any county, city, political subdivision,
72 or public authority, any person entering into such a contract
73 which is for \$200,000 or less may be exempted from executing the
74 payment and performance bond. When such work is done for the
75 state, the Secretary of the Department of Management Services
76 may delegate to state agencies the authority to exempt any
77 person entering into such a contract amounting to more than
78 \$100,000 but less than \$200,000 from executing the payment and
79 performance bond. In the event such exemption is granted, the
80 officer or officials shall not be personally liable to persons
81 suffering loss because of granting such exemption. The
82 Department of Management Services shall maintain information on
83 the number of requests by state agencies for delegation of
84 authority to waive the bond requirements by agency and project
85 number and whether any request for delegation was denied and the
86 justification for the denial. Any provision in a bond furnished
87 for public work contracts as provided by this subsection

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88 restricting the classes or persons protected by such bond or the
 89 venue of any proceeding relating to such bond is unenforceable.

90 (5) In addition to the provisions of chapter 47, any
 91 action authorized under this section may be brought in the
 92 county in which the public building or public work is being
 93 constructed or repaired. ~~This subsection shall not apply to an~~
 94 ~~action instituted prior to May 17, 1977.~~

95 Section 2. Subsection (1) of section 489.129, Florida
 96 Statutes, is amended to read:

97 489.129 Disciplinary proceedings.--

98 (1) The board may take any of the following actions
 99 against any certificateholder or registrant: place on probation
 100 or reprimand the licensee, revoke, suspend, or deny the issuance
 101 or renewal of the certificate, registration, or certificate of
 102 authority, require financial restitution to a consumer for
 103 financial harm directly related to a violation of a provision of
 104 this part, impose an administrative fine not to exceed \$10,000
 105 ~~\$5,000~~ per violation, require continuing education, or assess
 106 costs associated with investigation and prosecution, if the
 107 contractor, financially responsible officer, or business
 108 organization for which the contractor is a primary qualifying
 109 agent, a financially responsible officer, or a secondary
 110 qualifying agent responsible under s. 489.1195 is found guilty
 111 of any of the following acts:

112 (a) Obtaining a certificate, registration, or certificate
 113 of authority by fraud or misrepresentation.

114 (b) Being convicted or found guilty of, or entering a plea
 115 of nolo contendere to, regardless of adjudication, a crime in

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116 any jurisdiction which directly relates to the practice of
 117 contracting or the ability to practice contracting.

118 (c) Violating any provision of chapter 455.

119 (d) Performing any act which assists a person or entity in
 120 engaging in the prohibited uncertified and unregistered practice
 121 of contracting, if the certificateholder or registrant knows or
 122 has reasonable grounds to know that the person or entity was
 123 uncertified and unregistered.

124 (e) Knowingly combining or conspiring with an uncertified
 125 or unregistered person by allowing his or her certificate,
 126 registration, or certificate of authority to be used by the
 127 uncertified or unregistered person with intent to evade the
 128 provisions of this part. When a certificateholder or registrant
 129 allows his or her certificate or registration to be used by one
 130 or more business organizations without having any active
 131 participation in the operations, management, or control of such
 132 business organizations, such act constitutes prima facie
 133 evidence of an intent to evade the provisions of this part.

134 (f) Acting in the capacity of a contractor under any
 135 certificate or registration issued hereunder except in the name
 136 of the certificateholder or registrant as set forth on the
 137 issued certificate or registration, or in accordance with the
 138 personnel of the certificateholder or registrant as set forth in
 139 the application for the certificate or registration, or as later
 140 changed as provided in this part.

141 (g) Committing mismanagement or misconduct in the practice
 142 of contracting that causes financial harm to a customer.

