

1 A bill to be entitled
2 An act relating to construction liens and bonds;
3 amending s. 255.05, F.S.; requiring that the bond
4 number be stated on the first page of the bond;
5 providing that a provision in a payment bond furnished
6 for a public works contract that limits or expands the
7 effective duration of the bond or adds conditions
8 precedent is unenforceable; requiring a contractor, or
9 the contractor's attorney, to serve rather than mail a
10 notice of contest of claim against the payment bond;
11 providing additional time for service when the bond is
12 not recorded; specifying the duration of the bond;
13 providing that payment to a contractor who has
14 furnished a payment bond on a public works project may
15 not be conditioned upon production of certain
16 documents; providing prerequisites for commencement of
17 an action against a payment bond; amending s. 713.10,
18 F.S.; providing that a specified notice concerning a
19 lessor's liability for liens for improvements made by
20 the lessee is effective notwithstanding that all of
21 the leases for all of the premises on the parcel of
22 land do not contain language prohibiting such
23 liability or the language prohibiting such liability
24 varies in the various leases or does not match the
25 language in the notice, if the lease for the specific
26 premises as to which a lien could otherwise be claimed
27 against the lessor's interest expressly provides that
28 the interest of the lessor shall not be subject to

29 | liens for improvements made by the lessee; amending s.
30 | 713.13, F.S.; providing additional time for service
31 | when a notice of commencement is not recorded with a
32 | copy of the bond attached; amending s. 713.132, F.S.;
33 | requiring notice of termination to be served on
34 | lienors in privity with the owner; amending s. 713.16,
35 | F.S.; revising requirements for demands for a copy of
36 | a construction contract and a statement of account;
37 | authorizing a lienor to make certain written demands
38 | to an owner for certain written statements; providing
39 | requirements for such written demands; amending s.
40 | 713.18, F.S.; providing additional methods by which
41 | certain items may be served; revising provisions
42 | relating to when service of specified items is
43 | effective; specifying requirements for certain written
44 | instruments under certain circumstances; amending s.
45 | 713.22, F.S.; requiring that the clerk serve rather
46 | than mail a notice of contest of lien; amending s.
47 | 713.23, F.S.; revising the contents of a notice to
48 | contractor; requiring that a contractor serve rather
49 | than mail a notice of contest of claim against the
50 | payment bond and a notice of bond; clarifying the
51 | attachment of the bond to the notice; providing that a
52 | provision in a payment bond that limits or expands the
53 | effective duration of the bond or adds conditions
54 | precedent is unenforceable; clarifying applicability
55 | of certain provisions; providing an effective date.
56 |

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

58

59 Section 1. Subsection (1) and paragraph (a) of subsection
60 (2) of section 255.05, Florida Statutes, are amended, and
61 subsection (11) is added to that section, to read:

62 255.05 Bond of contractor constructing public buildings;
63 form; action by materialmen.—

64 (1) (a) Any person entering into a formal contract with the
65 state or any county, city, or political subdivision thereof, or
66 other public authority or private entity, for the construction
67 of a public building, for the prosecution and completion of a
68 public work, or for repairs upon a public building or public
69 work shall be required, before commencing the work or before
70 recommencing the work after a default or abandonment, to
71 execute, deliver to the public owner, and record in the public
72 records of the county where the improvement is located, a
73 payment and performance bond with a surety insurer authorized to
74 do business in this state as surety. A public entity may not
75 require a contractor to secure a surety bond under this section
76 from a specific agent or bonding company. The bond must state on
77 its front page: the name, principal business address, and phone
78 number of the contractor, the surety, the owner of the property
79 being improved, and, if different from the owner, the
80 contracting public entity; the contract number assigned by the
81 contracting public entity; the bond number assigned by the
82 surety; and a description of the project sufficient to identify
83 it, such as a legal description or the street address of the
84 property being improved, and a general description of the

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85 improvement. Such bond shall be conditioned upon the
86 contractor's performance of the construction work in the time
87 and manner prescribed in the contract and promptly making
88 payments to all persons defined in s. 713.01 who furnish labor,
89 services, or materials for the prosecution of the work provided
90 for in the contract. Any claimant may apply to the governmental
91 entity having charge of the work for copies of the contract and
92 bond and shall thereupon be furnished with a certified copy of
93 the contract and bond. The claimant shall have a right of action
94 against the contractor and surety for the amount due him or her,
95 including unpaid finance charges due under the claimant's
96 contract. Such action shall not involve the public authority in
97 any expense. When such work is done for the state and the
98 contract is for \$100,000 or less, no payment and performance
99 bond shall be required. At the discretion of the official or
100 board awarding such contract when such work is done for any
101 county, city, political subdivision, or public authority, any
102 person entering into such a contract which is for \$200,000 or
103 less may be exempted from executing the payment and performance
104 bond. When such work is done for the state, the Secretary of
105 Management Services may delegate to state agencies the authority
106 to exempt any person entering into such a contract amounting to
107 more than \$100,000 but less than \$200,000 from executing the
108 payment and performance bond. In the event such exemption is
109 granted, the officer or officials shall not be personally liable
110 to persons suffering loss because of granting such exemption.
111 The Department of Management Services shall maintain information
112 on the number of requests by state agencies for delegation of

