

1 issuing building permits; providing
2 construction; amending s. 713.24, F.S.;
3 preserving jurisdiction in the county court
4 over certain transfer bond claims for
5 nonpayment; preserving certain lien rights when
6 filing a transfer bond after commencing certain
7 lien enforcement proceedings; amending s.
8 713.345, F.S.; increasing certain criminal
9 penalties for misapplication of construction
10 funds; amending s. 713.3471, F.S.; revising a
11 provision requiring a lender to provide notice
12 to a borrower when making a disbursement on a
13 construction loan secured by residential
14 property; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (a) of subsection (1) of section
19 255.05, Florida Statutes, is amended to read:

20 255.05 Bond of contractor constructing public
21 buildings; form; action by materialmen.--

22 (1)(a) Any person entering into a formal contract with
23 the state or any county, city, or political subdivision
24 thereof, or other public authority, for the construction of a
25 public building, for the prosecution and completion of a
26 public work, or for repairs upon a public building or public
27 work shall be required, before commencing the work or before
28 recommencing the work after a default or abandonment, to
29 execute, deliver to the public owner, and record in the public
30 records of the county where the improvement is located, a
31 payment and performance bond with a surety insurer authorized

1 | to do business in this state as surety. A public entity may
2 | not require a contractor to secure a surety bond under this
3 | section from a specific agent or bonding company. The bond
4 | must state on its front page: the name, principal business
5 | address, and phone number of the contractor, the surety, the
6 | owner of the property being improved, and, if different from
7 | the owner, the contracting public entity; the contract number
8 | assigned by the contracting public entity; and a description
9 | of the project sufficient to identify it, such as a legal
10 | description or the street address of the property being
11 | improved, and a general description of the improvement. Such
12 | bond shall be conditioned upon the contractor's performance of
13 | the construction work in the time and manner prescribed in the
14 | contract and promptly making payments to all persons defined
15 | in s. 713.01 who furnish labor, services, or materials for the
16 | prosecution of the work provided for in the contract. Any
17 | claimant may apply to the governmental entity having charge of
18 | the work for copies of the contract and bond and shall
19 | thereupon be furnished with a certified copy of the contract
20 | and bond. The claimant shall have a right of action against
21 | the contractor and surety for the amount due him or her,
22 | including unpaid finance charges due under the claimant's
23 | contract. Such action shall not involve the public authority
24 | in any expense. When such work is done for the state and the
25 | contract is for \$100,000 or less, no payment and performance
26 | bond shall be required. At the discretion of the official or
27 | board awarding such contract when such work is done for any
28 | county, city, political subdivision, or public authority, any
29 | person entering into such a contract which is for \$200,000 or
30 | less may be exempted from executing the payment and
31 | performance bond. When such work is done for the state, the

1 Secretary of the Department of Management Services may
2 delegate to state agencies the authority to exempt any person
3 entering into such a contract amounting to more than \$100,000
4 but less than \$200,000 from executing the payment and
5 performance bond. In the event such exemption is granted, the
6 officer or officials shall not be personally liable to persons
7 suffering loss because of granting such exemption. The
8 Department of Management Services shall maintain information
9 on the number of requests by state agencies for delegation of
10 authority to waive the bond requirements by agency and project
11 number and whether any request for delegation was denied and
12 the justification for the denial. Any provision in a bond
13 furnished for public work contracts as provided by this
14 subsection restricting the classes or persons protected by
15 such bond or the venue of any proceeding relating to such bond
16 is unenforceable.

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

19 489.129 Disciplinary proceedings.--

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

1 or a secondary qualifying agent responsible under s. 489.1195
2 is found guilty of any of the following acts:

3 (a) Obtaining a certificate, registration, or
4 certificate of authority by fraud or misrepresentation.

5 (b) Being convicted or found guilty of, or entering a
6 plea of nolo contendere to, regardless of adjudication, a
7 crime in any jurisdiction which directly relates to the
8 practice of contracting or the ability to practice
9 contracting.

10 (c) Violating any provision of chapter 455.

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

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

27 (f) Acting in the capacity of a contractor under any
28 certificate or registration issued hereunder except in the
29 name of the certificateholder or registrant as set forth on
30 the issued certificate or registration, or in accordance with
31 the personnel of the certificateholder or registrant as set

1 | forth in the application for the certificate or registration,
2 | or as later changed as provided in this part.

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

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

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

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

28 | (h) Being disciplined by any municipality or county
29 | for an act or violation of this part.

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

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

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

18 (l) Committing fraud or deceit in the practice of
19 contracting.

20 (m) Committing incompetency or misconduct in the
21 practice of contracting.

22 (n) Committing gross negligence, repeated negligence,
23 or negligence resulting in a significant danger to life or
24 property.

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

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

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1 (q) Failing to satisfy within a reasonable time, the
2 terms of a civil judgment obtained against the licensee, or
3 the business organization qualified by the licensee, relating
4 to the practice of the licensee's profession.

