

House Bill No. 113

An act relating to construction contracting; amending s. 255.05, F.S.; making certain restrictions in bonds issued for public works projects unenforceable; amending s. 489.118, F.S.; postponing a date for submitting an application for a certificate as a registered contractor; amending ss. 489.129 and 489.533, F.S.; increasing an administrative fine under certain disciplinary proceeding provisions; amending s. 713.015, F.S.; revising form criteria for a direct contract provision; preserving lien and bond rights of certain persons; specifying nonapplication to certain contractors or construction professionals; amending s. 713.02, F.S.; protecting the rights of certain persons to enforce certain contract, lien, or bond remedies or contractual obligations under certain circumstances; precluding certain defenses; amending s. 713.04, F.S.; revising certain final payment requirements; amending s. 713.08, F.S.; requiring a claim of lien to be served on an owner; amending s. 713.13, F.S.; revising provisions authorizing use of certain payment bonds to transfer certain recorded liens; specifying application of certain notice requirements to certain claims; revising time limits for serving certain required notices; amending s. 713.23, F.S.; clarifying provisions relating to payment bonds; amending s. 713.24, F.S.; providing construction to preserve county court jurisdiction over certain transfer bond claims for nonpayment; preserving certain lien rights when filing a transfer bond after commencing certain lien enforcement proceedings; amending s. 713.345, F.S.; revising criteria for certain criminal penalties for misapplication of construction funds; amending s. 713.3471, F.S.; revising a provision requiring a lender to provide notice to a property owner when making a disbursement on a construction loan secured by residential property; specifying nonapplication; providing an effective date.

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

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

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(1)(a) Any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding

company. The bond must state on its front page: the name, principal business address, and phone number of the contractor, the surety, the owner of the property being improved, and, if different from the owner, the contracting public entity; the contract number assigned by the contracting public entity; and a description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement. Such bond shall be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract and promptly making payments to all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract. Any claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a certified copy of the contract and bond. The claimant shall have a right of action against the contractor and surety for the amount due him or her, including unpaid finance charges due under the claimant's contract. Such action shall not involve the public authority in any expense. When such work is done for the state and the contract is for \$100,000 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a contract which is for \$200,000 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the Secretary of the Department of Management Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to more than \$100,000 but less than \$200,000 from executing the payment and performance bond. In the event such exemption is granted, the officer or officials shall not be personally liable to persons suffering loss because of granting such exemption. The Department of Management Services shall maintain information on the number of requests by state agencies for delegation of authority to waive the bond requirements by agency and project number and whether any request for delegation was denied and the justification for the denial. Any provision in a payment bond furnished for public work contracts as provided by this subsection which restricts the classes of persons as defined in s. 713.01 protected by the bond or the venue of any proceeding relating to such bond is unenforceable.

Section 2. Section 489.118, Florida Statutes, is amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National As-

assessment Institute, Block and Associates, NAI/Block, Exporior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of \$500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, ~~2005~~ 2004.

Section 3. Subsection (1) of section 489.129, Florida Statutes, is amended to read:

489.129 Disciplinary proceedings.—

(1) The board may take any of the following actions against any certificateholder or registrant: place on probation or reprimand the licensee, revoke, suspend, or deny the issuance or renewal of the certificate, registration, or certificate of authority, require financial restitution to a consumer for financial harm directly related to a violation of a provision of this part, impose an administrative fine not to exceed ~~\$10,000~~ \$5,000 per violation, require continuing education, or assess costs associated with investigation and prosecution, if the contractor, financially responsible officer, or business organization for which the contractor is a primary qualifying agent, a financially responsible officer, or a secondary qualifying agent responsible under s. 489.1195 is found guilty of any of the following acts:

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

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

(c) Violating any provision of chapter 455.

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

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

(f) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Paragraph (c) of subsection (2) of section 489.533, Florida Statutes, is amended to read:

489.533 Disciplinary proceedings.—

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

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

Section 5. Section 713.015, Florida Statutes, is amended to read:

713.015 Mandatory provisions for direct contracts.—Any direct contract between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including

four units, must contain the following provision printed in no less than 14-point ~~18-point~~, capitalized, boldfaced type on the front page of the contract:

~~ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS CONTRACT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A "NOTICE TO OWNER."~~ FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT ~~WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.~~

Nothing in this section shall be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner. This section does not apply when the owner is a contractor licensed under chapter 489 or is a person who created parcels or offers parcels for sale or lease in the ordinary course of business.

