

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; amending ss.
 5 489.129 and 489.533, F.S.; increasing an administrative
 6 fine under certain disciplinary proceeding provisions;
 7 amending s. 713.015, F.S.; revising a direct contract
 8 provision requirement; providing that failure to include
 9 such provision in such contracts limits certain lien
 10 rights under the contract; providing construction relating
 11 to validity and enforceability; preserving lien rights of
 12 certain persons; amending s. 713.02, F.S.; protecting the
 13 rights of certain persons to enforce certain contract,
 14 lien, or bond remedies or contractual obligations under
 15 certain circumstances; precluding certain defenses;
 16 amending s. 713.04, F.S.; revising certain final payment
 17 requirements; amending s. 713.08, F.S.; requiring a claim
 18 of lien to be served on an owner; amending s. 713.13,
 19 F.S.; revising provisions authorizing use of certain
 20 payment bonds to transfer certain recorded liens;
 21 specifying application of certain notice requirements to
 22 certain claims; revising time limits for serving certain
 23 required notices; amending s. 713.135, F.S.; revising
 24 certain notice of commencement and applicability of lien
 25 requirements for certain authorities issuing building
 26 permits; providing construction; amending s. 713.24, F.S.;
 27 preserving certain lien rights when filing a transfer bond
 28 after commencing certain lien enforcement proceedings;

29 | amending s. 713.345, F.S.; increasing certain criminal
 30 | penalties for misapplication of construction funds;
 31 | amending s. 713.3471, F.S.; revising a provision requiring
 32 | a lender to provide notice to a property owner when making
 33 | a first loan disbursement on a construction loan secured
 34 | by residential real property; revising a notice form;
 35 | providing an effective date.

36 |

37 | Be It Enacted by the Legislature of the State of Florida:

38 |

39 | Section 1. Paragraph (a) of subsection (1) of section
 40 | 255.05, Florida Statutes, is amended to read:

41 | 255.05 Bond of contractor constructing public buildings;
 42 | form; action by materialmen.--

43 | (1)(a) Any person entering into a formal contract with the
 44 | state or any county, city, or political subdivision thereof, or
 45 | other public authority, for the construction of a public
 46 | building, for the prosecution and completion of a public work,
 47 | or for repairs upon a public building or public work shall be
 48 | required, before commencing the work or before recommencing the
 49 | work after a default or abandonment, to execute, deliver to the
 50 | public owner, and record in the public records of the county
 51 | where the improvement is located, a payment and performance bond
 52 | with a surety insurer authorized to do business in this state as
 53 | surety. A public entity may not require a contractor to secure a
 54 | surety bond under this section from a specific agent or bonding
 55 | company. The bond must state on its front page: the name,
 56 | principal business address, and phone number of the contractor,

57 | the surety, the owner of the property being improved, and, if
58 | different from the owner, the contracting public entity; the
59 | contract number assigned by the contracting public entity; and a
60 | description of the project sufficient to identify it, such as a
61 | legal description or the street address of the property being
62 | improved, and a general description of the improvement. Such
63 | bond shall be conditioned upon the contractor's performance of
64 | the construction work in the time and manner prescribed in the
65 | contract and promptly making payments to all persons defined in
66 | s. 713.01 who furnish labor, services, or materials for the
67 | prosecution of the work provided for in the contract. Any
68 | claimant may apply to the governmental entity having charge of
69 | the work for copies of the contract and bond and shall thereupon
70 | be furnished with a certified copy of the contract and bond. The
71 | claimant shall have a right of action against the contractor and
72 | surety for the amount due him or her, including unpaid finance
73 | charges due under the claimant's contract. Such action shall not
74 | involve the public authority in any expense. When such work is
75 | done for the state and the contract is for \$100,000 or less, no
76 | payment and performance bond shall be required. At the
77 | discretion of the official or board awarding such contract when
78 | such work is done for any county, city, political subdivision,
79 | or public authority, any person entering into such a contract
80 | which is for \$200,000 or less may be exempted from executing the
81 | payment and performance bond. When such work is done for the
82 | state, the Secretary of the Department of Management Services
83 | may delegate to state agencies the authority to exempt any
84 | person entering into such a contract amounting to more than

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

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

99 489.129 Disciplinary proceedings.--

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

112 qualifying agent responsible under s. 489.1195 is found guilty
 113 of any of the following acts:

114 (a) Obtaining a certificate, registration, or certificate
 115 of authority by fraud or misrepresentation.

