

CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to construction contracting; amending s.  
7 255.05, F.S.; making certain restrictions in bonds issued  
8 for public works projects unenforceable; deleting obsolete  
9 language; amending ss. 489.129 and 489.533, F.S.;  
10 increasing an administrative fine under certain  
11 disciplinary proceeding provisions; amending s. 713.015,  
12 F.S.; revising a direct contract provision requirement;  
13 providing that failure to include such provision in such  
14 contracts limits certain lien rights under the contract;  
15 providing construction relating to validity and  
16 enforceability; preserving lien rights of certain persons;  
17 amending s. 713.02, F.S.; protecting the rights of certain  
18 persons to enforce certain contract, lien, or bond  
19 remedies or contractual obligations under certain  
20 circumstances; precluding certain defenses; amending s.  
21 713.04, F.S.; revising certain final payment requirements;  
22 amending s. 713.08, F.S.; requiring a claim of lien to be  
23 served on an owner; amending s. 713.13, F.S.; clarifying

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24 use of a payment bond as a transfer bond; amending s.  
 25 713.135, F.S., revising certain notice of commencement and  
 26 applicability of lien requirements for certain authorities  
 27 issuing building permits; amending s. 713.24, F.S.;  
 28 preserving certain lien rights when filing a transfer bond  
 29 after commencing certain lien enforcement proceedings;  
 30 amending s. 713.345, F.S.; increasing certain criminal  
 31 penalties for misapplication of construction funds;  
 32 amending s. 713.3471, F.S.; revising a provision requiring  
 33 a lender to provide notice to a property owner when making  
 34 a first loan disbursement on a construction loan secured  
 35 by residential real property; revising a notice form;  
 36 providing an effective date.

37

38 Be It Enacted by the Legislature of the State of Florida:

39

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

42 255.05 Bond of contractor constructing public buildings;  
 43 form; action by materialmen.--

44 (1)(a) Any person entering into a formal contract with the  
 45 state or any county, city, or political subdivision thereof, or  
 46 other public authority, for the construction of a public  
 47 building, for the prosecution and completion of a public work,  
 48 or for repairs upon a public building or public work shall be  
 49 required, before commencing the work or before recommencing the  
 50 work after a default or abandonment, to execute, deliver to the  
 51 public owner, and record in the public records of the county

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52 | where the improvement is located, a payment and performance bond  
53 | with a surety insurer authorized to do business in this state as  
54 | surety. A public entity may not require a contractor to secure a  
55 | surety bond under this section from a specific agent or bonding  
56 | company. The bond must state on its front page: the name,  
57 | principal business address, and phone number of the contractor,  
58 | the surety, the owner of the property being improved, and, if  
59 | different from the owner, the contracting public entity; the  
60 | contract number assigned by the contracting public entity; and a  
61 | description of the project sufficient to identify it, such as a  
62 | legal description or the street address of the property being  
63 | improved, and a general description of the improvement. Such  
64 | bond shall be conditioned upon the contractor's performance of  
65 | the construction work in the time and manner prescribed in the  
66 | contract and promptly making payments to all persons defined in  
67 | s. 713.01 who furnish labor, services, or materials for the  
68 | prosecution of the work provided for in the contract. Any  
69 | claimant may apply to the governmental entity having charge of  
70 | the work for copies of the contract and bond and shall thereupon  
71 | be furnished with a certified copy of the contract and bond. The  
72 | claimant shall have a right of action against the contractor and  
73 | surety for the amount due him or her, including unpaid finance  
74 | charges due under the claimant's contract. Such action shall not  
75 | involve the public authority in any expense. When such work is  
76 | done for the state and the contract is for \$100,000 or less, no  
77 | payment and performance bond shall be required. At the  
78 | discretion of the official or board awarding such contract when  
79 | such work is done for any county, city, political subdivision,

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80 or public authority, any person entering into such a contract  
 81 which is for \$200,000 or less may be exempted from executing the  
 82 payment and performance bond. When such work is done for the  
 83 state, the Secretary of the Department of Management Services  
 84 may delegate to state agencies the authority to exempt any  
 85 person entering into such a contract amounting to more than  
 86 \$100,000 but less than \$200,000 from executing the payment and  
 87 performance bond. In the event such exemption is granted, the  
 88 officer or officials shall not be personally liable to persons  
 89 suffering loss because of granting such exemption. The  
 90 Department of Management Services shall maintain information on  
 91 the number of requests by state agencies for delegation of  
 92 authority to waive the bond requirements by agency and project  
 93 number and whether any request for delegation was denied and the  
 94 justification for the denial. Any provision in a bond furnished  
 95 for public work contracts as provided by this subsection  
 96 restricting the classes or persons protected by such bond or the  
 97 venue of any proceeding relating to such bond is unenforceable.