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

17 Section 3. Paragraph (c) of subsection (2) of section
18 489.533, Florida Statutes, is amended to read:

19 489.533 Disciplinary proceedings.--

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

26 (c) Imposition of an administrative fine not to exceed
27 ~~\$10,000~~\$5,000 for each count or separate offense.

28 Section 4. Section 713.015, Florida Statutes, is
29 amended to read:

30 713.015 Mandatory provisions for direct
31 contracts.--Any direct contract between an owner and a

1 contractor, related to improvements to real property
2 consisting of single or multiple family dwellings up to and
3 including four units, must contain the following provision
4 printed in capital letters no less than 14-point ~~18-point~~,
5 capitalized, boldfaced type on the front of the contract:
6

7 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
8 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR
9 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A
10 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
11 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR
12 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,
13 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE
14 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY
15 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID
16 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,
17 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS
18 MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST
19 YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT
20 YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.
21 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
22 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU
23 CONSULT AN ATTORNEY.
24

25 Nothing in this section shall be construed to adversely affect
26 the lien and bond rights of lienors who are not in privity
27 with the owner. This section does not apply when the owner is
28 also a licensed contractor or a construction professional who
29 is in the business of developing property.

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

1 713.02 Types of lienors and exemptions.--

2 (7) Notwithstanding any other provision of this part,
3 no lien shall exist in favor of any contractor, subcontractor,
4 or sub-subcontractor who is unlicensed as provided in s.
5 489.128 or s. 489.532. Notwithstanding any other provision of
6 this part, if a contract is rendered unenforceable by an
7 unlicensed contractor, subcontractor, or sub-subcontractor
8 pursuant to s. 489.128 or s. 489.532, such unenforceability
9 shall not affect the rights of any other persons to enforce
10 contract, lien, or bond remedies and shall not affect the
11 obligations of a surety that has provided a bond on behalf of
12 the unlicensed contractor, subcontractor, or
13 sub-subcontractor. It shall not be a defense to any claim on a
14 bond or indemnity agreement that the principal or indemnitor
15 is unlicensed as provided in s. 489.128 or s. 489.532.

16 Section 6. Subsection (3) of section 713.04, Florida
17 Statutes, is amended, and subsection (4) is added to that
18 section, to read:

19 713.04 Subdivision improvements.--

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

25 (4) The owner shall make final payment on account of a
26 direct contract only after the contractor complies with s.
27 713.06(3)(d). Any such payment not complying with such
28 requirement shall not qualify as a proper payment under this
29 chapter.

30 Section 7. Paragraph (c) of subsection (4) of section
31 713.08, Florida Statutes, is amended to read:

1 713.08 Claim of lien.--

2 (4)

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

4 Failure to serve any claim of lien in the manner provided in
5 s. 713.18 before recording or within 15 days after recording
6 shall render the claim of lien voidable to the extent that the
7 failure or delay is shown to have been prejudicial to any
8 person entitled to rely on the service.

9 Section 8. Paragraph (e) of subsection (1) of section
10 713.13, Florida Statutes, is amended to read:

11 713.13 Notice of commencement.--

12 (1)

13 (e) A copy of any payment bond must be attached at the
14 time of recordation of the notice of commencement. The failure
15 to attach a copy of the bond to the notice of commencement
16 when the notice is recorded negates the exemption provided in
17 s. 713.02(6). However, if ~~such~~ a payment bond under s. 713.23
18 exists but was is not attached at the time of recordation of
19 the notice of commencement, the bond may be used to transfer
20 any recorded lien of a lienor except that of the contractor by
21 the recordation and service of a notice of bond pursuant to s.
22 713.23(2). The notice requirements of s. 713.23 apply to any
23 claim against the bond; however, the time limits for serving
24 any required notices shall begin running from the later of the
25 time specified in s. 713.23 or the date the notice of bond is
26 served on the lienor recorded, the bond may be used as a
27 transfer bond pursuant to s. 713.24.

28 Section 9. Paragraph (b) of subsection (1) and
29 subsection (4) of section 713.135, Florida Statutes, are
30 amended, and paragraph (e) is added to subsection (1) of that
31 section, to read:

1 713.135 Notice of commencement and applicability of
2 lien.--

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

5 (b) Provide the applicant and the owner of the real
6 property upon which improvements are to be constructed with a
7 printed statement stating that the right, title, and interest
8 of the person who has contracted for the improvement may be
9 subject to attachment under the Construction Lien Law. The
10 Department of Business and Professional Regulation shall
11 furnish, for distribution, the statement described in this
12 paragraph, and the statement must be a summary of the
13 Construction Lien Law and must include an explanation of the
14 provisions of the Construction Lien Law relating to the
15 recording, and the posting of copies, of notices of
16 commencement and a statement encouraging the owner to record a
17 notice of commencement and post a copy of the notice of
18 commencement in accordance with s. 713.13. The statement must
19 also contain an explanation of the owner's rights if a lienor
20 fails to furnish the owner with a notice as provided in s.
21 713.06(2) and an explanation of the owner's rights as provided
22 in s. 713.22. The authority that issues the building permit
23 must obtain from the Department of Business and Professional
24 Regulation the statement required by this paragraph and must
25 mail, deliver by electronic mail or other electronic format or
26 facsimile, or personally deliver that statement to the owner
27 or, in a case in which the owner is required to personally
28 appear to obtain the permit, provide that statement to any
29 owner making improvements to real property consisting of a
30 single or multiple family dwelling up to and including four
31