116 (b) Being convicted or found guilty of, or entering a plea
 117 of nolo contendere to, regardless of adjudication, a crime in
 118 any jurisdiction which directly relates to the practice of
 119 contracting or the ability to practice contracting.

120 (c) Violating any provision of chapter 455.

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

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

136 (f) Acting in the capacity of a contractor under any
 137 certificate or registration issued hereunder except in the name
 138 of the certificateholder or registrant as set forth on the
 139 issued certificate or registration, or in accordance with the

140 personnel of the certificateholder or registrant as set forth in
141 the application for the certificate or registration, or as later
142 changed as provided in this part.

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

145 Financial mismanagement or misconduct occurs when:

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

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

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

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

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

172 (j) Abandoning a construction project in which the
 173 contractor is engaged or under contract as a contractor. A
 174 project may be presumed abandoned after 90 days if the
 175 contractor terminates the project without just cause or without
 176 proper notification to the owner, including the reason for
 177 termination, or fails to perform work without just cause for 90
 178 consecutive days.

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

186 (l) Committing fraud or deceit in the practice of
 187 contracting.

188 (m) Committing incompetency or misconduct in the practice
 189 of contracting.

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

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

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

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

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

215 Section 3. Paragraph (c) of subsection (2) of section
 216 489.533, Florida Statutes, is amended to read:

217 489.533 Disciplinary proceedings.--

218 (2) When the board finds any applicant, contractor, or
 219 business organization for which the contractor is a primary
 220 qualifying agent or secondary qualifying agent responsible under
 221 s. 489.522 guilty of any of the grounds set forth in subsection

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222 (1), it may enter an order imposing one or more of the following
 223 penalties:

224 (c) Imposition of an administrative fine not to exceed
 225 \$10,000 ~~\$5,000~~ for each count or separate offense.

226 Section 4. Section 713.015, Florida Statutes, is amended
 227 to read:

228 713.015 Mandatory provisions for direct contracts.--Any
 229 direct contract between an owner and a contractor, related to
 230 improvements to real property consisting of single or multiple
 231 family dwellings up to and including four units, must contain
 232 the following provision printed in capital letters no less than
 233 the same size as the 18-point, capitalized, boldfaced type used
 234 in the body of the contract:

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

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250 LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A
 251 SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

252
 253 Nothing in this section shall be construed to adversely affect
 254 the lien and bond rights of lienors who are not in privity with
 255 the owner. This section does not apply when the owner is also a
 256 licensed contractor or a construction professional who is in the
 257 business of developing property.

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

260 713.02 Types of lienors and exemptions.--

261 (7) Notwithstanding any other provision of this part, no
 262 lien shall exist in favor of any contractor, subcontractor, or
 263 sub-subcontractor who is unlicensed as provided in s. 489.128 or
 264 s. 489.532. Notwithstanding any other provision of this part, if
 265 a contract is rendered unenforceable by an unlicensed
 266 contractor, subcontractor, or sub-subcontractor pursuant to s.
 267 489.128 or s. 489.532, such unenforceability shall not affect
 268 the rights of any other persons to enforce contract, lien, or
 269 bond remedies and shall not affect the obligations of a surety
 270 that has provided a bond on behalf of the unlicensed contractor,
 271 subcontractor, or sub-subcontractor. It shall not be a defense
 272 to any claim on a bond or indemnity agreement that the principal
 273 or indemnitor is unlicensed as provided in s. 489.128 or s.
 274 489.532.

275 Section 6. Subsection (3) of section 713.04, Florida
 276 Statutes, is amended, and subsection (4) is added to said
 277 section, to read:

278 713.04 Subdivision improvements.--

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

284 (4) The owner shall make final payment on account of a
 285 direct contract only after the contractor complies with s.
 286 713.06(3)(d). Any such payment not complying with such
 287 requirement shall not qualify as a proper payment under this
 288 chapter.

289 Section 7. Paragraph (c) of subsection (4) of section
 290 713.08, Florida Statutes, is amended to read:

291 713.08 Claim of lien.--

292 (4)

293 (c) The claim of lien shall be served on the owner.
 294 Failure to serve any claim of lien in the manner provided in s.
 295 713.18 before recording or within 15 days after recording shall
 296 render the claim of lien voidable to the extent that the failure
 297 or delay is shown to have been prejudicial to any person
 298 entitled to rely on the service.

