

1                   A bill to be entitled  
2           An act relating to construction contracting; amending  
3           s. 95.11, F.S.; adding a cross-reference; amending s.  
4           255.05, F.S.; requiring that the bond number be stated  
5           on the first page of the bond; providing that a public  
6           entity may not make payment to the contractor unless  
7           the public entity has received a certified copy of the  
8           bond; providing that a provision in a payment bond  
9           furnished for a public works contract that limits or  
10          expands the effective duration of the bond or adds  
11          conditions precedent is unenforceable; requiring a  
12          contractor, or the contractor's attorney, to serve  
13          rather than mail a notice of contest of claim against  
14          the payment bond; providing prerequisites for  
15          commencement of an action against a payment bond;  
16          requiring payment bond forms to reference specified  
17          notice and time limitation provisions; providing that  
18          payment to a contractor who has furnished a payment  
19          bond on a public works project may not be conditioned  
20          upon production of certain documents if the surety has  
21          given written consent; providing for the surety to  
22          withhold or revoke consent; creating s. 255.0518,  
23          F.S.; requiring that the state, a county, a  
24          municipality, or any other public body or institution  
25          open sealed bids received in response to a competitive  
26          solicitation at a public meeting, announce the name of  
27          each bidder and the price submitted, and make  
28          available upon request the names of bidders and

29 submitted prices; amending s. 713.10, F.S.; providing  
30 that a specified notice concerning a lessor's  
31 liability for liens for improvements made by the  
32 lessee prohibits liens even if other leases do not  
33 expressly prohibit liens or if certain other  
34 provisions are not identical; amending s. 713.13,  
35 F.S.; revising a notice form to clarify that the  
36 notice of commencement expires 1 year after the date  
37 of recording; removing a clause relating to perjury;  
38 providing additional time for service when a notice of  
39 commencement is not recorded with a copy of the bond  
40 attached; reenacting and amending s. 489.118, F.S.;  
41 reviving certain grandfathering provisions and setting  
42 a new deadline by which certain registered contractors  
43 may apply for certification; amending s. 713.132,  
44 F.S.; requiring notice of termination to be served on  
45 lienors in privity with the owner; amending s. 713.16,  
46 F.S.; revising requirements for demands for a copy of  
47 a construction contract and a statement of account;  
48 authorizing a lienor to make certain written demands  
49 to an owner for certain written statements; providing  
50 requirements for such written demands; amending s.  
51 713.18, F.S.; providing additional methods by which  
52 certain items may be served; revising provisions  
53 relating to when service of specified items is  
54 effective; specifying requirements for certain written  
55 instruments under certain circumstances; amending s.  
56 713.22, F.S.; requiring that the clerk serve rather

57 |       than mail a notice of contest of lien; amending s.  
 58 |       713.23, F.S.; revising the contents of a notice to  
 59 |       contractor; requiring that a contractor serve rather  
 60 |       than mail a notice of contest of claim against the  
 61 |       payment bond and a notice of bond; clarifying the  
 62 |       attachment of the bond to the notice; providing that a  
 63 |       provision in a payment bond that limits or expands the  
 64 |       effective duration of the bond or adds conditions  
 65 |       precedent is unenforceable; clarifying applicability  
 66 |       of certain provisions; providing effective dates.

67 |  
 68 | Be It Enacted by the Legislature of the State of Florida:  
 69 |

70 |       Section 1. Paragraph (b) of subsection (2) and paragraph  
 71 |       (e) of subsection (5) of section 95.11, Florida Statutes, are  
 72 |       amended to read:

73 |       95.11 Limitations other than for the recovery of real  
 74 |       property.—Actions other than for recovery of real property shall  
 75 |       be commenced as follows:

76 |       (2) WITHIN FIVE YEARS.—

77 |       (b) A legal or equitable action on a contract, obligation,  
 78 |       or liability founded on a written instrument, except for an  
 79 |       action to enforce a claim against a payment bond, which shall be  
 80 |       governed by the applicable provisions of paragraph (5)(e), s.  
 81 |       ~~ss.~~ 255.05(10), s. 337.18(1), or s. and 713.23(1)(e).

82 |       (5) WITHIN ONE YEAR.—

83 |       (e) Except for actions governed by s. 255.05(10), s.  
 84 |       337.18(1), or s. 713.23(1)(e), an action to enforce any claim

85 against a payment bond on which the principal is a contractor,  
 86 subcontractor, or sub-subcontractor as defined in s. 713.01, for  
 87 private work as well as public work, from the last furnishing of  
 88 labor, services, or materials or from the last furnishing of  
 89 labor, services, or materials by the contractor if the  
 90 contractor is the principal on a bond on the same construction  
 91 project, whichever is later.

