

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | | |
|-----------------------|-------|-------|
| ADOPTED | ___ | (Y/N) |
| ADOPTED AS AMENDED | ___ | (Y/N) |
| ADOPTED W/O OBJECTION | ___ | (Y/N) |
| FAILED TO ADOPT | ___ | (Y/N) |
| WITHDRAWN | ___ | (Y/N) |
| OTHER | _____ | |

1 Committee/Subcommittee hearing bill: Commerce Committee
2 Representative Grant, M. offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 489.126, Florida Statutes, is amended
7 to read:

8 489.126 Moneys received by contractors.—

9 (1) For purposes of this section, the term "contractor"
10 includes all definitions as set forth in s. 489.105(3), and any
11 person performing or contracting or promising to perform work
12 described therein, without regard to the licensure of the
13 person.

14 (2) A contractor who receives, as initial payment, money
15 totaling more than 10 percent of the contract price for repair,

Amendment No. 1

16 restoration, improvement, or construction to residential real
17 property must:

18 (a) Apply for permits necessary to do work within 30 days
19 after the date payment is made, except where the work does not
20 require a permit under the applicable codes and ordinances, and

21 (b) Start the work within 90 days after the date all
22 necessary permits for work, if any, are issued,

23
24 unless the contractor has just cause for failing to apply for
25 the necessary permits, starting the work, or refunding the
26 payment, or unless the person who made the payment agreed, in
27 writing, to a longer period to apply for the necessary permits
28 or start the work or to longer periods for both.

29 (c) There is a presumption that a contractor does not have
30 just cause if the contractor fails to apply for the necessary
31 permits, start the work, or refund payments, within 30 days of
32 receiving written demand to apply for the necessary permits,
33 start the work, or refund the payment, from the person who made
34 the payment.

35 1. Written demand must be made to the contractor in the
36 form of a letter that includes a demand to apply for the
37 necessary permits, start the work, or refund the payment sent
38 via certified mail, return receipt requested, mailed to the
39 address listed in the contracting agreement. If there is no
40 address for the contractor listed in the contracting agreement,

567801 - h0877-strike (002).docx

Published On: 4/3/2019 7:18:39 PM

Amendment No. 1

41 or no written agreement exists, the letter must be mailed to the
42 address listed with the Department of Business and Professional
43 Regulation for licensing purposes or the local construction
44 industry licensing board, if applicable.

45 (d) The burden is on the contractor to prove just cause and
46 to rebut the presumption contained in paragraph (c).

47 (3) (a) A contractor who receives money for repair,
48 restoration, addition, improvement, or construction of
49 residential real property in excess of the value of the work
50 performed shall not, ~~with intent to defraud the owner,~~ fail or
51 refuse to perform any work for any 90-day period.

52 (b) It is prima facie evidence ~~Proof~~ that a contractor
53 received money for the repair, restoration, addition,
54 improvement, or construction of residential real property and
55 that the amount received exceeds the value of the work performed
56 by the contractor when ~~and that~~:

57 1. The contractor failed to perform any of the work for
58 which he or she contracted during any 90-day ~~60-day~~ period;

59 2. The failure to perform any such work during the 90-day
60 ~~60-day~~ period was not related to the owner's termination of the
61 contract or a material breach of the contract by the owner; and

62 3. The contractor failed, to perform for 90 days without
63 just cause or terminated the contract without proper
64 notification to the owner.

Amendment No. 1

65 (c) There is a presumption that a contractor does not have
66 just cause if the contractor fails to perform work, or refund
67 the money received in excess of the value of the work performed,
68 within 30 days of receiving a written demand to perform the
69 work, or refund the money received in excess of the value of the
70 work performed, from the person who made the payment.