143 Financial mismanagement or misconduct occurs when:

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144 1. Valid liens have been recorded against the property of
 145 a contractor's customer for supplies or services ordered by the
 146 contractor for the customer's job; the contractor has received
 147 funds from the customer to pay for the supplies or services; and
 148 the contractor has not had the liens removed from the property,
 149 by payment or by bond, within 75 days after the date of such
 150 liens;

151 2. The contractor has abandoned a customer's job and the
 152 percentage of completion is less than the percentage of the
 153 total contract price paid to the contractor as of the time of
 154 abandonment, unless the contractor is entitled to retain such
 155 funds under the terms of the contract or refunds the excess
 156 funds within 30 days after the date the job is abandoned; or

157 3. The contractor's job has been completed, and it is
 158 shown that the customer has had to pay more for the contracted
 159 job than the original contract price, as adjusted for subsequent
 160 change orders, unless such increase in cost was the result of
 161 circumstances beyond the control of the contractor, was the
 162 result of circumstances caused by the customer, or was otherwise
 163 permitted by the terms of the contract between the contractor
 164 and the customer.

165 (h) Being disciplined by any municipality or county for an
 166 act or violation of this part.

167 (i) Failing in any material respect to comply with the
 168 provisions of this part or violating a rule or lawful order of
 169 the board.

170 (j) Abandoning a construction project in which the
 171 contractor is engaged or under contract as a contractor. A
 172 project may be presumed abandoned after 90 days if the

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173 contractor terminates the project without just cause or without
 174 proper notification to the owner, including the reason for
 175 termination, or fails to perform work without just cause for 90
 176 consecutive days.

177 (k) Signing a statement with respect to a project or
 178 contract falsely indicating that the work is bonded; falsely
 179 indicating that payment has been made for all subcontracted
 180 work, labor, and materials which results in a financial loss to
 181 the owner, purchaser, or contractor; or falsely indicating that
 182 workers' compensation and public liability insurance are
 183 provided.

184 (l) Committing fraud or deceit in the practice of
 185 contracting.

186 (m) Committing incompetency or misconduct in the practice
 187 of contracting.

188 (n) Committing gross negligence, repeated negligence, or
 189 negligence resulting in a significant danger to life or
 190 property.

191 (o) Proceeding on any job without obtaining applicable
 192 local building department permits and inspections.

193 (p) Intimidating, threatening, coercing, or otherwise
 194 discouraging the service of a notice to owner under part I of
 195 chapter 713 or a notice to contractor under chapter 255 or part
 196 I of chapter 713.

197 (q) Failing to satisfy within a reasonable time, the terms
 198 of a civil judgment obtained against the licensee, or the
 199 business organization qualified by the licensee, relating to the
 200 practice of the licensee's profession.

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202 For the purposes of this subsection, construction is considered
 203 to be commenced when the contract is executed and the contractor
 204 has accepted funds from the customer or lender. A contractor
 205 does not commit a violation of this subsection when the
 206 contractor relies on a building code interpretation rendered by
 207 a building official or person authorized by s. 553.80 to enforce
 208 the building code, absent a finding of fraud or deceit in the
 209 practice of contracting, or gross negligence, repeated
 210 negligence, or negligence resulting in a significant danger to
 211 life or property on the part of the building official, in a
 212 proceeding under chapter 120.

213 Section 3. Paragraph (c) of subsection (2) of section
 214 489.533, Florida Statutes, is amended to read:

215 489.533 Disciplinary proceedings.--

216 (2) When the board finds any applicant, contractor, or
 217 business organization for which the contractor is a primary
 218 qualifying agent or secondary qualifying agent responsible under
 219 s. 489.522 guilty of any of the grounds set forth in subsection
 220 (1), it may enter an order imposing one or more of the following
 221 penalties:

222 (c) Imposition of an administrative fine not to exceed
 223 \$10,000 ~~\$5,000~~ for each count or separate offense.

224 Section 4. Section 713.015, Florida Statutes, is amended
 225 to read:

226 713.015 Mandatory provisions for direct contracts.--

227 (1) Any direct contract between an owner and a contractor,
 228 related to improvements to real property consisting of single or
 229 multiple family dwellings up to and including four units, must
 230 contain the following provision printed in capital letters no

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231 less than the same size 18-point, capitalized, boldfaced type
 232 used in the body of the contract:
 233

234 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-
 235 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR
 236 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO
 237 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS
 238 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A
 239 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,
 240 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED
 241 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR
 242 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
 243 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY
 244 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED
 245 YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR,
 246 MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A
 247 SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION
 248 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
 249 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

250 (2) The failure of a contractor to include this provision
 251 in the direct contract shall not invalidate or render the direct
 252 contract unenforceable. Nothing in this section shall be
 253 construed to adversely affect the lien and bond rights of
 254 lienors who are not in privity with the owner.