92 Section 2. Subsection (1), paragraph (a) of subsection  
 93 (2), and subsection (6) of section 255.05, Florida Statutes, are  
 94 amended, and subsection (11) is added to that section, to read:

95 255.05 Bond of contractor constructing public buildings;  
 96 form; action by claimants ~~materialmen~~.

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

110 (a) The bond must state on its front page:

111 1. The name, principal business address, and phone number  
 112 of the contractor, the surety, the owner of the property being

113 improved, and, if different from the owner, the contracting  
 114 public entity.~~†~~

115 2. The contract number assigned by the contracting public  
 116 entity.~~†~~

117 3. The bond number assigned by the surety. ~~and~~

118 4. A description of the project sufficient to identify it,  
 119 such as a legal description or the street address of the  
 120 property being improved, and a general description of the  
 121 improvement.

122 (b) Before commencing the work or before recommencing the  
 123 work after a default or abandonment, the contractor shall  
 124 provide to the public entity a certified copy of the recorded  
 125 bond. Notwithstanding the terms of the contract or any other law  
 126 governing prompt payment for construction services, the public  
 127 entity may not make a payment to the contractor until the  
 128 contractor has complied with this paragraph. This paragraph  
 129 applies to contracts entered into on or after October 1, 2012.

130 (c) The ~~Such~~ bond shall be conditioned upon the  
 131 contractor's performance of the construction work in the time  
 132 and manner prescribed in the contract and promptly making  
 133 payments to all persons defined in s. 713.01 who furnish labor,  
 134 services, or materials for the prosecution of the work provided  
 135 for in the contract. ~~A~~ Any claimant may apply to the  
 136 governmental entity having charge of the work for copies of the  
 137 contract and bond and shall thereupon be furnished with a  
 138 ~~certified~~ copy of the contract and the recorded bond. The  
 139 claimant shall have a cause ~~right~~ of action against the  
 140 contractor and surety for the amount due him or her, including

141 unpaid finance charges due under the claimant's contract. Such  
 142 action may ~~shall~~ not involve the public authority in any  
 143 expense.

144 (d) When the ~~such~~ work is done for the state and the  
 145 contract is for \$100,000 or less, no payment and performance  
 146 bond shall be required. At the discretion of the official or  
 147 board awarding such contract when such work is done for any  
 148 county, city, political subdivision, or public authority, a ~~any~~  
 149 person entering into such a contract that ~~which~~ is for \$200,000  
 150 or less may be exempted from executing the payment and  
 151 performance bond. When such work is done for the state, the  
 152 Secretary of Management Services may delegate to state agencies  
 153 the authority to exempt any person entering into such a contract  
 154 amounting to more than \$100,000 but less than \$200,000 from  
 155 executing the payment and performance bond. If an ~~In the event~~  
 156 ~~such~~ exemption is granted, the officer or official is ~~officials~~  
 157 ~~shall~~ not be personally liable to persons suffering loss because  
 158 of granting such exemption. The Department of Management  
 159 Services shall maintain information on the number of requests by  
 160 state agencies for delegation of authority to waive the bond  
 161 requirements by agency and project number and whether any  
 162 request for delegation was denied and the justification for the  
 163 denial.

164 (e) Any provision in a payment bond issued on or after  
 165 October 1, 2012, furnished for public work contracts as provided  
 166 by this subsection which further restricts the classes of  
 167 persons ~~as defined in s. 713.01~~ protected by the bond, which  
 168 restricts ~~or~~ the venue of any proceeding relating to such bond,

169 which limits or expands the effective duration of the bond, or  
 170 which adds conditions precedent to the enforcement of a claim  
 171 against the bond beyond those provided in this section is  
 172 unenforceable.

173 (f)~~(b)~~ The Department of Management Services shall adopt  
 174 rules with respect to all contracts for \$200,000 or less, to  
 175 provide:

176 1. Procedures for retaining up to 10 percent of each  
 177 request for payment submitted by a contractor and procedures for  
 178 determining disbursements from the amount retained on a pro rata  
 179 basis to laborers, materialmen, and subcontractors, as defined  
 180 in s. 713.01.

181 2. Procedures for requiring certification from laborers,  
 182 materialmen, and subcontractors, as defined in s. 713.01, before  
 183 ~~prior to~~ final payment to the contractor that such laborers,  
 184 materialmen, and subcontractors have no claims against the  
 185 contractor resulting from the completion of the work provided  
 186 for in the contract.

187  
 188 The state is ~~shall~~ not ~~be held~~ liable to any laborer,  
 189 materialman, or subcontractor for any amounts greater than the  
 190 pro rata share as determined under this section.