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

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

105 489.129 Disciplinary proceedings.--

106 (1) The board may take any of the following actions  
 107 against any certificateholder or registrant: place on probation

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108 or reprimand the licensee, revoke, suspend, or deny the issuance  
 109 or renewal of the certificate, registration, or certificate of  
 110 authority, require financial restitution to a consumer for  
 111 financial harm directly related to a violation of a provision of  
 112 this part, impose an administrative fine not to exceed \$10,000  
 113 ~~\$5,000~~ per violation, require continuing education, or assess  
 114 costs associated with investigation and prosecution, if the  
 115 contractor, financially responsible officer, or business  
 116 organization for which the contractor is a primary qualifying  
 117 agent, a financially responsible officer, or a secondary  
 118 qualifying agent responsible under s. 489.1195 is found guilty  
 119 of any of the following acts:

120 (a) Obtaining a certificate, registration, or certificate  
 121 of authority by fraud or misrepresentation.

122 (b) Being convicted or found guilty of, or entering a plea  
 123 of nolo contendere to, regardless of adjudication, a crime in  
 124 any jurisdiction which directly relates to the practice of  
 125 contracting or the ability to practice contracting.

126 (c) Violating any provision of chapter 455.

127 (d) Performing any act which assists a person or entity in  
 128 engaging in the prohibited uncertified and unregistered practice  
 129 of contracting, if the certificateholder or registrant knows or  
 130 has reasonable grounds to know that the person or entity was  
 131 uncertified and unregistered.

132 (e) Knowingly combining or conspiring with an uncertified  
 133 or unregistered person by allowing his or her certificate,  
 134 registration, or certificate of authority to be used by the  
 135 uncertified or unregistered person with intent to evade the

136 provisions of this part. When a certificateholder or registrant  
 137 allows his or her certificate or registration to be used by one  
 138 or more business organizations without having any active  
 139 participation in the operations, management, or control of such  
 140 business organizations, such act constitutes prima facie  
 141 evidence of an intent to evade the provisions of this part.

142 (f) Acting in the capacity of a contractor under any  
 143 certificate or registration issued hereunder except in the name  
 144 of the certificateholder or registrant as set forth on the  
 145 issued certificate or registration, or in accordance with the  
 146 personnel of the certificateholder or registrant as set forth in  
 147 the application for the certificate or registration, or as later  
 148 changed as provided in this part.

149 (g) Committing mismanagement or misconduct in the practice  
 150 of contracting that causes financial harm to a customer.  
 151 Financial mismanagement or misconduct occurs when:

152 1. Valid liens have been recorded against the property of  
 153 a contractor's customer for supplies or services ordered by the  
 154 contractor for the customer's job; the contractor has received  
 155 funds from the customer to pay for the supplies or services; and  
 156 the contractor has not had the liens removed from the property,  
 157 by payment or by bond, within 75 days after the date of such  
 158 liens;

159 2. The contractor has abandoned a customer's job and the  
 160 percentage of completion is less than the percentage of the  
 161 total contract price paid to the contractor as of the time of  
 162 abandonment, unless the contractor is entitled to retain such

163 funds under the terms of the contract or refunds the excess  
 164 funds within 30 days after the date the job is abandoned; or

165 3. The contractor's job has been completed, and it is  
 166 shown that the customer has had to pay more for the contracted  
 167 job than the original contract price, as adjusted for subsequent  
 168 change orders, unless such increase in cost was the result of  
 169 circumstances beyond the control of the contractor, was the  
 170 result of circumstances caused by the customer, or was otherwise  
 171 permitted by the terms of the contract between the contractor  
 172 and the customer.

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

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

178 (j) Abandoning a construction project in which the  
 179 contractor is engaged or under contract as a contractor. A  
 180 project may be presumed abandoned after 90 days if the  
 181 contractor terminates the project without just cause or without  
 182 proper notification to the owner, including the reason for  
 183 termination, or fails to perform work without just cause for 90  
 184 consecutive days.

185 (k) Signing a statement with respect to a project or  
 186 contract falsely indicating that the work is bonded; falsely  
 187 indicating that payment has been made for all subcontracted  
 188 work, labor, and materials which results in a financial loss to  
 189 the owner, purchaser, or contractor; or falsely indicating that

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190 workers' compensation and public liability insurance are  
191 provided.

192 (l) Committing fraud or deceit in the practice of  
193 contracting.

