

By Senator Argenziano

3-1560-04

See HB 1427

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

1 s. 713.345, F.S.; increasing certain criminal
2 penalties for misapplication of construction
3 funds; providing an effective date.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

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

10 255.05 Bond of contractor constructing public
11 buildings; form; action by materialmen.--

12 (1)(a) Any person entering into a formal contract with
13 the state or any county, city, or political subdivision
14 thereof, or other public authority, for the construction of a
15 public building, for the prosecution and completion of a
16 public work, or for repairs upon a public building or public
17 work shall be required, before commencing the work or before
18 recommencing the work after a default or abandonment, to
19 execute, deliver to the public owner, and record in the public
20 records of the county where the improvement is located, a
21 payment and performance bond with a surety insurer authorized
22 to do business in this state as surety. A public entity may
23 not require a contractor to secure a surety bond under this
24 section from a specific agent or bonding company. The bond
25 must state on its front page: the name, principal business
26 address, and phone number of the contractor, the surety, the
27 owner of the property being improved, and, if different from
28 the owner, the contracting public entity; the contract number
29 assigned by the contracting public entity; and a description
30 of the project sufficient to identify it, such as a legal
31 description or the street address of the property being

1 improved, and a general description of the improvement. Such
2 bond shall be conditioned upon the contractor's performance of
3 the construction work in the time and manner prescribed in the
4 contract and promptly making payments to all persons defined
5 in s. 713.01 who furnish labor, services, or materials for the
6 prosecution of the work provided for in the contract. Any
7 claimant may apply to the governmental entity having charge of
8 the work for copies of the contract and bond and shall
9 thereupon be furnished with a certified copy of the contract
10 and bond. The claimant shall have a right of action against
11 the contractor and surety for the amount due him or her,
12 including unpaid finance charges due under the claimant's
13 contract. Such action shall not involve the public authority
14 in any expense. When such work is done for the state and the
15 contract is for \$100,000 or less, no payment and performance
16 bond shall be required. At the discretion of the official or
17 board awarding such contract when such work is done for any
18 county, city, political subdivision, or public authority, any
19 person entering into such a contract which is for \$200,000 or
20 less may be exempted from executing the payment and
21 performance bond. When such work is done for the state, the
22 Secretary of the Department of Management Services may
23 delegate to state agencies the authority to exempt any person
24 entering into such a contract amounting to more than \$100,000
25 but less than \$200,000 from executing the payment and
26 performance bond. In the event such exemption is granted, the
27 officer or officials shall not be personally liable to persons
28 suffering loss because of granting such exemption. The
29 Department of Management Services shall maintain information
30 on the number of requests by state agencies for delegation of
31 authority to waive the bond requirements by agency and project

1 number and whether any request for delegation was denied and
2 the justification for the denial. Any provision in a bond
3 furnished for public work contracts as provided by this
4 subsection restricting the classes or persons protected by
5 such bond or the venue of any proceeding relating to such bond
6 is unenforceable.

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

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

14 489.129 Disciplinary proceedings.--

15 (1) The board may take any of the following actions
16 against any certificateholder or registrant: place on
17 probation or reprimand the licensee, revoke, suspend, or deny
18 the issuance or renewal of the certificate, registration, or
19 certificate of authority, require financial restitution to a
20 consumer for financial harm directly related to a violation of
21 a provision of this part, impose an administrative fine not to
22 exceed ~~\$10,000~~ ~~\$5,000~~ per violation, require continuing
23 education, or assess costs associated with investigation and
24 prosecution, if the contractor, financially responsible
25 officer, or business organization for which the contractor is
26 a primary qualifying agent, a financially responsible officer,
27 or a secondary qualifying agent responsible under s. 489.1195
28 is found guilty of any of the following acts:

29 (a) Obtaining a certificate, registration, or
30 certificate of authority by fraud or misrepresentation.

31

1 (b) Being convicted or found guilty of, or entering a
2 plea of nolo contendere to, regardless of adjudication, a
3 crime in any jurisdiction which directly relates to the
4 practice of contracting or the ability to practice
5 contracting.