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113 authority to waive the bond requirements by agency and project
114 number and whether any request for delegation was denied and the
115 justification for the denial. Any provision in a payment bond
116 furnished for public work contracts as provided by this
117 subsection which further restricts the classes of persons ~~as~~
118 ~~defined in s. 713.01~~ protected by the bond, which restricts or
119 the venue of any proceeding relating to such bond, which limits
120 or expands the effective duration of the bond, or which adds
121 conditions precedent to the enforcement of a claim against the
122 bond beyond those provided in this section is unenforceable.

123 (b) The Department of Management Services shall adopt
124 rules with respect to all contracts for \$200,000 or less, to
125 provide:

126 1. Procedures for retaining up to 10 percent of each
127 request for payment submitted by a contractor and procedures for
128 determining disbursements from the amount retained on a pro rata
129 basis to laborers, materialmen, and subcontractors, as defined
130 in s. 713.01.

131 2. Procedures for requiring certification from laborers,
132 materialmen, and subcontractors, as defined in s. 713.01, prior
133 to final payment to the contractor that such laborers,
134 materialmen, and subcontractors have no claims against the
135 contractor resulting from the completion of the work provided
136 for in the contract.

137
138 The state shall not be held liable to any laborer, materialman,
139 or subcontractor for any amounts greater than the pro rata share
140 as determined under this section.

141 (c)1. The amount of the bond shall equal the contract
 142 price, except that for a contract in excess of \$250 million, if
 143 the state, county, municipality, political subdivision, or other
 144 public entity finds that a bond in the amount of the contract
 145 price is not reasonably available, the public owner shall set
 146 the amount of the bond at the largest amount reasonably
 147 available, but not less than \$250 million.

148 2. For construction-management or design-build contracts,
 149 if the public owner does not include in the bond amount the cost
 150 of design or other nonconstruction services, the bond may not be
 151 conditioned on performance of such services or payment to
 152 persons furnishing such services. Notwithstanding paragraph (a),
 153 such a bond may exclude persons furnishing such services from
 154 the classes of persons protected by the bond.

155 (2) (a)1. If a claimant is no longer furnishing labor,
 156 services, or materials on a project, a contractor or the
 157 contractor's agent or attorney may elect to shorten the
 158 ~~prescribed time in this paragraph~~ within which an action to
 159 enforce any claim against a payment bond must ~~provided pursuant~~
 160 ~~to this section may~~ be commenced by recording in the clerk's
 161 office a notice in substantially the following form:

162
 163 NOTICE OF CONTEST OF CLAIM
 164 AGAINST PAYMENT BOND
 165

166 To: ... (Name and address of claimant) ...
 167

168 You are notified that the undersigned contests your notice

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169 of nonpayment, dated,, and served on the
 170 undersigned on,, and that the time within
 171 which you may file suit to enforce your claim is limited to 60
 172 days after the date of service of this notice.

173
 174 DATED on,

175
 176 Signed: ...(Contractor or Attorney)...

177
 178 The claim of any claimant upon whom such notice is served and
 179 who fails to institute a suit to enforce his or her claim
 180 against the payment bond within 60 days after service of such
 181 notice shall be extinguished automatically. The contractor of
 182 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the
 183 notice of contest to the claimant at the address shown in the
 184 notice of nonpayment or most recent amendment thereto and shall
 185 certify to such service on the face of such notice and record
 186 the notice. ~~Service is complete upon mailing.~~

187 2. A claimant, except a laborer, who is not in privity
 188 with the contractor must ~~shall~~, before commencing or not later
 189 than 45 days after commencing to furnish labor, services, or
 190 materials for the prosecution of the work, furnish the
 191 contractor with a written notice that he or she intends to look
 192 to the bond for protection. A claimant who is not in privity
 193 with the contractor and who has not received payment for his or
 194 her labor, services, or materials shall deliver to the
 195 contractor and to the surety written notice of the performance
 196 of the labor or delivery of the materials or supplies and of the