255 Section 5. Subsection (7) of section 713.02, Florida
 256 Statutes, is amended to read:

257 713.02 Types of lienors and exemptions.--

258 (7) Notwithstanding any other provision of this part, no
 259 lien shall exist in favor of any contractor, subcontractor, or

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260 sub-subcontractor who is unlicensed as provided in s. 489.128 or
 261 s. 489.532. Notwithstanding any other provision of this part, if
 262 a contract is rendered unenforceable by an unlicensed
 263 contractor, subcontractor, or sub-subcontractor pursuant to s.
 264 489.128 or s. 489.532, such unenforceability shall not affect
 265 the rights of any other persons to enforce contract, lien, or
 266 bond remedies and shall not affect the obligations of a surety
 267 that has provided a bond on behalf of the unlicensed contractor,
 268 subcontractor, or sub-subcontractor. It shall not be a defense
 269 to any claim on a bond or indemnity agreement that the principal
 270 or indemnitor is unlicensed as provided in s. 489.128 or s.
 271 489.532.

272 Section 6. Subsection (3) of section 713.04, Florida
 273 Statutes, is amended, and subsection (4) is added to said
 274 section, to read:

275 713.04 Subdivision improvements.--

276 (3) The owner shall not pay any money on account of a
 277 direct contract before actual furnishing of labor and services
 278 or materials for subdivision improvements. Any such ~~The~~ payment
 279 not complying with such requirement shall not qualify as a
 280 proper payment under this chapter ~~section~~.

281 (4) The owner shall make final payment on account of a
 282 direct contract only after the contractor complies with s.
 283 713.06(3)(d). Any such payment not complying with such
 284 requirement shall not qualify as a proper payment under this
 285 chapter.

286 Section 7. Paragraph (c) of subsection (4) of section
 287 713.08, Florida Statutes, is amended to read:

288 713.08 Claim of lien.--

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289 (4)

290 (c) The claim of lien shall be served on the owner.

291 Failure to serve any claim of lien in the manner provided in s.
 292 713.18 before recording or within 15 days after recording shall
 293 render the claim of lien voidable to the extent that the failure
 294 or delay is shown to have been prejudicial to any person
 295 entitled to rely on the service.

296 Section 8. Paragraph (e) of subsection (1) of section
 297 713.13, Florida Statutes, is amended to read:

298 713.13 Notice of commencement.--

299 (1)

300 (e) A copy of any bond must be attached at the time of
 301 recordation of the notice of commencement. The failure to attach
 302 a copy of the bond to the notice of commencement when the notice
 303 is recorded negates the exemption provided in s. 713.02(6).
 304 However, if such a bond exists but is not recorded, the bond may
 305 be used as a transfer bond pursuant to s. 713.24. The bond shall
 306 be deemed a transfer bond under s. 713.24 for all purposes at
 307 the time of recordation of the notice of bond and the clerk's
 308 mailing as provided in s. 713.23(2). At the time of recordation
 309 of the notice of bond, any notice requirements not contained in
 310 s. 713.24 shall be deemed deleted from the bond.

311 Section 9. Paragraph (b) of subsection (1) and subsection
 312 (4) of section 713.135, Florida Statutes, are amended, and
 313 paragraph (e) is added to subsection (1) of said section, to
 314 read:

315 713.135 Notice of commencement and applicability of
 316 lien.--

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317 (1) When any person applies for a building permit, the
 318 authority issuing such permit shall:

