

## House Bill No. 1277

An act relating to contracting; amending ss. 489.128 and 489.532, F.S.; clarifying that the prohibition on enforcement of construction contracts extends only to enforcement by the unlicensed contractor; clarifying the specific licensure status required and timing of licensure for purposes of determining the enforceability of a construction contract; clarifying the effect of an unenforceable contract on other contracts and obligations; clarifying that unlicensed contractors have no lien or bond rights; clarifying that sureties of unlicensed contractors have continuing bond obligations; amending s. 713.02, F.S., relating to liens for unlicensed contractors, subcontractors, or sub-subcontractors, to conform; amending s. 489.113, F.S.; requiring certain swimming pool work to be subcontracted; revising provisions for the scope of work that a licensed general contractor may perform; amending s. 489.117, F.S.; specifying conditions under which a person may perform specialty contracting services without obtaining a local professional license; amending ss. 489.119 and 489.521, F.S.; revising license requirements for certain business organizations engaging in contracting; providing for retroactive application; providing legislative intent; providing severability; providing an effective date.

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

Section 1. Section 489.128, Florida Statutes, is amended to read:

489.128 Contracts entered into ~~performed~~ by unlicensed contractors unenforceable.—

(1) As a matter of public policy, contracts entered into on or after October 1, 1990, and performed in full or in part by an unlicensed any contractor who fails to obtain or maintain a license in accordance with this part shall be unenforceable in law or in equity by the unlicensed contractor.

(a) For purposes of this section, an individual is unlicensed if the individual does not have a license required by this part concerning the scope of the work to be performed under the contract. A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract.

(b) For purposes of this section, an individual or business organization shall not be considered unlicensed for failing to have an occupational license certificate issued under the authority of chapter 205. A business organization shall not be considered unlicensed for failing to have a certificate of authority as required by ss. 489.119 and 489.127.

(c) For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the

original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.

(2) Notwithstanding any other provision of law to the contrary, if a contract is rendered unenforceable under this section, no lien or bond claim shall exist in favor of the unlicensed contractor for any labor, services, or materials provided under the contract or any amendment thereto.

(3) This section shall not affect the rights of parties other than the unlicensed contractor to enforce contract, lien, or bond remedies. This section shall not affect the obligations of a surety that has provided a bond on behalf of an unlicensed contractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed for purposes of this section.

Section 2. Section 489.532, Florida Statutes, is amended to read:

489.532 Contracts ~~entered into performed~~ by unlicensed contractors unenforceable.—

(1) As a matter of public policy, contracts entered into on or after October 1, 1990, and performed in full or in part by an unlicensed any contractor who fails to obtain or maintain his or her license in accordance with this part shall be unenforceable in law or in equity by the unlicensed contractor, and the court in its discretion may extend this provision to equitable remedies.

(a) For purposes of this section, an individual is unlicensed if the individual does not have a license required by this part concerning the scope of the work to be performed under the contract. A business organization is unlicensed if the business organization does not have a primary or secondary qualifying agent in accordance with this part concerning the scope of the work to be performed under the contract.

(b) For purposes of this section, an individual or business organization shall not be considered unlicensed for failing to have an occupational license certificate issued under the authority of chapter 205.

(c) For purposes of this section, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed it, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract.

(2) Notwithstanding any other provision of law to the contrary, if a contract is rendered unenforceable under this section, no lien or bond claim shall exist in favor of the unlicensed contractor for any labor, services, or materials provided under the contract or any amendment thereto.

(3) This section shall not affect the rights of parties other than the unlicensed contractor to enforce contract, lien, or bond remedies. This section shall not affect the obligations of a surety that has provided a bond on behalf of an unlicensed contractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed for purposes of this section.

Section 3. Subsection (7) of section 713.02, Florida Statutes, is amended to read:

713.02 Types of lienors and exemptions.—

(7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor who is unlicensed as provided in s. 489.128 or s. 489.532 unless such contractor, subcontractor, or sub-subcontractor is licensed, if required to be licensed, as a contractor pursuant to the laws of the jurisdiction within which she or he is doing business.