197 nonpayment. The notice of nonpayment must ~~may~~ be served ~~at any~~
 198 ~~time~~ during the progress of the work or thereafter but may not
 199 be served earlier than before 45 days after the first furnishing
 200 of labor, services, or materials or, ~~and not~~ later than 90 days
 201 after the final furnishing of the labor, services, or materials
 202 by the claimant or, with respect to rental equipment, not later
 203 than 90 days after the date that the rental equipment was last
 204 on the job site available for use. Any notice of nonpayment
 205 served by a claimant who is not in privity with the contractor
 206 which includes sums for retainage must specify the portion of
 207 the amount claimed for retainage. An ~~No~~ action for the labor,
 208 materials, or supplies may not be instituted against the
 209 contractor or the surety unless the notice to the contractor and
 210 notice of nonpayment have been served, if required by this
 211 section both notices have been given. If the payment bond is not
 212 recorded before commencement of construction, the time periods
 213 for the claimant to serve the required notices may at the option
 214 of the claimant be calculated from the dates specified in this
 215 section or from the date the claimant is served a copy of the
 216 bond. In no event, however, shall the limitation period for
 217 commencement of an action against a payment bond as established
 218 in s. 95.11 be expanded. Notices required or permitted under
 219 this section may be served in accordance with s. 713.18. A
 220 claimant may not waive in advance his or her right to bring an
 221 action under the bond against the surety. In any action brought
 222 to enforce a claim against a payment bond under this section,
 223 the prevailing party is entitled to recover a reasonable fee for
 224 the services of his or her attorney for trial and appeal or for

225 arbitration, in an amount to be determined by the court, which
 226 fee must be taxed as part of the prevailing party's costs, as
 227 allowed in equitable actions. The time periods for service of a
 228 notice of nonpayment or for bringing an action against a
 229 contractor or a surety shall be measured from the last day of
 230 furnishing labor, services, or materials by the claimant and
 231 shall not be measured by other standards, such as the issuance
 232 of a certificate of occupancy or the issuance of a certificate
 233 of substantial completion.

234 (11) If a contractor furnishes and records a payment and
 235 performance bond for a public works project in accordance with
 236 this section, the public authority may not condition its
 237 payments to the contractor on the production of a release,
 238 waiver, or like documentation from a claimant demonstrating that
 239 the claimant does not have an outstanding claim against the
 240 contractor, the surety, the payment bond, or the public
 241 authority for payments due on labor, services, or materials
 242 furnished on the public works project.

243 Section 2. Paragraph (b) of subsection (2) of section
 244 713.10, Florida Statutes, is amended to read:

245 713.10 Extent of liens.—

246 (2)

247 (b) The interest of the lessor shall not be subject to
 248 liens for improvements made by the lessee when:

249 1. The lease, or a short form or a memorandum of the lease
 250 that contains the specific language in the lease prohibiting
 251 such liability, is recorded in the official records of the
 252 county where the premises are located before the recording of a

253 notice of commencement for improvements to the premises and the
 254 terms of the lease expressly prohibit such liability; or

255 2. The terms of the lease expressly prohibit such
 256 liability, and a notice advising that leases for the rental of
 257 premises on a parcel of land prohibit such liability has been
 258 recorded in the official records of the county in which the
 259 parcel of land is located before the recording of a notice of
 260 commencement for improvements to the premises, and the notice
 261 includes the following:

262 a. The name of the lessor.

263 b. The legal description of the parcel of land to which
 264 the notice applies.

265 c. The specific language contained in the various leases
 266 prohibiting such liability.

267 d. A statement that all or a majority of the leases
 268 entered into for premises on the parcel of land expressly
 269 prohibit such liability.

270

271 The notice required by this subparagraph shall still be
 272 effective and the lessor's interest in a premises on the parcel
 273 of land shall not be subject to liens for improvements made by
 274 the lessee of such premises, notwithstanding that all of the
 275 leases for all of the premises on the parcel of land do not
 276 contain language prohibiting such liability or the language
 277 prohibiting such liability varies in the various leases or does
 278 not match the language in the notice, if the lease for the
 279 specific premises as to which a lien could otherwise be claimed
 280 against the lessor's interest expressly provides that the

281 interest of the lessor shall not be subject to liens for
 282 improvements made by the lessee.

283 3. The lessee is a mobile home owner who is leasing a
 284 mobile home lot in a mobile home park from the lessor.