194 (m) Committing incompetency or misconduct in the practice  
195 of contracting.

196 (n) Committing gross negligence, repeated negligence, or  
197 negligence resulting in a significant danger to life or  
198 property.

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

201 (p) Intimidating, threatening, coercing, or otherwise  
202 discouraging the service of a notice to owner under part I of  
203 chapter 713 or a notice to contractor under chapter 255 or part  
204 I of chapter 713.

205 (q) Failing to satisfy within a reasonable time, the terms  
206 of a civil judgment obtained against the licensee, or the  
207 business organization qualified by the licensee, relating to the  
208 practice of the licensee's profession.

209  
210 For the purposes of this subsection, construction is considered  
211 to be commenced when the contract is executed and the contractor  
212 has accepted funds from the customer or lender. A contractor  
213 does not commit a violation of this subsection when the  
214 contractor relies on a building code interpretation rendered by  
215 a building official or person authorized by s. 553.80 to enforce  
216 the building code, absent a finding of fraud or deceit in the  
217 practice of contracting, or gross negligence, repeated



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218 negligence, or negligence resulting in a significant danger to  
219 life or property on the part of the building official, in a  
220 proceeding under chapter 120.

221 Section 3. Paragraph (c) of subsection (2) of section  
222 489.533, Florida Statutes, is amended to read:

223 489.533 Disciplinary proceedings.--

224 (2) When the board finds any applicant, contractor, or  
225 business organization for which the contractor is a primary  
226 qualifying agent or secondary qualifying agent responsible under  
227 s. 489.522 guilty of any of the grounds set forth in subsection  
228 (1), it may enter an order imposing one or more of the following  
229 penalties:

230 (c) Imposition of an administrative fine not to exceed  
231 \$10,000 ~~\$5,000~~ for each count or separate offense.

232 Section 4. Section 713.015, Florida Statutes, is amended  
233 to read:

234 713.015 Mandatory provisions for direct contracts.--

235 (1) Any direct contract between an owner and a contractor,  
236 related to improvements to real property consisting of single or  
237 multiple family dwellings up to and including four units, must  
238 contain the following provision printed in capital letters no  
239 less than the same size ~~18-point, capitalized, boldfaced~~ type  
240 used in the body of the contract:

241  
242 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-  
243 713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR  
244 PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO  
245 ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS

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246 CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A  
 247 SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS,  
 248 OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED  
 249 PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR  
 250 PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN  
 251 FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY  
 252 ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED  
 253 YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR,  
 254 MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A  
 255 SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION  
 256 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A  
 257 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

258 (2) The failure of a contractor to include this provision  
 259 in the direct contract shall not invalidate or render the direct  
 260 contract unenforceable. Nothing in this section shall be  
 261 construed to adversely affect the lien and bond rights of  
 262 lienors who are not in privity with the owner.

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

265 713.02 Types of lienors and exemptions.--

266 (7) Notwithstanding any other provision of this part, no  
 267 lien shall exist in favor of any contractor, subcontractor, or  
 268 sub-subcontractor who is unlicensed as provided in s. 489.128 or  
 269 s. 489.532. Notwithstanding any other provision of this part, if  
 270 a contract is rendered unenforceable by an unlicensed  
 271 contractor, subcontractor, or sub-subcontractor pursuant to s.  
 272 489.128 or s. 489.532, such unenforceability shall not affect  
 273 the rights of any other persons to enforce contract, lien, or

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274 bond remedies and shall not affect the obligations of a surety  
 275 that has provided a bond on behalf of the unlicensed contractor,  
 276 subcontractor, or sub-subcontractor. It shall not be a defense  
 277 to any claim on a bond or indemnity agreement that the principal  
 278 or indemnitor is unlicensed as provided in s. 489.128 or s.  
 279 489.532.

280 Section 6. Subsection (3) of section 713.04, Florida  
 281 Statutes, is amended, and subsection (4) is added to said  
 282 section, to read:

283 713.04 Subdivision improvements.--

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

289 (4) The owner shall make final payment on account of a  
 290 direct contract only after the contractor complies with s.  
 291 713.06(3)(d). Any such payment not complying with such  
 292 requirement shall not qualify as a proper payment under this  
 293 chapter.

294 Section 7. Paragraph (c) of subsection (4) of section  
 295 713.08, Florida Statutes, is amended to read:

296 713.08 Claim of lien.--

297 (4)

298 (c) The claim of lien shall be served on the owner.  
 299 Failure to serve any claim of lien in the manner provided in s.  
 300 713.18 before recording or within 15 days after recording shall  
 301 render the claim of lien voidable to the extent that the failure

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302 or delay is shown to have been prejudicial to any person  
303 entitled to rely on the service.

