

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Grant offered the following:

Amendment

Remove lines 70-219 and insert:

designated contractor or qualified business licensed by the board under this chapter pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense in violation of s. 489.126(5)(b), (c), or (d); s. 489.126(6)(b), (c), or (d); or s. 713.345(2)(g), the board and the Electrical Contractors' Licensing Board must suspend all licenses issued to such licensee under this chapter for at least 1 year after the date of the conviction. The suspension required under this

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13 paragraph is not exclusive, and the board may impose any
14 additional penalties set forth in this subsection.

15
16 For the purposes of this subsection, construction is considered
17 to be commenced when the contract is executed and the contractor
18 has accepted funds from the customer or lender. A contractor
19 does not commit a violation of this subsection when the
20 contractor relies on a building code interpretation rendered by
21 a building official or person authorized by s. 553.80 to enforce
22 the building code, absent a finding of fraud or deceit in the
23 practice of contracting, or gross negligence, repeated
24 negligence, or negligence resulting in a significant danger to
25 life or property on the part of the building official, in a
26 proceeding under chapter 120.

27 Section 2. Subsection (2) of section 713.345, Florida
28 Statutes, is renumbered as subsection (3), and a new subsection
29 (2) is added to that section, to read:

30 713.345 Moneys received for real property improvements;
31 penalty for misapplication; escrow account required for certain
32 funds.—

33 (2)(a) As used in this subsection, the term:

34 1. "Substantial completion" means performance that is
35 nearly equivalent to that which was contracted for and when only
36 minor, corrective, or warranty work remains.

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37 2. "Designated contractor or qualified business" means a
38 contractor who is certified or registered under chapter 489 or a
39 business organization qualified by a contractor who is certified
40 or registered under chapter 489, and such contractor or business
41 organization:

42 a. Has been certified, registered, or qualified for less
43 than 5 years;

44 b. Contracts for improvements to residential real property
45 within an area in which a state of emergency has been declared
46 under s. 252.36 for a hurricane within 18 months after the date
47 of the declaration; or

48 c. Has been disciplined by the Construction Industry
49 Licensing Board or the Electrical Contractors' Licensing Board
50 within the previous 5 years for failing to comply with this
51 subsection or s. 489.126.

52 (b) A designated contractor or qualified business that
53 receives, pursuant to a contract for improvements to real
54 property, payments of \$10,000 or more, regardless of whether
55 such payments are paid in a lump sum or in the aggregate, before
56 the commencement of such improvements to residential real
57 property must, within 3 business days after receipt, place such
58 payment in an escrow account with a savings and loan
59 association, bank, or trust company located in the state; an
60 attorney who is a member in good standing with The Florida Bar;
61 or a real estate broker licensed in the state, unless such

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62 escrow requirement is waived in writing by the owner of the
63 residential real property. If such escrow is waived in writing
64 by the owner of the residential real property, the designated
65 contractor or qualified business must provide a copy of a
66 performance bond if required under subparagraph 5.

67 1. Unless the contract specifies where such payment must
68 be deposited, the designated contractor or qualified business
69 must, within 10 business days after a deposit has been made,
70 inform the owner of the residential real property in writing of
71 the name of the depository institution, attorney, or real estate
72 broker with whom the funds have been deposited.

73 2. The designated contractor or qualified business may
74 keep funds received from different owners in the same account if
75 the designated contractor or qualified business has financial or
76 accounting records that clearly show how the funds deposited
77 were allocated to each owner.

78 3. A depository institution, an attorney, or a real estate
79 broker who receives a payment in an amount of \$10,000 or more
80 from a designated contractor or qualified business under this
81 subsection for improvements to residential real property is not
82 required to inquire into the nature of any deposits to or
83 withdrawals from the escrow account or to ensure that any
84 withdrawals from such account are used for a specific purpose as
85 required by a contract. A deposit into the escrow account

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86 remains the property of the owner of the residential real
87 property except as otherwise provided in this subsection.

88 4. A designated contractor or qualified business may
89 withdraw funds from the escrow account before the substantial
90 completion of work in the following circumstances:

91 a. Under the terms of a payment schedule agreed to in the
92 contract between the designated contractor or qualified business
93 and the owner of the residential real property;

94 b. When required to make payments to subcontractors or for
95 materials related to the contracted job in order to comply with
96 subsection (1); or

97 c. If the owner of such property violates the contract,
98 but only if the amount withdrawn by the designated contractor or
99 qualified business covers reasonable costs plus liquidated
100 damages not to exceed \$500.

101 5. If the escrow requirement is waived in writing by the
102 owner of the residential real property, a designated contractor
103 or qualified business must obtain a performance bond equal to
104 the value of the contract and provide proof of such bond to the
105 property owner before commencing or continuing the project.

106 6. A designated contractor or qualified business has
107 control over the disbursement of funds in escrow upon
108 substantial completion of the contract, or any portion that is
109 specifically accounted for in the contract.

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110 (c) The owner of the residential real property may deliver
111 by certified mail, return receipt requested, a written demand to
112 the address listed in the contract for an accounting report of
113 the funds paid to the designated contractor or qualified
114 business. If the address of the designated contractor or
115 qualified business is not provided in the contract, or a written
116 contract or agreement does not exist, the owner must deliver by
117 certified mail, return receipt requested, the written demand to
118 the address that is listed for the designated contractor or
119 qualified business with the Department of Business and
120 Professional Regulation for licensing purposes. Within 60 days
121 after receipt of such demand, the designated contractor or
122 qualified business must provide the owner, by certified mail,
123 return receipt requested, with an accounting record indicating
124 all payments made to and from the designated contractor or
125 qualified business, including those that were made to
126 subcontractors and for purchased materials.

127 (d) The failure of a designated contractor or qualified
128 business to respond to an owner's written demand for an
129 accounting report as required under paragraph (c) creates a
130 rebuttable presumption that a violation of this section is
131 willful.

132 (e) This subsection does not apply to any of the
133 following:

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134 1. A contract for hourly labor provided by a designated
135 contractor or qualified business.

136 2. A designated contractor or qualified business that owns
137 the real property upon which the improvement or construction is
138 to be completed.

139 3. A cost-plus contract.

140 (f) If the value of a contract or addenda thereto is more
141 than \$100,000 for a contract for improvements to residential
142 real property, a designated contractor or qualified business
143 must obtain a performance bond equal to the value of the
144 contract and provide proof of such bond to the property owner
145 before commencing or continuing the project.

146 (g) A designated contractor or qualified business commits
147 a felony of the third degree, punishable as provided in s.
148 775.082, s. 775.083, or s. 775.084, if the designated contractor
149 or qualified business willfully fails to place funds in an
150 escrow account as required under this subsection.

151 (h) If a designated contractor or qualified business
152 pleads guilty or

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