285 Section 3. Paragraph (e) of subsection (1) of section
 286 713.13, Florida Statutes, is amended to read:

287 713.13 Notice of commencement.—

288 (1)

289 (e) A copy of any payment bond must be attached at the
 290 time of recordation of the notice of commencement. The failure
 291 to attach a copy of the bond to the notice of commencement when
 292 the notice is recorded negates the exemption provided in s.
 293 713.02(6). However, if a payment bond under s. 713.23 exists but
 294 was not attached at the time of recordation of the notice of
 295 commencement, the bond may be used to transfer any recorded lien
 296 of a lienor except that of the contractor by the recordation and
 297 service of a notice of bond pursuant to s. 713.23(2). The notice
 298 requirements of s. 713.23 apply to any claim against the bond;
 299 however, the time limits for serving any required notices shall,
 300 at the option of the lienor, be calculated from the dates begin
 301 ~~running from the later of the time~~ specified in s. 713.23 or the
 302 date the notice of bond is served on the lienor.

303 Section 4. Paragraph (f) of subsection (1) and subsection
 304 (4) of section 713.132, Florida Statutes, are amended to read:

305 713.132 Notice of termination.—

306 (1) An owner may terminate the period of effectiveness of
 307 a notice of commencement by executing, swearing to, and
 308 recording a notice of termination that contains:

309 (f) A statement that the owner has, before recording the
 310 notice of termination, served a copy of the notice of
 311 termination on the contractor and on each lienor who has a
 312 direct contract with the owner or who has served a notice to
 313 owner ~~given notice~~. The owner is not required to serve a copy of
 314 the notice of termination on any lienor who has executed a
 315 waiver and release of lien upon final payment in accordance with
 316 s. 713.20.

317 (4) A notice of termination is effective to terminate the
 318 notice of commencement at the later of 30 days after recording
 319 of the notice of termination or the date stated in the notice of
 320 termination as the date on which the notice of commencement is
 321 terminated, if ~~provided that~~ the notice of termination has been
 322 served pursuant to paragraph (1)(f) on the contractor and on
 323 each lienor who has a direct contract with the owner or who has
 324 served a notice to owner ~~given notice~~.

325 Section 5. Section 713.16, Florida Statutes, is amended to
 326 read:

327 713.16 Demand for copy of contract and statements of
 328 account; form.—

329 (1) A copy of the contract of a lienor or owner and a
 330 statement of the amount due or to become due if fixed or
 331 ascertainable thereon must be furnished by any party thereto,
 332 upon written demand of an owner or a lienor contracting with or
 333 employed by the other party to such contract. If the owner or
 334 lienor refuses or neglects to furnish such copy of the contract
 335 or such statement, or willfully and falsely states the amount
 336 due or to become due if fixed or ascertainable under such

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337 | contract, any person who suffers any detriment thereby has a
338 | cause of action against the person refusing or neglecting to
339 | furnish the same or willfully and falsely stating the amount due
340 | or to become due for his or her damages sustained thereby. The
341 | information contained in such copy or statement furnished
342 | pursuant to such written demand is binding upon the owner or
343 | lienor furnishing it unless actual notice of any modification is
344 | given to the person demanding the copy or statement before such
345 | person acts in good faith in reliance on it. The person
346 | demanding such documents must pay for the reproduction thereof;
347 | and, if such person fails or refuses to do so, he or she is
348 | entitled only to inspect such documents at reasonable times and
349 | places.

350 | (2) The owner may serve in writing a demand of any lienor
351 | for a written statement under oath of his or her account showing
352 | the nature of the labor or services performed and to be
353 | performed, if any, the materials furnished, the materials to be
354 | furnished, if known, the amount paid on account to date, the
355 | amount due, and the amount to become due, if known, as of the
356 | date of the statement by the lienor. Any such demand to a lienor
357 | must be served on the lienor at the address and to the attention
358 | of any person who is designated to receive the demand in the
359 | notice to owner served by such lienor and must include a
360 | description of the project, including the names of the owner,
361 | the contractor, and the lienor's customer, as set forth in the
362 | lienor's notice to owner. The failure or refusal to furnish the
363 | statement does not deprive the lienor of his or her lien if the
364 | demand is not served at the address of the lienor or directed to

365 the attention of the person designated to receive the demand in
 366 the notice to owner. The failure or refusal to furnish the
 367 statement under oath within 30 days after the demand, or the
 368 furnishing of a false or fraudulent statement, deprives the
 369 person so failing or refusing to furnish such statement of his
 370 or her lien. If the owner serves more than one demand for
 371 statement of account on a lienor and none of the information
 372 regarding the account has changed since the lienor's last
 373 response to a demand, the failure or refusal to furnish such
 374 statement does not deprive the lienor of his or her lien. The
 375 negligent inclusion or omission of any information deprives the
 376 person of his or her lien to the extent the owner can
 377 demonstrate prejudice from such act or omission by the lienor.
 378 The failure to furnish a response to a demand for statement of
 379 account does not affect the validity of any claim of lien being
 380 enforced through a foreclosure case filed prior to the date the
 381 demand for statement is received by the lienor.