304 Section 8. Paragraph (e) of subsection (1) of section  
305 713.13, Florida Statutes, is amended to read:

306 713.13 Notice of commencement.--

307 (1)

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

319 Section 9. Paragraph (b) of subsection (1) and subsection  
320 (4) of section 713.135, Florida Statutes, are amended, and  
321 paragraph (e) is added to subsection (1) of said section, to  
322 read:

323 713.135 Notice of commencement and applicability of  
324 lien.--

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

327 (b) Provide the applicant and the owner of the real  
328 property upon which improvements are to be constructed with a  
329 printed statement stating that the right, title, and interest of

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330 the person who has contracted for the improvement may be subject  
 331 to attachment under the Construction Lien Law. The Department of  
 332 Business and Professional Regulation shall furnish, for  
 333 distribution, the statement described in this paragraph, and the  
 334 statement must be a summary of the Construction Lien Law and  
 335 must include an explanation of the provisions of the  
 336 Construction Lien Law relating to the recording, and the posting  
 337 of copies, of notices of commencement and a statement  
 338 encouraging the owner to record a notice of commencement and  
 339 post a copy of the notice of commencement in accordance with s.  
 340 713.13. The statement must also contain an explanation of the  
 341 owner's rights if a lienor fails to furnish the owner with a  
 342 notice as provided in s. 713.06(2) and an explanation of the  
 343 owner's rights as provided in s. 713.22. The authority that  
 344 issues the building permit must obtain from the Department of  
 345 Business and Professional Regulation the statement required by  
 346 this paragraph and must mail, deliver by electronic mail or  
 347 other electronic format or facsimile, or personally deliver that  
 348 statement to the owner or, in the case in which the owner is  
 349 required to personally appear to obtain the permit, provide that  
 350 statement to any owner making improvements to real property  
 351 consisting of a single or multiple family dwelling up to and  
 352 including four units. However, the failure by the authorities to  
 353 provide the summary does not subject the issuing authority to  
 354 liability.

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

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

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

375 713.24 Transfer of liens to security.--

376 (4) If a proceeding to enforce a transferred lien is not  
 377 commenced within the time specified in s. 713.22 or if it  
 378 appears that the transferred lien has been satisfied of record,  
 379 the clerk shall return said security upon request of the person  
 380 depositing or filing the same, or the insurer. If a proceeding  
 381 to enforce a lien is commenced in a court of competent  
 382 jurisdiction within the time specified in s. 713.22 and,  
 383 subsequent to the expiration of the proceeding, the lien is  
 384 transferred pursuant to s. 713.24, an action commenced to

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385 recover against the security shall be deemed to have been  
 386 brought as of the date of filing the action to enforce the lien.

387 Section 11. Paragraph (b) of subsection (1) of section  
 388 713.345, Florida Statutes, is amended to read:

389 713.345 Moneys received for real property improvements;  
 390 penalty for misapplication.--

391 (1)

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

395 1. If the amount of payments misapplied has an aggregate  
 396 value of \$100,000 or more, the violator is guilty of a felony of  
 397 the first degree, punishable as provided in s. 775.082, s.  
 398 775.083, or s. 775.084.

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

403 ~~3. If the amount of payments misapplied has an aggregate~~  
 404 ~~value of less than \$20,000, the violator is guilty of a felony~~  
 405 ~~of the third degree, punishable as provided in s. 775.082, s.~~  
 406 ~~775.083, or s. 775.084.~~

407 Section 12. Subsection (1) of section 713.3471, Florida  
 408 Statutes, is amended to read:

409 713.3471 Lender responsibilities with construction  
 410 loans.--

411 (1) Prior to a lender making the first ~~any~~ loan  
 412 disbursement on any construction loan secured by residential

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413 | real property directly to the owner which, for purposes of this  
 414 | subsection, means only a natural person, or jointly to the owner  
 415 | and any other party, the lender shall give the following written  
 416 | notice to the owner ~~borrowers~~ in bold type larger than any other  
 417 | type on the page:

418 |  
 419 | WARNING!  
 420 |

421 |         THIS IS THE ONLY LOAN DISBURSEMENT NOTICE THAT YOU WILL  
 422 | RECEIVE. YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO  
 423 | YOU AS THE OWNER ~~BORROWER~~, OR JOINTLY TO YOU AND ANOTHER PARTY.  
 424 | TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR,  
 425 | SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR  
 426 | PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU  
 427 | LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO  
 428 | OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

429 |         Section 13. This act shall take effect October 1, 2004.