1 units. However, the failure by the authorities to provide the
2 summary does not subject the issuing authority to liability.

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

6 (4) The several boards of county commissioners,
7 municipal councils, or other similar bodies may by ordinance
8 or resolution establish reasonable fees for furnishing copies
9 of the forms and the printed statement provided in paragraphs
10 ~~paragraph~~ (1)(b) and (d) in an amount not to exceed \$5 to be
11 paid by the applicant for each permit in addition to all other
12 costs of the permit; however, no forms or statement need be
13 furnished, mailed, or otherwise provided to, nor may such
14 additional fee be obtained from, applicants for permits in
15 those cases in which the owner of a legal or equitable
16 interest (including that of ownership of stock of a corporate
17 landowner) of the real property to be improved is engaged in
18 the business of construction of buildings for sale to others
19 and intends to make the improvements authorized by the permit
20 on the property and upon completion will offer the improved
21 real property for sale.

22 Section 10. Subsections (3) and (4) of section 713.24,
23 Florida Statutes, are amended to read:

24 713.24 Transfer of liens to security.--

25 (3) Any party having an interest in such security or
26 the property from which the lien was transferred may at any
27 time, and any number of times, file a complaint in chancery in
28 the circuit court of the county where such security is
29 deposited, or file a motion in a pending action to enforce a
30 lien, for an order to require additional security, reduction
31 of security, change or substitution of sureties, payment of

1 discharge thereof, or any other matter affecting said
2 security. If the court finds that the amount of the deposit or
3 bond in excess of the amount claimed in the claim of lien is
4 insufficient to pay the lienor's attorney's fees and court
5 costs incurred in the action to enforce the lien, the court
6 must increase the amount of the cash deposit or lien transfer
7 bond. Nothing in this section shall be construed to vest
8 exclusive jurisdiction in the circuit courts over transfer
9 bond claims for nonpayment of an amount within the monetary
10 jurisdiction of the county courts.

11 (4) If a proceeding to enforce a transferred lien is
12 not commenced within the time specified in s. 713.22 or if it
13 appears that the transferred lien has been satisfied of
14 record, the clerk shall return said security upon request of
15 the person depositing or filing the same, or the insurer. If a
16 proceeding to enforce a lien is commenced in a court of
17 competent jurisdiction within the time specified in s. 713.22
18 and, during such proceeding, the lien is transferred pursuant
19 to this section or s. 713.13(1)(e), an action commenced in the
20 same county or circuit court to recover against the security
21 shall be deemed to have been brought as of the date of filing
22 the action to enforce the lien, and the court shall have
23 jurisdiction over the action.

24 Section 11. Paragraph (b) of subsection (1) of section
25 713.345, Florida Statutes, is amended to read:

26 713.345 Moneys received for real property
27 improvements; penalty for misapplication.--

28 (1)

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

1 YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM
2 HAVING TO PAY TWICE FOR THE SAME LABOR,
3 SERVICES, OR MATERIALS USED IN MAKING THE
4 IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU
5 REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN
6 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A
7 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO
8 YOUR CONTRACTOR.

9
10 This subsection does not apply to owners of real property when
11 acting as licensed contractors pursuant to chapter 489 or as
12 developers who create parcels or offer parcels for sale or
13 lease in the ordinary course of business.

14 Section 13. This act shall take effect October 1,
15 2005.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1016
4 The committee substitute (CS) requires that the notice of lien
5 law be in capital letters no less than 14-point, capitalized,
6 boldfaced type on the front of standard construction
7 contracts.
8 It deletes the word "proper" in front of payment bond to
9 conform to correct terminology.
10 It clarifies that the time for serving notices regarding
11 payment bonds begins to run as specified in the act.
12 It clarifies the jurisdiction of the county and circuit court
13 in transfers of lien actions.
14 It clarifies the provision affecting the transfer of lien
15 during a lien enforcement proceeding.
16 It increases the criminal penalty for misapplication of
17 construction funds between \$1,000 and \$20,000.
18 It maintains the requirements that a loan disbursement notice
19 go out with every disbursement. It also expands the method of
20 delivery to mail, electronic mail, facsimile, or personally
21 delivery. It deletes language that states that the
22 disbursement notice will be the only noticed received.
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