382 (3) A request for sworn statement of account must be in
 383 substantially the following form:

384
 385 REQUEST FOR SWORN STATEMENT OF ACCOUNT

386
 387 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
 388 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
 389 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

390
 391 To: ... (Lienor's name and address) ...
 392

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393 The undersigned hereby demands a written statement under oath of
 394 his or her account showing the nature of the labor or services
 395 performed and to be performed, if any, the materials furnished,
 396 the materials to be furnished, if known, the amount paid on
 397 account to date, the amount due, and the amount to become due,
 398 if known, as of the date of the statement for the improvement of
 399 real property identified as ...(property description)....

400
 401 ...(name of contractor)...

402
 403 ...(name of the lienor's customer, as set forth in the lienor's
 404 Notice to Owner, if such notice has been served)....

405
 406 ... (signature and address of owner) ...
 407 ... (date of request for sworn statement of account) ...

408
 409 (4) When a contractor has furnished a payment bond
 410 pursuant to s. 713.23, he or she may, when an owner makes any
 411 payment to the contractor or directly to a lienor, serve a
 412 written demand on any other lienor for a written statement under
 413 oath of his or her account showing the nature of the labor or
 414 services performed and to be performed, if any, the materials
 415 furnished, the materials to be furnished, if known, the amount
 416 paid on account to date, the amount due, and the amount to
 417 become due, if known, as of the date of the statement by the
 418 lienor. Any such demand to a lienor must be served on the lienor
 419 at the address and to the attention of any person who is
 420 designated to receive the demand in the notice to contractor

421 served by such lienor. The demand must include a description of
 422 the project, including the names of the owner, the contractor,
 423 and the lienor's customer, as set forth in the lienor's notice
 424 to contractor. The failure or refusal to furnish the statement
 425 does not deprive the lienor of his or her rights under the bond
 426 if the demand is not served at the address of the lienor or
 427 directed to the attention of the person designated to receive
 428 the demand in the notice to contractor. The failure to furnish
 429 the statement within 30 days after the demand, or the furnishing
 430 of a false or fraudulent statement, deprives the person who
 431 fails to furnish the statement, or who furnishes the false or
 432 fraudulent statement, of his or her rights under the bond. If
 433 the contractor serves more than one demand for statement of
 434 account on a lienor and none of the information regarding the
 435 account has changed since the lienor's last response to a
 436 demand, the failure or refusal to furnish such statement does
 437 not deprive the lienor of his or her rights under the bond. The
 438 negligent inclusion or omission of any information deprives the
 439 person of his or her rights under the bond to the extent the
 440 contractor can demonstrate prejudice from such act or omission
 441 by the lienor. The failure to furnish a response to a demand for
 442 statement of account does not affect the validity of any claim
 443 on the bond being enforced in a lawsuit filed prior to the date
 444 the demand for statement of account is received by the lienor.

445 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
 446 ~~recorded a claim of lien~~ may serve with the claim of lien or
 447 thereafter a ~~make~~ written demand on the owner for a written
 448 statement under oath showing:

449 1. The amount of the direct contract under which the lien
450 was recorded;

451 2. The dates and amounts paid or to be paid by or on
452 behalf of the owner for all improvements described in the direct
453 contract;

454 3. The reasonable estimated costs of completing the direct
455 contract under which the lien was claimed pursuant to the scope
456 of the direct contract; and

457 4. If known, the actual cost of completion.

458 (b) Any owner who does not provide the statement within 30
459 days after demand, or who provides a false or fraudulent
460 statement, is not a prevailing party for purposes of an award of
461 attorney ~~attorney's~~ fees under s. 713.29. The written demand
462 must include the following warning in conspicuous type in
463 substantially the following form:

464
465 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED
466 STATEMENT WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
467 STATEMENT WILL RESULT IN THE LOSS OF YOUR RIGHT TO
468 RECOVER ATTORNEY FEES IN ANY ACTION TO ENFORCE THE
469 CLAIM OF LIEN OF THE PERSON REQUESTING THIS STATEMENT.

470
471 (6) Any written demand served on the owner must include a
472 description of the project, including the names of the
473 contractor and the lienor's customer, as set forth in the
474 lienor's notice to owner.

475 (7) For purposes of this section, the term "information"
476 means the nature and quantity of the labor, services, and

477 materials furnished or to be furnished by a lienor and the
 478 amount paid, the amount due, and the amount to become due on the
 479 lienor's account.

480 Section 6. Section 713.18, Florida Statutes, is amended to
 481 read:

482 713.18 Manner of serving notices and other instruments.—

483 (1) Service of notices, claims of lien, affidavits,
 484 assignments, and other instruments permitted or required under
 485 this part, or copies thereof when so permitted or required,
 486 unless otherwise specifically provided in this part, must be
 487 made by one of the following methods:

488 (a) By actual delivery to the person to be served; if a
 489 partnership, to one of the partners; if a corporation, to an
 490 officer, director, managing agent, or business agent; or, if a
 491 limited liability company, to a member or manager.