6 (c) Violating any provision of chapter 455.

7 (d) Performing any act which assists a person or
8 entity in engaging in the prohibited uncertified and
9 unregistered practice of contracting, if the certificateholder
10 or registrant knows or has reasonable grounds to know that the
11 person or entity was uncertified and unregistered.

12 (e) Knowingly combining or conspiring with an
13 uncertified or unregistered person by allowing his or her
14 certificate, registration, or certificate of authority to be
15 used by the uncertified or unregistered person with intent to
16 evade the provisions of this part. When a certificateholder or
17 registrant allows his or her certificate or registration to be
18 used by one or more business organizations without having any
19 active participation in the operations, management, or control
20 of such business organizations, such act constitutes prima
21 facie evidence of an intent to evade the provisions of this
22 part.

23 (f) Acting in the capacity of a contractor under any
24 certificate or registration issued hereunder except in the
25 name of the certificateholder or registrant as set forth on
26 the issued certificate or registration, or in accordance with
27 the personnel of the certificateholder or registrant as set
28 forth in the application for the certificate or registration,
29 or as later changed as provided in this part.

30
31

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

4 1. Valid liens have been recorded against the property
5 of a contractor's customer for supplies or services ordered by
6 the contractor for the customer's job; the contractor has
7 received funds from the customer to pay for the supplies or
8 services; and the contractor has not had the liens removed
9 from the property, by payment or by bond, within 75 days after
10 the date of such liens;

11 2. The contractor has abandoned a customer's job and
12 the percentage of completion is less than the percentage of
13 the total contract price paid to the contractor as of the time
14 of abandonment, unless the contractor is entitled to retain
15 such funds under the terms of the contract or refunds the
16 excess funds within 30 days after the date the job is
17 abandoned; or

18 3. The contractor's job has been completed, and it is
19 shown that the customer has had to pay more for the contracted
20 job than the original contract price, as adjusted for
21 subsequent change orders, unless such increase in cost was the
22 result of circumstances beyond the control of the contractor,
23 was the result of circumstances caused by the customer, or was
24 otherwise permitted by the terms of the contract between the
25 contractor and the customer.

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

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

31

1 (j) Abandoning a construction project in which the
2 contractor is engaged or under contract as a contractor. A
3 project may be presumed abandoned after 90 days if the
4 contractor terminates the project without just cause or
5 without proper notification to the owner, including the reason
6 for termination, or fails to perform work without just cause
7 for 90 consecutive days.

8 (k) Signing a statement with respect to a project or
9 contract falsely indicating that the work is bonded; falsely
10 indicating that payment has been made for all subcontracted
11 work, labor, and materials which results in a financial loss
12 to the owner, purchaser, or contractor; or falsely indicating
13 that workers' compensation and public liability insurance are
14 provided.

15 (l) Committing fraud or deceit in the practice of
16 contracting.

17 (m) Committing incompetency or misconduct in the
18 practice of contracting.

19 (n) Committing gross negligence, repeated negligence,
20 or negligence resulting in a significant danger to life or
21 property.

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

24 (p) Intimidating, threatening, coercing, or otherwise
25 discouraging the service of a notice to owner under part I of
26 chapter 713 or a notice to contractor under chapter 255 or
27 part I of chapter 713.

28 (q) Failing to satisfy within a reasonable time, the
29 terms of a civil judgment obtained against the licensee, or
30 the business organization qualified by the licensee, relating
31 to the practice of the licensee's profession.

1
2 For the purposes of this subsection, construction is
3 considered to be commenced when the contract is executed and
4 the contractor has accepted funds from the customer or lender.
5 A contractor does not commit a violation of this subsection
6 when the contractor relies on a building code interpretation
7 rendered by a building official or person authorized by s.
8 553.80 to enforce the building code, absent a finding of fraud
9 or deceit in the practice of contracting, or gross negligence,
10 repeated negligence, or negligence resulting in a significant
11 danger to life or property on the part of the building
12 official, in a proceeding under chapter 120.