299 Section 8. Paragraph (e) of subsection (1) of section
 300 713.13, Florida Statutes, is amended to read:

301 713.13 Notice of commencement.--

302 (1)

303 (e) A copy of any payment bond must be attached at the
 304 time of recordation of the notice of commencement. The failure
 305 to attach a copy of the bond to the notice of commencement when

306 the notice is recorded negates the exemption provided in s.
 307 713.02(6). However, if ~~such~~ a proper payment bond under s.
 308 713.23 exists but was ~~is~~ not attached at the time of recordation
 309 of the notice of commencement, the bond may be used to transfer
 310 any recorded lien of a lienor except that of the contractor by
 311 the recordation of a notice of bond pursuant to s. 713.23(2).
 312 The notice requirements of s. 713.23 apply to any claim against
 313 the bond; however, the time limits for serving any required
 314 notices shall run from the later of the time specified in s.
 315 713.23 or the date the notice of bond is served on the lienor
 316 ~~recorded, the bond may be used as a transfer bond pursuant to s.~~
 317 ~~713.24.~~

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

322 713.135 Notice of commencement and applicability of
 323 lien.--

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

326 (b) Provide the applicant and the owner of the real
 327 property upon which improvements are to be constructed with a
 328 printed statement stating that the right, title, and interest of
 329 the person who has contracted for the improvement may be subject
 330 to attachment under the Construction Lien Law. The Department of
 331 Business and Professional Regulation shall furnish, for
 332 distribution, the statement described in this paragraph, and the
 333 statement must be a summary of the Construction Lien Law and

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

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

357 (4) The several boards of county commissioners, municipal
 358 councils, or other similar bodies may by ordinance or resolution
 359 establish reasonable fees for furnishing copies of the forms and
 360 the printed statement provided in paragraphs ~~paragraph~~ (1)(b)
 361 and (d) in an amount not to exceed \$5 to be paid by the

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362 applicant for each permit in addition to all other costs of the
 363 permit; however, no forms or statement need be furnished,
 364 mailed, or otherwise provided to, nor may such additional fee be
 365 obtained from, applicants for permits in those cases in which
 366 the owner of a legal or equitable interest (including that of
 367 ownership of stock of a corporate landowner) of the real
 368 property to be improved is engaged in the business of
 369 construction of buildings for sale to others and intends to make
 370 the improvements authorized by the permit on the property and
 371 upon completion will offer the improved real property for sale.

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

374 713.24 Transfer of liens to security.--

375 (4) If a proceeding to enforce a transferred lien is not
 376 commenced within the time specified in s. 713.22 or if it
 377 appears that the transferred lien has been satisfied of record,
 378 the clerk shall return said security upon request of the person
 379 depositing or filing the same, or the insurer. If a proceeding
 380 to enforce a lien is commenced in a court of competent
 381 jurisdiction within the time specified in s. 713.22 and,
 382 subsequent to such proceeding, the lien is transferred pursuant
 383 to this section or s. 713.13(1)(e), an action commenced in the
 384 same county or circuit court to recover against the security
 385 shall be deemed to have been brought as of the date of filing
 386 the action to enforce the lien, and the court shall have
 387 jurisdiction over the action.

388 Section 11. Paragraph (b) of subsection (1) of section
 389 713.345, Florida Statutes, is amended to read:

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

392 (1)

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

396 1. If the amount of payments misapplied has an aggregate
 397 value of \$100,000 or more, the violator is guilty of a felony of
 398 the first degree, punishable as provided in s. 775.082, s.
 399 775.083, or s. 775.084.

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

404 ~~3. If the amount of payments misapplied has an aggregate~~
 405 ~~value of less than \$20,000, the violator is guilty of a felony~~
 406 ~~of the third degree, punishable as provided in s. 775.082, s.~~
 407 ~~775.083, or s. 775.084.~~

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

410 713.3471 Lender responsibilities with construction
 411 loans.--

412 (1) Prior to a lender making the first any loan
 413 disbursement on any construction loan secured by residential
 414 real property directly to the owner, which, for purposes of this
 415 subsection, means only a natural person, or jointly to the owner
 416 and any other party, the lender shall give the following written

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417 notice to the owner ~~borrowers~~ in bold type larger than any other
 418 type on the page:

420 WARNING!

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

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