492 (b) By common carrier delivery service or ~~sending the same~~
 493 ~~by registered,~~ Global Express Guaranteed, or certified mail,
 494 with postage or shipping paid by the sender and prepaid, ~~or by~~
 495 ~~overnight or second-day delivery~~ with evidence of delivery,
 496 which may be in an electronic format.

497 (c) ~~If the method specified in paragraph (a) or paragraph~~
 498 ~~(b) cannot be accomplished,~~ By posting on the site of the
 499 improvement if service as provided by paragraph (a) or paragraph
 500 (b) cannot be accomplished ~~premises.~~

501 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
 502 to owner, or a notice to contractor under s. 713.23, s. 337.18,
 503 ~~or a preliminary notice under s. 255.05 is mailed by registered~~
 504 ~~or certified mail with postage prepaid to the person to be~~

505 ~~served at any of the addresses set forth in subsection (3)~~
 506 ~~within 40 days after the date the lienor first furnishes labor,~~
 507 ~~services, or materials, service of that notice is~~ effective as
 508 of the date of mailing if:

509 (a) The notice is mailed by registered, Global Express
 510 Guaranteed, or certified mail, with postage prepaid, to the
 511 person to be served at any of the addresses set forth in
 512 subsection (3);

513 (b) The notice is mailed within 40 days after the date the
 514 lienor first furnishes labor, services, or materials; and

515 (c) The person who served the notice maintains a
 516 registered or certified mail log that shows the registered or
 517 certified mail number issued by the United States Postal
 518 Service, the name and address of the person served, and the date
 519 stamp of the United States Postal Service confirming the date of
 520 mailing or if the person who served the notice maintains
 521 electronic tracking records generated through use of the United
 522 States Postal Service Confirm service or a similar service
 523 containing the postal tracking number, the name and address of
 524 the person served, and verification of the date of receipt by
 525 the United States Postal Service.

526 (3) (a) Service of ~~If~~ an instrument ~~served~~ pursuant to this
 527 section is effective on the date of mailing the instrument if
 528 it:

529 1. Is sent to the last address shown in the notice of
 530 commencement or any amendment thereto or, in the absence of a
 531 notice of commencement, to the last address shown in the
 532 building permit application, or to the last known address of the

533 person to be served; and ~~, is not received, but~~

534 2. Is returned as being "refused," "moved, not
535 forwardable," or "unclaimed," or is otherwise not delivered or
536 deliverable through no fault of the person serving the item,
537 ~~then service is effective on the date the instrument was sent.~~

538 (b) If the address shown in the notice of commencement or
539 any amendment to the notice of commencement, or, in the absence
540 of a notice of commencement, in the building permit application,
541 is incomplete for purposes of mailing or delivery, the person
542 serving the item may complete the address and properly format it
543 according to United States Postal Service addressing standards
544 using information obtained from the property appraiser or
545 another public record without affecting the validity of service
546 under this section.

547 (4) A notice served by a lienor on one owner or one
548 partner of a partnership owning the real property ~~If the real~~
549 ~~property is owned by more than one person or a partnership, a~~
550 ~~lienor may serve any notices or other papers under this part on~~
551 ~~any one of such owners or partners, and such notice is deemed~~
552 ~~notice to all owners and partners.~~

553 Section 7. Section 713.22, Florida Statutes, is amended to
554 read:

555 713.22 Duration of lien.—

556 (1) A ~~No~~ lien provided by this part does not ~~shall~~
557 continue for a longer period than 1 year after the claim of lien
558 has been recorded or 1 year after the recording of an amended
559 claim of lien that shows a later date of final furnishing of
560 labor, services, or materials, unless within that time an action

561 to enforce the lien is commenced in a court of competent
 562 jurisdiction. A lien that has been continued beyond the 1-year
 563 period ~~The continuation of the lien effected~~ by the commencement
 564 of an ~~the~~ action is ~~shall~~ not enforceable ~~be good~~ against
 565 creditors or subsequent purchasers for a valuable consideration
 566 and without notice, unless a notice of lis pendens is recorded.

567 (2) An owner or the owner's ~~agent or~~ attorney may elect to
 568 shorten the time prescribed in subsection (1) within which to
 569 commence an action to enforce any claim of lien or claim against
 570 a bond or other security under s. 713.23 or s. 713.24 by
 571 recording in the clerk's office a notice in substantially the
 572 following form:

573
 574 NOTICE OF CONTEST OF LIEN
 575

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

577
 578 You are notified that the undersigned contests the claim of lien
 579 filed by you on, ...(year)..., and recorded in Book
 580, Page, of the public records of County, Florida,
 581 and that the time within which you may file suit to enforce your
 582 lien is limited to 60 days from the date of service of this
 583 notice. This day of, ...(year)....

