

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Grant offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (s) is added to subsection (1) of
 7 section 489.129, Florida Statutes, to read:

8 489.129 Disciplinary proceedings.—

9 (1) The board may take any of the following actions
 10 against any certificateholder or registrant: place on probation
 11 or reprimand the licensee, revoke, suspend, or deny the issuance
 12 or renewal of the certificate or registration, require financial
 13 restitution to a consumer for financial harm directly related to
 14 a violation of a provision of this part, impose an
 15 administrative fine not to exceed \$10,000 per violation, require
 16 continuing education, or assess costs associated with

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17 investigation and prosecution, if the contractor, financially
18 responsible officer, or business organization for which the
19 contractor is a primary qualifying agent, a financially
20 responsible officer, or a secondary qualifying agent responsible
21 under s. 489.1195 is found guilty of any of the following acts:

22 (s) Committing a violation of s. 713.345(2). If a
23 contractor or qualified business licensed by the board under
24 this chapter pleads guilty or nolo contendere to, or is found
25 guilty of, regardless of adjudication, an offense in violation
26 of s. 489.126(5)(b), (c), or (d); s. 489.126(6)(b), (c), or (d);
27 or s. 713.345(2)(g), the board and the Electrical Contractors'
28 Licensing Board must suspend all licenses issued to such
29 licensee under this chapter for a minimum of 1 year from the
30 date of conviction. The suspension required under this paragraph
31 is not exclusive, and the board may impose any additional
32 penalties set forth in this subsection.

33
34 For the purposes of this subsection, construction is considered
35 to be commenced when the contract is executed and the contractor
36 has accepted funds from the customer or lender. A contractor
37 does not commit a violation of this subsection when the
38 contractor relies on a building code interpretation rendered by
39 a building official or person authorized by s. 553.80 to enforce
40 the building code, absent a finding of fraud or deceit in the
41 practice of contracting, or gross negligence, repeated

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42 negligence, or negligence resulting in a significant danger to
43 life or property on the part of the building official, in a
44 proceeding under chapter 120.

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

48 713.345 Moneys received for real property improvements;
49 penalty for misapplication; escrow account required for certain
50 funds.—

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

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

55 2. "Designated contractor or qualified business" means a
56 contractor certified or registered under chapter 489 or a
57 business organization qualified by a contractor certified or
58 registered under chapter 489 who:

59 a. Has been certified, registered, or qualified for less
60 than 5 years;

61 b. Contracts for improvements to residential real property
62 within an area for which a state of emergency has been declared
63 pursuant to s. 252.36 for a hurricane within 18 months after the
64 date of the declaration; or

65 c. Has been disciplined by the Construction Industry
66 Licensing Board or the Electrical Contractors' Licensing Board

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67 within the previous five years for failing to comply with this
68 subsection or s. 489.126.

69 (b) A designated contractor or qualified business that
70 receives a payment of \$10,000 or more prior to commencement
71 pursuant to a contract for improvements to residential real
72 property, must, within 3 business days after receipt, place such
73 payment in an escrow account with a savings and loan
74 association, bank, or trust company located in the state; an
75 attorney who is a member in good standing with The Florida Bar;
76 or a real estate broker licensed in the state, unless such
77 escrow requirement is waived in writing by the owner of the
78 residential real property. If such escrow is waived in writing
79 by the owner of the residential real property, the contractor
80 must provide a copy of a performance bond if required under
81 subparagraph 5.

82 1. Unless the contract specifies where such payment must
83 be deposited, the designated contractor or qualified business
84 must, within 10 business days after a deposit has been made,
85 inform the owner of the residential real property in writing of
86 the name of the depository institution, attorney, or real estate
87 broker with whom the funds have been deposited.

88 2. The designated contractor or qualified business may
89 keep funds received from different owners in the same account if
90 the designated contractor or qualified business has financial or

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91 accounting records that clearly show how the funds deposited
92 were allocated to each owner.

93 3. A depository institution, an attorney, or a real estate
94 broker who receives a payment in an amount of \$10,000 or more
95 from a designated contractor or qualified business under this
96 subsection for improvements to residential real property is not
97 required to inquire into the nature of any deposits to or
98 withdrawals from the escrow account or to ensure that any
99 withdrawals from such account are used for a specific purpose as
100 required by a contract. A deposit into the escrow account
101 remains the property of the owner of the residential real
102 property except as otherwise provided in this subsection.

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

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

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

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

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116 5. If the escrow requirement is waived in writing by the
117 owner of the residential real property, a designated contractor
118 or qualified business must obtain a performance bond equal to
119 the value of the contract and provide proof of such bond to the
120 property owner before commencing or continuing the project.

121 6. A designated contractor or qualified business has
122 control over the disbursement of funds in escrow upon
123 substantial completion of the contract, or any portion that is
124 specifically accounted for in the contract.

125 (c) The owner of the residential real property may deliver
126 by certified mail, return receipt requested, a written demand to
127 the address listed in the contract for an accounting report of
128 the funds paid to the designated contractor or qualified
129 business. If the address of the designated contractor or
130 qualified business is not provided in the contract, or a written
131 contract or agreement does not exist, the owner must deliver by
132 certified mail, return receipt requested, the written demand to
133 the address that is listed for the designated contractor or
134 qualified business with the Department of Business and
135 Professional Regulation for licensing purposes. Within 60 days
136 after receipt of such demand, the designated contractor or
137 qualified business must provide the owner with an accounting
138 record indicating all payments made to and from the designated
139 contractor or qualified business, including those that were made

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140 to subcontractors and for purchased materials, by certified
141 mail, return receipt requested.