71 1. Written demand must be made to the contractor in the
72 form of a letter that includes a demand to perform work, or
73 refund the money received in excess of the value of the work
74 performed, sent via certified mail, return receipt requested,
75 mailed to the address listed in the contracting agreement. If
76 there is no address for the contractor listed in the contracting
77 agreement, or no written agreement exists, the letter must be
78 mailed to the address listed with the Department of Business and
79 Professional Regulation for licensing purposes or the local
80 construction industry licensing board, if applicable~~for an~~
81 ~~additional 30-day period after the date of mailing of~~
82 ~~notification as specified in paragraph (c), to perform any work~~
83 ~~for which he or she contracted,~~

84
85 ~~gives rise to an inference that the money in excess of the value~~
86 ~~of the work performed was taken with the intent to defraud.~~

87 ~~(c) Notification as contemplated in paragraph (b) consists~~
88 ~~of a certified letter, return receipt requested, mailed to the~~
89 ~~address of the contractor as listed in the written contracting~~

567801 - h0877-strike (002).docx

Published On: 4/3/2019 7:18:39 PM

Amendment No. 1

~~agreement. The letter must indicate that the contractor has failed to perform any work for a 60-day period, that the failure to perform the work was not the result of the owner's termination of the contract or a material breach of the contract by the owner, and that the contractor must recommence construction within 30 days after the date of mailing of the letter. If there is no address for the contractor listed in the written contracting agreement, or no written agreement exists, the letter must be mailed to the address of the contractor listed in the building permit application.~~

(d) The burden is on the contractor to prove just cause and to rebut the presumption contained in paragraph (c).

(e) Proper notification of termination for purposes of paragraph (b) must be made by the contractor in the form of a letter that includes the reason for termination of the contract or the reason for failure to perform sent via certified mail, return receipt requested, mailed to the last address of the owner in the written contracting agreement. If there is no address for the owner listed in the contracting agreement, or no written agreement exists, the letter must be mailed to the address where the work was to be performed or the address listed on the permit, if applicable.

(4) The legislature finds that vigorous enforcement of residential contracting laws are necessary to protect consumers and the State's economy, and therefore, this section shall be

Amendment No. 1

115 strictly construed ~~Any person who violates any provision of this~~
116 ~~section is guilty of theft and shall be prosecuted and punished~~
117 ~~under s. 812.014.~~

118 (5) A violation of subsection (2) is a:

119 (a) Misdemeanor of the first degree, punishable as
120 provided in s. 775.082 or s. 775.083, if the total money
121 received is less than \$1,000.

122 (b) Felony of the third degree, punishable as provided in
123 s. 775.082, s. 775.083, or s. 775.084, if the total money
124 received is \$1,000 or more but less than \$20,000.

125 (c) Felony of the second degree, punishable as provided in
126 s. 775.082, s. 775.083, or s. 775.084, if the total money
127 received is \$20,000 or more but less than \$50,000.

128 (d) Felony of the first degree, punishable as provided in
129 s. 775.082, s. 775.083, or s. 775.084, if the total money
130 received is \$50,000 or more.

131 (6) A violation of subsection (3) is a:

132 (a) Misdemeanor of the first degree, punishable as
133 provided in s. 775.082 or s. 775.083, if the total money
134 received exceeding the value of the work performed is less than
135 \$1,000.

136 (b) Felony of the third degree, punishable as provided in
137 s. 775.082, s. 775.083, or s. 775.084, if the total money
138 received exceeding the value of the work performed is \$1,000 or
139 more but less than \$20,000.

567801 - h0877-strike (002).docx

Published On: 4/3/2019 7:18:39 PM

Amendment No. 1

140 (c) Felony of the second degree, punishable as provided in
141 s. 775.082, s. 775.083, or s. 775.084, if the total money
142 received exceeding the value of the work performed is \$20,000 or
143 more but less than \$50,000.

144 (d) Felony of the first degree, punishable as provided in
145 s. 775.082, s. 775.083, or s. 775.084, if the total money
146 received exceeding the value of the work performed is \$50,000 or
147 more.

148 Section 2. This act shall take effect October 1, 2019.

149
150 -----

151 **T I T L E A M E N D M E N T**

152 Remove everything before the enacting clause and insert:
153 An act relating to construction contracting offenses;
154 amending s. 489.126, F.S.; providing a just cause
155 defense for criminal offenses and disciplinary
156 violations; providing a rebuttable presumption;
157 deleting an intent requirement for contractor
158 offenses; revising elements of offenses; providing
159 legislative findings; revising criminal penalties for
160 contractor offenses; providing an effective date.