584
 585 Signed: ...(Owner or Attorney)...

586
 587 The lien of any lienor upon whom such notice is served and who
 588 fails to institute a suit to enforce his or her lien within 60

589 days after service of such notice shall be extinguished
 590 automatically. The clerk shall serve, in accordance with s.
 591 713.18, mail a copy of the notice of contest to the lien
 592 claimant at the address shown in the claim of lien or most
 593 recent amendment thereto and shall certify to such service and
 594 the date of service on the face of such notice and record the
 595 notice. ~~Service shall be deemed complete upon mailing.~~

596 Section 8. Paragraphs (c), (d), (e), and (f) of subsection
 597 (1) and subsections (2) and (4) of section 713.23, Florida
 598 Statutes, are amended to read:

599 713.23 Payment bond.—

600 (1)

601 (c) ~~Either~~ Before beginning or within 45 days after
 602 beginning to furnish labor, materials, or supplies, a lienor who
 603 is not in privity with the contractor, except a laborer, shall
 604 serve the contractor with notice in writing that the lienor will
 605 look to the contractor's bond for protection on the work. If a
 606 notice of commencement with the attached bond is not recorded,
 607 before commencement of construction ~~or a reference to the bond~~
 608 ~~is not given in the notice of commencement, and in either case~~
 609 ~~if the lienor not in privity with the contractor is not~~
 610 ~~otherwise notified in writing of the existence of the bond, the~~
 611 ~~lienor not in privity with the contractor~~ may, in the
 612 alternative, elect to serve the notice to contractor up to ~~shall~~
 613 ~~have~~ 45 days from the date the lienor is served with a copy
 614 ~~notified of the existence of the bond within which to serve the~~
 615 ~~notice.~~ The notice may be in substantially the following form
 616 and may be combined with a notice to owner given under s. 713.06

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617 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO
 618 CONTRACTOR:

619

620 NOTICE TO CONTRACTOR

621

622 To ... (name and address of contractor) ...

623

624 The undersigned hereby informs you that he or she has furnished
 625 or is furnishing services or materials as follows:

626

627 ...(general description of services or materials)... for the
 628 improvement of the real property identified as ...(property
 629 description)... under an order given by ...(lienor's
 630 customer)....

631

632 This notice is to inform you that the undersigned intends to
 633 look to the contractor's bond to secure payment for the
 634 furnishing of materials or services for the improvement of the
 635 real property.

636

637 ...(name of lienor)...

638 ...(signature of lienor or lienor's representative)...

639 ...(date)...

640 ...(lienor's address)...

641

642 ~~The undersigned notifies you that he or she has furnished or is~~
 643 ~~furnishing ...(services or materials)... for the improvement of~~
 644 ~~the real property identified as ...(property description)...~~

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645 ~~owned by ... (owner's name and address) ... under an order given~~
646 ~~by and that the undersigned will look to the contractor's~~
647 ~~bond for protection on the work.~~

648

649 ~~... (Lienor's signature and address) ...~~

650

651 (d) In addition, a lienor is required, as a condition
652 precedent to recovery under the bond, to serve a written notice
653 of nonpayment to the contractor and the surety not later than 90
654 days after the final furnishing of labor, services, or materials
655 by the lienor. A written notice satisfies this condition
656 precedent with respect to the payment described in the notice of
657 nonpayment, including unpaid finance charges due under the
658 lienor's contract, and with respect to any other payments which
659 become due to the lienor after the date of the notice of
660 nonpayment. The time period for serving a written notice of
661 nonpayment shall be measured from the last day of furnishing
662 labor, services, or materials by the lienor and shall not be
663 measured by other standards, such as the issuance of a
664 certificate of occupancy or the issuance of a certificate of
665 substantial completion. The failure of a lienor to receive
666 retainage sums not in excess of 10 percent of the value of
667 labor, services, or materials furnished by the lienor is not
668 considered a nonpayment requiring the service of the notice
669 provided under this paragraph. If the payment bond is not
670 recorded before commencement of construction, the time period
671 for the lienor to serve a notice of nonpayment may, at the
672 option of the lienor, be calculated from the date specified in

673 this section or the date the lienor is served a copy of the
 674 bond. In no event, however, shall the limitation period for
 675 commencement of an action against a payment bond as established
 676 in s. 95.11 be expanded. The notice under this paragraph may be
 677 in substantially the following form:

678
 679 NOTICE OF NONPAYMENT

680
 681 To ...(name of contractor and address)...
 682 ...(name of surety and address)...