142 (d) The failure of a designated contractor or qualified
143 business to respond to an owner's written demand for an
144 accounting report as required under paragraph (c) creates a
145 rebuttable presumption that a violation was willful.

146 (e) This subsection does not apply to any of the
147 following:

148 1. A contract for hourly labor provided by a contractor
149 certified or registered under chapter 489 or a business
150 organization qualified by a contractor certified or registered
151 under chapter 489.

152 2. A contractor certified or registered under chapter 489
153 or a business organization qualified by a contractor certified
154 or registered under chapter 489 who owns the real property upon
155 which the improvement or construction is to be completed.

156 3. A cost-plus contract.

157 (f) If the value of a contract or addenda thereto is more
158 than \$100,000 for a contract for improvements to residential
159 real property, a contractor certified or registered under
160 chapter 489 or a business organization qualified by a contractor
161 certified or registered under chapter 489, must obtain a
162 performance bond equal to the value of the contract and provide
163 proof of such bond to the property owner before commencing or
164 continuing the project.

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165 (g) A contractor certified or registered under chapter 489
166 or a business organization qualified by a contractor certified
167 or registered under chapter 489 commits a felony of the third
168 degree, punishable as provided in s. 775.082, s. 775.083, or s.
169 775.084, if the contractor or qualified business willfully fails
170 to place funds in an escrow account as required under this
171 subsection.

172 (h) If a contractor or qualified business pleads guilty or
173 nolo contendere to, or is found guilty of, regardless of
174 adjudication, a violation of paragraph (g), the licensee is
175 subject to discipline under s. 489.129(1)(s).

176 Section 3. Section 938.14, Florida Statutes, is created to
177 read:

178 938.14 Court cost imposed in cases related to construction
179 fraud.-

180 (1) If a person pleads guilty or nolo contendere to, or is
181 found guilty of, regardless of adjudication, an offense in
182 violation of s. 489.126, s. 489.127, or s. 713.345, the court
183 shall impose a court cost of \$51 against the offender in
184 addition to any other cost or penalty required by law. Payment
185 of such court cost is a condition of probation, community
186 control, or any other court-ordered supervision.

187 (2) Each month the clerk of the court shall transfer \$50
188 from the proceeds of the court cost to the Florida Homeowners'

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189 Construction Recovery Fund. The clerk of the court shall retain
190 \$1 of each sum collected as a service charge.

191 Section 4. Section 489.140, Florida Statutes, is amended
192 to read:

193 489.140 Florida Homeowners' Construction Recovery Fund.—
194 There is created the Florida Homeowners' Construction Recovery
195 Fund as a separate account in the Professional Regulation Trust
196 Fund. The recovery fund shall be funded pursuant to ss. 468.631
197 and 938.14 ~~s. 468.631.~~

198 Section 5. This act shall take effect July 1, 2024.

199

200 -----

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

202 Remove everything before the enacting clause and insert:

203 An act relating to construction contracting; amending s.
204 489.129, F.S.; authorizing disciplinary action for specified
205 offenses; amending s. 713.345, F.S.; requiring a designated
206 contractor or qualified business that receives a payment of
207 \$10,000 or more before commencement pursuant to a contract for
208 improvements to residential real property to place such payment
209 in an escrow account with specified depository institutions,
210 attorneys, or real estate brokers within 3 business days after
211 receipt, absent written waiver of such requirement by the
212 property owner; requiring a designated contractor or qualified
213 business to inform the property owner in writing of the name of

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214 the depository institution, attorney, or real estate broker with
215 whom the funds have been deposited, unless the contract
216 specified where such payment must be deposited; authorizing the
217 designated contractor or qualified business to keep funds
218 received from different property owners in one escrow account
219 under specified circumstances; specifying the obligations of a
220 depository institution, attorney, or real estate broker who
221 accepts a deposit from a designated contractor or qualified
222 business under this subsection; clarifying property rights in a
223 deposit into an escrow account under this subsection;
224 authorizing a designated contractor or qualified business to
225 withdraw funds from the escrow account in specified
226 circumstances; specifying who controls disbursements from an
227 escrow account upon substantial completion or as accounted for
228 in the contract; requiring a designated contractor or qualified
229 business to obtain a performance bond in certain situations;
230 authorizing a property owner who waives the escrow requirement
231 to deliver in a specified manner a written demand for an
232 accounting report of the funds paid to the designated contractor
233 or qualified business; requiring a designated contractor or
234 qualified business to provide to a property owner in a specified
235 manner an accounting record containing specified information
236 within 60 days of receipt of the property owner's demand
237 therefor; requiring specified contractors and business
238 organizations qualified by specified contractors to obtain a

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239 performance bond in certain situations; providing definitions;
240 providing applicability; creating a rebuttable presumption;
241 providing criminal penalties; authorizing disciplinary action
242 for specified offenses; creating s. 938.14, F.S.; requiring the
243 court to impose an additional court cost for certain offenses in
244 specified circumstances; providing that such court cost is a
245 condition of probation, community control, or court-ordered
246 supervision; requiring the clerk of the court to transfer part
247 of such court cost to the Florida Homeowners' Construction
248 Recovery Fund; providing for the clerk of the court to retain a
249 service charge from such court cost; amending s. 489.140, F.S.;
250 conforming a provision to changes made by the act; providing an
251 effective date.