Section 4. Paragraphs (c) and (d) of subsection (3) of section 489.113, Florida Statutes, are amended to read:

489.113 Qualifications for practice; restrictions.—

(3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category, however:

(c) A general contractor shall not be required to subcontract structural swimming pool work. All other swimming pool work shall be subcontracted to an appropriately licensed certified or registered swimming pool contractor.

~~(d) A general contractor, on new site development work, site redevelopment work, mobile home parks, and commercial properties, shall not be required to subcontract the construction of a the main sanitary sewer collection system, the storm collection system, or and the water distribution system, not including the continuation of utility lines from the mains to the buildings, and may perform any of the services, on public or private property, for which a license as an underground utility and excavation contractor is required under this part.~~

Section 5. Paragraph (e) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)

(e) Any person who is not required to obtain registration or certification pursuant to s. 489.105(3)(d)-(o) may perform specialty contracting services for the construction, remodeling, repair, or improvement of single-family residences, including a townhouse as defined in the Florida Building Code,

without obtaining a local professional license if such person is under the supervision of a certified or registered general, building, or residential contractor. As used in this paragraph, supervision shall not be deemed to require the existence of a direct contract between the certified or registered general, building, or residential contractor and the person performing specialty contracting services.

Section 6. Subsection (8) is added to section 489.119, Florida Statutes, to read:

489.119 Business organizations; qualifying agents.—

(8)(a) A business organization proposing to engage in contracting is not required to apply for or obtain authorization under this part to engage in contracting if:

1. The business organization employs one or more registered or certified contractors licensed in accordance with this part who are responsible for obtaining permits and supervising all of the business organization's contracting activities;

2. The business organization engages only in contracting on property owned by the business organization or by its parent, subsidiary, or affiliated entities; and

3. The business organization, or its parent entity if the business organization is a wholly owned subsidiary, maintains a minimum net worth of \$20 million.

(b) Any business organization engaging in contracting under this subsection shall provide the board with the name and license number of each registered or certified contractor employed by the business organization to supervise its contracting activities. The business organization is not required to post a bond or otherwise evidence any financial or credit information except as necessary to demonstrate compliance with paragraph(a).

(c) A registered or certified contractor employed by a business organization to supervise its contracting activities under this subsection shall not be required to post a bond or otherwise evidence any personal financial or credit information so long as the individual performs contracting activities exclusively on behalf of a business organization meeting all of the requirements of paragraph (a).

Section 7. Subsection (10) is added to section 489.521, Florida Statutes, to read:

489.521 Business organizations; qualifying agents.—

(10)(a) A business organization proposing to engage in contracting is not required to apply for or obtain authorization under this part to engage in contracting if:

1. The business organization employs one or more registered or certified contractors licensed in accordance with this part who are responsible for

obtaining permits and supervising all of the business organization's contracting activities;

2. The business organization engages only in contracting on property owned by the business organization or by its parent, subsidiary, or affiliated entities; and

3. The business organization, or its parent entity if the business organization is a wholly owned subsidiary, maintains a minimum net worth of \$20 million.

(b) Any business organization engaging in contracting under this subsection shall provide the board with the name and license number of each registered or certified contractor employed by the business organization to supervise its contracting activities. The business organization is not required to post a bond or otherwise evidence any financial or credit information except as necessary to demonstrate compliance with paragraph(a).

(c) A registered or certified contractor employed by a business organization to supervise its contracting activities under this subsection shall not be required to post a bond or otherwise evidence any personal financial or credit information so long as the individual performs contracting activities exclusively on behalf of a business organization meeting all of the requirements of paragraph (a).

Section 8. Sections 1, 2, 3, and 4 are intended to be remedial in nature and to clarify existing law. Sections 1, 2, 3, and 4 shall apply retroactively to all actions, including any action on a lien or bond claim, initiated on or after, or pending as of, the effective date of this act. If the retroactivity of any provision of section 1, section 2, section 3, or section 4, or its retroactive application to any person or circumstance, is held invalid, the invalidity does not affect the retroactivity or retroactive application of other provisions of sections 1, 2, 3, and 4.

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this and the provisions of this act are severable.

Section 10. This act shall take effect upon becoming a law.

Approved by the Governor June 25, 2003.

Filed in Office Secretary of State June 25, 2003.