Section 6. 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. Notwithstanding any other provision of this part, if a contract is rendered unenforceable by an unlicensed contractor, subcontractor, or sub-subcontractor pursuant to s. 489.128 or s. 489.532, such unenforceability shall not affect the rights of any other persons to enforce contract, lien, or bond remedies and shall not affect the obligations of a surety that has provided a bond on behalf of the unlicensed contractor, subcontractor, or sub-subcontractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed as provided in s. 489.128 or s. 489.532.

Section 7. Subsection (3) of section 713.04, Florida Statutes, is amended, and subsection (4) is added to said section, to read:

713.04 Subdivision improvements.—

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

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

Section 8. Paragraph (c) of subsection (4) of section 713.08, Florida Statutes, is amended to read:

713.08 Claim of lien.—

(4)

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

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

713.13 Notice of commencement.—

(1)

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

Section 10. Paragraph (e) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(e) No action for the labor or materials or supplies may be instituted or prosecuted against the contractor or surety unless both notices have been

given. No action shall be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor's agent or attorney may elect to shorten the prescribed time within which an action to enforce any claim against a payment bond provided under pursuant to this section or s. 713.245 may be commenced at any time after a notice of nonpayment, if required, has been served for the claim by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of lienor)...

You are notified that the undersigned contests your notice of nonpayment, dated,, and served on the undersigned on,, and that the time within which you may file suit to enforce your claim is limited to 60 days from the date of service of this notice.

DATED on,

Signed: ...(Contractor or Attorney)...

The claim of any lienor upon whom ~~the such~~ notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of ~~the such~~ notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of ~~the such~~ notice and record the notice. Service is complete upon mailing.

Section 11. Subsections (3) and (4) of section 713.24, Florida Statutes, are amended to read:

713.24 Transfer of liens to security.—

(3) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited, or file a motion in a pending action to enforce a lien, for an order to require additional security, reduction of security, change or substitution of sureties, payment of discharge thereof, or any other matter affecting said security. If the court finds that the amount of the deposit or bond in excess of the amount claimed in the claim of lien is insufficient to pay the lienor's attorney's fees and court costs incurred in the action to enforce the lien, the court must increase the amount of the cash deposit or

lien transfer bond. Nothing in this section shall be construed to vest exclusive jurisdiction in the circuit courts over transfer bond claims for nonpayment of an amount within the monetary jurisdiction of the county courts.

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer. If a proceeding to enforce a lien is commenced in a court of competent jurisdiction within the time specified in s. 713.22 and, during such proceeding, the lien is transferred pursuant to this section or s. 713.13(1)(e), an action commenced within 1 year after the transfer, unless otherwise shortened by operation of law, in the same county or circuit court to recover against the security shall be deemed to have been brought as of the date of filing the action to enforce the lien, and the court shall have jurisdiction over the action.

Section 12. Paragraph (b) of subsection (1) of section 713.345, Florida Statutes, is amended to read:

713.345 Moneys received for real property improvements; penalty for misapplication.—

(1)

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

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

2. If the amount of payments misapplied has an aggregate value of ~~\$1,000~~ \$20,000 or more but less than \$100,000, the violator is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the amount of payments misapplied has an aggregate value of less than ~~\$1,000~~ \$20,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 13. Subsection (1) of section 713.3471, Florida Statutes, is amended to read:

713.3471 Lender responsibilities with construction loans.—

(1) Prior to a lender making any loan disbursement on any construction loan secured by residential real property directly to the owner, which, for purposes of this subsection, means only a natural person, into the owner's account or accounts, or jointly to the owner and any other party, the lender shall mail, deliver by electronic mail or other electronic format or facsimile, or personally deliver give the following written notice to the borrowers in bold type larger than any other type on the page:

WARNING!

YOUR LENDER IS MAKING A LOAN DISBURSEMENT DIRECTLY TO YOU AS THE BORROWER, OR JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME LABOR, SERVICES, OR MATERIALS USED IN MAKING THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM EACH LIENOR WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

This subsection does not apply when the owner is a contractor licensed under chapter 489 or is a person who creates parcels or offer parcels for sale or lease in the ordinary course of business.

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

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.