683
 684 The undersigned notifies you that he or she has furnished
 685 ...(describe labor, services, or materials)... for the
 686 improvement of the real property identified as ...(property
 687 description).... The amount now due and unpaid is \$.....

688
 689 ...(signature and address of lienor)...

690
 691 (e) An ~~Ne~~ action for the labor or materials or supplies
 692 may not be instituted or prosecuted against the contractor or
 693 surety unless both notices have been given, if required by this
 694 section. An ~~Ne~~ action may not ~~shall~~ be instituted or prosecuted
 695 against the contractor or against the surety on the bond under
 696 this section after 1 year from the performance of the labor or
 697 completion of delivery of the materials and supplies. The time
 698 period for bringing an action against the contractor or surety
 699 on the bond shall be measured from the last day of furnishing
 700 labor, services, or materials by the lienor. The time period ~~and~~

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701 shall not be measured by other standards, such as the issuance
 702 of a certificate of occupancy or the issuance of a certificate
 703 of substantial completion. A contractor or the contractor's
 704 ~~agent or~~ attorney may elect to shorten the ~~prescribed~~ time
 705 within which an action to enforce any claim against a payment
 706 bond provided under this section or s. 713.245 must ~~may~~ be
 707 commenced at any time after a notice of nonpayment, if required,
 708 has been served for the claim by recording in the clerk's office
 709 a notice in substantially the following form:

710
 711 NOTICE OF CONTEST OF CLAIM
 712 AGAINST PAYMENT BOND
 713

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

715
 716 You are notified that the undersigned contests your notice
 717 of nonpayment, dated,, and served on the undersigned
 718 on,, and that the time within which you may file suit
 719 to enforce your claim is limited to 60 days from the date of
 720 service of this notice.

721
 722 DATED on,

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

724
 725 The claim of any lienor upon whom the notice is served and who
 726 fails to institute a suit to enforce his or her claim against
 727 the payment bond within 60 days after service of the notice
 728 shall be extinguished automatically. The contractor or the

729 contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the
 730 notice of contest to the lienor at the address shown in the
 731 notice of nonpayment or most recent amendment thereto and shall
 732 certify to such service on the face of the notice and record the
 733 notice. ~~Service is complete upon mailing.~~

734 (f) Any lienor has a direct right of action on the bond
 735 against the surety. Any provision in a payment bond which
 736 further restricts ~~A bond must not contain any provisions~~
 737 ~~restricting~~ the classes of persons who are protected by the
 738 payment bond, which restricts ~~thereby or~~ the venue of any
 739 proceeding relating to such payment bond, which limits or
 740 expands the effective duration of the payment bond, or which
 741 adds conditions precedent to the enforcement of a claim against
 742 a payment bond beyond those provided in this part is
 743 enforceable. The surety is not entitled to the defense of pro
 744 tanto discharge as against any lienor because of changes or
 745 modifications in the contract to which the surety is not a
 746 party; but the liability of the surety may not be increased
 747 beyond the penal sum of the bond. A lienor may not waive in
 748 advance his or her right to bring an action under the bond
 749 against the surety.

750 (2) The bond shall secure every lien under the direct
 751 contract accruing subsequent to its execution and delivery,
 752 except that of the contractor. Every claim of lien, except that
 753 of the contractor, filed subsequent to execution and delivery of
 754 the bond shall be transferred to it with the same effect as
 755 liens transferred under s. 713.24. Record notice of the transfer
 756 shall be effected by the contractor, or any person having an

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757 interest in the property against which the claim of lien has
 758 been asserted, by recording in the clerk's office a notice, with
 759 the bond attached, in substantially the following form:

761 NOTICE OF BOND

763 To ... (Name and Address of Lienor) ...

764
 765 You are notified that the claim of lien filed by you on,
 766, and recorded in Official Records Book at page of
 767 the public records of County, Florida, is secured by a
 768 bond, a copy being attached.

770 Signed: ... (Name of person recording notice) ...

771
 772 The notice shall be verified. The person recording the notice of
 773 bond ~~clerk~~ shall serve ~~mail~~ a copy of the notice along with a
 774 copy of the bond to the lienor at the address shown in the claim
 775 of lien, or the most recent amendment to it; shall certify to
 776 the service on the face of the notice; and shall record the
 777 notice. ~~The clerk shall receive the same fee as prescribed in s.~~
 778 ~~713.24(1) for certifying to a transfer of lien.~~

779 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds
 780 under this section except where those provisions conflict with
 781 this section.

782 Section 9. This act shall take effect October 1, 2012.