319 (b) Provide the applicant and the owner of the real
 320 property upon which improvements are to be constructed with a
 321 printed statement stating that the right, title, and interest of
 322 the person who has contracted for the improvement may be subject
 323 to attachment under the Construction Lien Law. The Department of
 324 Business and Professional Regulation shall furnish, for
 325 distribution, the statement described in this paragraph, and the
 326 statement must be a summary of the Construction Lien Law and
 327 must include an explanation of the provisions of the
 328 Construction Lien Law relating to the recording, and the posting
 329 of copies, of notices of commencement and a statement
 330 encouraging the owner to record a notice of commencement and
 331 post a copy of the notice of commencement in accordance with s.
 332 713.13. The statement must also contain an explanation of the
 333 owner's rights if a lienor fails to furnish the owner with a
 334 notice as provided in s. 713.06(2) and an explanation of the
 335 owner's rights as provided in s. 713.22. The authority that
 336 issues the building permit must obtain from the Department of
 337 Business and Professional Regulation the statement required by
 338 this paragraph and must mail, deliver by electronic mail or
 339 other electronic format or facsimile, or personally deliver that
 340 statement to the owner or, in the case in which the owner is
 341 required to personally appear to obtain the permit, provide that
 342 statement to any owner making improvements to real property
 343 consisting of a single or multiple family dwelling up to and
 344 including four units. However, the failure by the authorities to

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345 provide the summary does not subject the issuing authority to
 346 liability.

347 (e) Nothing in this subsection shall be construed to
 348 require a notice of commencement to be recorded as a condition
 349 to the issuance of a building permit.

350 (4) The several boards of county commissioners, municipal
 351 councils, or other similar bodies may by ordinance or resolution
 352 establish reasonable fees for furnishing copies of the forms and
 353 the printed statement provided in paragraphs (1)(b) and
 354 ~~paragraph (1)(d)~~ in an amount not to exceed \$5 to be paid by the
 355 applicant for each permit in addition to all other costs of the
 356 permit; however, no forms or statement need be furnished,
 357 mailed, or otherwise provided to, nor may such additional fee be
 358 obtained from, applicants for permits in those cases in which
 359 the owner of a legal or equitable interest (including that of
 360 ownership of stock of a corporate landowner) of the real
 361 property to be improved is engaged in the business of
 362 construction of buildings for sale to others and intends to make
 363 the improvements authorized by the permit on the property and
 364 upon completion will offer the improved real property for sale.

365 Section 10. Subsection (4) of section 713.24, Florida
 366 Statutes, is amended to read:

367 713.24 Transfer of liens to security.--

368 (4) If a proceeding to enforce a transferred lien is not
 369 commenced within the time specified in s. 713.22 or if it
 370 appears that the transferred lien has been satisfied of record,
 371 the clerk shall return said security upon request of the person
 372 depositing or filing the same, or the insurer. If a proceeding
 373 to enforce a lien is commenced in a court of competent

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374 jurisdiction within the time specified in s. 713.22 and,
 375 subsequent to the expiration of the proceeding, the lien is
 376 transferred pursuant to s. 713.24, an action commenced to
 377 recover against the security shall be deemed to have been
 378 brought as of the date of filing the action to enforce the lien.

379 Section 11. Paragraph (b) of subsection (1) of section
 380 713.345, Florida Statutes, is amended to read:

381 713.345 Moneys received for real property improvements;
 382 penalty for misapplication.--

383 (1)

384 (b) Any person who knowingly and intentionally fails to
 385 comply with paragraph (a) is guilty of misapplication of
 386 construction funds, punishable as follows:

387 1. If the amount of payments misapplied has an aggregate
 388 value of \$100,000 or more, the violator is guilty of a felony of
 389 the first degree, punishable as provided in s. 775.082, s.
 390 775.083, or s. 775.084.

391 2. If the amount of payments misapplied has an aggregate
 392 value of ~~\$20,000 or more~~ but less than \$100,000, the violator is
 393 guilty of a felony of the second degree, punishable as provided
 394 in s. 775.082, s. 775.083, or s. 775.084.

395 ~~3. If the amount of payments misapplied has an aggregate~~
 396 ~~value of less than \$20,000, the violator is guilty of a felony~~
 397 ~~of the third degree, punishable as provided in s. 775.082, s.~~
 398 ~~775.083, or s. 775.084.~~

399 Section 12. This act shall take effect October 1, 2004.