13 Section 3. Paragraph (c) of subsection (2) of section
14 489.533, Florida Statutes, is amended to read:

15 489.533 Disciplinary proceedings.--

16 (2) When the board finds any applicant, contractor, or
17 business organization for which the contractor is a primary
18 qualifying agent or secondary qualifying agent responsible
19 under s. 489.522 guilty of any of the grounds set forth in
20 subsection (1), it may enter an order imposing one or more of
21 the following penalties:

22 (c) Imposition of an administrative fine not to exceed
23 \$10,000~~\$5,000~~ for each count or separate offense.

24 Section 4. Section 713.015, Florida Statutes, is
25 amended to read:

26 713.015 Mandatory provisions for direct contracts.--

27 (1) Any direct contract between an owner and a
28 contractor, related to improvements to real property
29 consisting of single or multiple family dwellings up to and
30 including four units, must contain the following provision
31 printed in capital letters no less than the same size

1 ~~18-point, capitalized, boldfaced~~ type used in the body of the
2 contract:

3
4 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
5 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR
6 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A
7 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
8 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR
9 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,
10 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE
11 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY
12 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID
13 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,
14 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS
15 MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST
16 YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT
17 YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.
18 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
19 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU
20 CONSULT AN ATTORNEY.

21 (2) The failure of a contractor to include this
22 provision in the direct contract shall not invalidate or
23 render the direct contract unenforceable. Nothing in this
24 section shall be construed to adversely affect the lien and
25 bond rights of lienors who are not in privity with the owner.

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

28 713.02 Types of lienors and exemptions.--

29 (7) Notwithstanding any other provision of this part,
30 no lien shall exist in favor of any contractor, subcontractor,
31 or sub-subcontractor who is unlicensed as provided in s.

1 489.128 or s. 489.532. Notwithstanding any other provision of
2 this part, if a contract is rendered unenforceable by an
3 unlicensed contractor, subcontractor, or sub-subcontractor
4 pursuant to s. 489.128 or s. 489.532, such unenforceability
5 shall not affect the rights of any other persons to enforce
6 contract, lien, or bond remedies and shall not affect the
7 obligations of a surety that has provided a bond on behalf of
8 the unlicensed contractor, subcontractor, or
9 sub-subcontractor. It shall not be a defense to any claim on a
10 bond or indemnity agreement that the principal or indemnitor
11 is unlicensed as provided in s. 489.128 or s. 489.532.

12 Section 6. Subsection (3) of section 713.04, Florida
13 Statutes, is amended, and subsection (4) is added to that
14 section, to read:

15 713.04 Subdivision improvements.--

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

21 (4) The owner shall make final payment on account of a
22 direct contract only after the contractor complies with s.
23 713.06(3)(d). Any such payment not complying with such
24 requirement shall not qualify as a proper payment under this
25 chapter.

26 Section 7. Paragraph (c) of subsection (4) of section
27 713.08, Florida Statutes, is amended to read:

28 713.08 Claim of lien.--

29 (4)

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

31 Failure to serve any claim of lien in the manner provided in

1 s. 713.18 before recording or within 15 days after recording
2 shall render the claim of lien voidable to the extent that the
3 failure or delay is shown to have been prejudicial to any
4 person entitled to rely on the service.

5 Section 8. Paragraph (e) of subsection (1) of section
6 713.13, Florida Statutes, is amended to read:

7 713.13 Notice of commencement.--

8 (1)

9 (e) A copy of any bond must be attached at the time of
10 recordation of the notice of commencement. The failure to
11 attach a copy of the bond to the notice of commencement when
12 the notice is recorded negates the exemption provided in s.
13 713.02(6). However, if such a bond exists but is not recorded,
14 the bond may be used as a transfer bond pursuant to s. 713.24.
15 The bond shall be deemed a transfer bond under s. 713.24 for
16 all purposes at the time of recordation of the notice of bond
17 and the clerk's mailing as provided in s. 713.23(2). At the
18 time of recordation of the notice of bond, any notice
19 requirements not contained in s. 713.24 shall be deemed
20 deleted from the bond.

21 Section 9. Paragraph (b) of subsection (1) and
22 subsection (4) of section 713.135, Florida Statutes, are
23 amended, and paragraph (e) is added to subsection (1) of that
24 section, to read:

25 713.135 Notice of commencement and applicability of
26 lien.--

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

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

1 of the person who has contracted for the improvement may be
2 subject to attachment under the Construction Lien Law. The
3 Department of Business and Professional Regulation shall
4 furnish, for distribution, the statement described in this
5 paragraph, and the statement must be a summary of the
6 Construction Lien Law and must include an explanation of the
7 provisions of the Construction Lien Law relating to the
8 recording, and the posting of copies, of notices of
9 commencement and a statement encouraging the owner to record a
10 notice of commencement and post a copy of the notice of
11 commencement in accordance with s. 713.13. The statement must
12 also contain an explanation of the owner's rights if a lienor
13 fails to furnish the owner with a notice as provided in s.
14 713.06(2) and an explanation of the owner's rights as provided
15 in s. 713.22. The authority that issues the building permit
16 must obtain from the Department of Business and Professional
17 Regulation the statement required by this paragraph and must
18 mail, deliver by electronic mail or other electronic format or
19 facsimile, or personally deliver that statement to the owner
20 or, in the case in which the owner is required to personally
21 appear to obtain the permit, provide that statement to any
22 owner making improvements to real property consisting of a
23 single or multiple family dwelling up to and including four
24 units. However, the failure by the authorities to provide the
25 summary does not subject the issuing authority to liability.

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

29 (4) The several boards of county commissioners,
30 municipal councils, or other similar bodies may by ordinance
31 or resolution establish reasonable fees for furnishing copies

1 of the forms and the printed statement provided in paragraphs
2 (1)(b) and ~~paragraph (1)~~(d) in an amount not to exceed \$5 to
3 be paid by the applicant for each permit in addition to all
4 other costs of the permit; however, no forms or statement need
5 be furnished, mailed, or otherwise provided to, nor may such
6 additional fee be obtained from, applicants for permits in
7 those cases in which the owner of a legal or equitable
8 interest (including that of ownership of stock of a corporate
9 landowner) of the real property to be improved is engaged in
10 the business of construction of buildings for sale to others
11 and intends to make the improvements authorized by the permit
12 on the property and upon completion will offer the improved
13 real property for sale.

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

16 713.24 Transfer of liens to security.--

17 (4) If a proceeding to enforce a transferred lien is
18 not commenced within the time specified in s. 713.22 or if it
19 appears that the transferred lien has been satisfied of
20 record, the clerk shall return said security upon request of
21 the person depositing or filing the same, or the insurer. If a
22 proceeding to enforce a lien is commenced in a court of
23 competent jurisdiction within the time specified in s. 713.22
24 and, subsequent to the expiration of the proceeding, the lien
25 is transferred pursuant to s. 713.24, an action commenced to
26 recover against the security shall be deemed to have been
27 brought as of the date of filing the action to enforce the
28 lien.

29 Section 11. Paragraph (b) of subsection (1) of section
30 713.345, Florida Statutes, is amended to read:

31

1 713.345 Moneys received for real property
2 improvements; penalty for misapplication.--

3 (1)

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

7 1. If the amount of payments misapplied has an
8 aggregate value of \$100,000 or more, the violator is guilty of
9 a felony of the first degree, punishable as provided in s.
10 775.082, s. 775.083, or s. 775.084.

11 2. If the amount of payments misapplied has an
12 aggregate value of ~~\$20,000 or more~~ but less than \$100,000, the
13 violator is guilty of a felony of the second degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

16 ~~3. If the amount of payments misapplied has an~~
17 ~~aggregate value of less than \$20,000, the violator is guilty~~
18 ~~of a felony of the third degree, punishable as provided in s.~~
19 ~~775.082, s. 775.083, or s. 775.084.~~

20 Section 12. This act shall take effect October 1,
21 2004.