191 (g)~~(e)~~1. The amount of the bond shall equal the contract  
 192 price, except that for a contract in excess of \$250 million, if  
 193 the state, county, municipality, political subdivision, or other  
 194 public entity finds that a bond in the amount of the contract  
 195 price is not reasonably available, the public owner shall set  
 196 the amount of the bond at the largest amount reasonably

197 available, but not less than \$250 million.

198 2. For construction-management or design-build contracts,  
 199 if the public owner does not include in the bond amount the cost  
 200 of design or other nonconstruction services, the bond may not be  
 201 conditioned on performance of such services or payment to  
 202 persons furnishing such services. Notwithstanding paragraphs (c)  
 203 and (e) ~~paragraph (a)~~, such a bond may exclude persons  
 204 furnishing such services from the classes of persons protected  
 205 by the bond.

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

213  
 214 NOTICE OF CONTEST OF CLAIM  
 215 AGAINST PAYMENT BOND  
 216

217 To: ... (Name and address of claimant) ...  
 218

219 You are notified that the undersigned contests your notice  
 220 of nonpayment, dated ....., ....., and served on the  
 221 undersigned on ....., ....., and that the time within  
 222 which you may file suit to enforce your claim is limited to 60  
 223 days after the date of service of this notice.  
 224



225 DATED on ....., .....

226

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

228

229 The claim of a ~~any~~ claimant upon whom such notice is served and  
 230 who fails to institute a suit to enforce his or her claim  
 231 against the payment bond within 60 days after service of such  
 232 notice shall be extinguished automatically. The contractor or  
 233 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the  
 234 notice of contest to the claimant at the address shown in the  
 235 notice of nonpayment or most recent amendment thereto and shall  
 236 certify to such service on the face of the ~~such~~ notice and  
 237 record the notice. ~~Service is complete upon mailing.~~

238 2. A claimant, except a laborer, who is not in privity  
 239 with the contractor shall, before commencing or not later than  
 240 45 days after commencing to furnish labor, services, or  
 241 materials for the prosecution of the work, furnish the  
 242 contractor with a written notice that he or she intends to look  
 243 to the bond for protection. A claimant who is not in privity  
 244 with the contractor and who has not received payment for his or  
 245 her labor, services, or materials shall deliver to the  
 246 contractor and to the surety written notice of the performance  
 247 of the labor or delivery of the materials or supplies and of the  
 248 nonpayment. The notice of nonpayment shall ~~may~~ be served ~~at any~~  
 249 ~~time~~ during the progress of the work or thereafter but may not  
 250 be served earlier than ~~before~~ 45 days after the first furnishing  
 251 of labor, services, or materials or, ~~and not~~ later than 90 days  
 252 after the final furnishing of the labor, services, or materials

253 | by the claimant or, with respect to rental equipment, not later  
 254 | than 90 days after the date that the rental equipment was last  
 255 | on the job site available for use. Any notice of nonpayment  
 256 | served by a claimant who is not in privity with the contractor  
 257 | which includes sums for retainage must specify the portion of  
 258 | the amount claimed for retainage. An ~~No~~ action for the labor,  
 259 | materials, or supplies may not be instituted against the  
 260 | contractor or the surety unless the notice to the contractor and  
 261 | notice of nonpayment have been served, if required by this  
 262 | section ~~both notices have been given~~. Notices required or  
 263 | permitted under this section shall ~~may~~ be served in accordance  
 264 | with s. 713.18. A claimant may not waive in advance his or her  
 265 | right to bring an action under the bond against the surety. In  
 266 | any action brought to enforce a claim against a payment bond  
 267 | under this section, the prevailing party is entitled to recover  
 268 | a reasonable fee for the services of his or her attorney for  
 269 | trial and appeal or for arbitration, in an amount to be  
 270 | determined by the court, which fee must be taxed as part of the  
 271 | prevailing party's costs, as allowed in equitable actions. The  
 272 | time periods for service of a notice of nonpayment or for  
 273 | bringing an action against a contractor or a surety shall be  
 274 | measured from the last day of furnishing labor, services, or  
 275 | materials by the claimant and may ~~shall~~ not be measured by other  
 276 | standards, such as the issuance of a certificate of occupancy or  
 277 | the issuance of a certificate of substantial completion.

278 |         (6) All payment bond forms used by a public owner and all  
 279 | payment bonds executed pursuant to this section by a surety  
 280 | shall make reference to this section by number, and ~~and~~ shall

281 contain reference to the notice and time limitation provisions  
 282 in subsections ~~subsection~~ (2) and (10), and shall comply with  
 283 the requirements of paragraph (1)(a).

284 (11) When a contractor furnishes and records a payment and  
 285 performance bond for a public works project in accordance with  
 286 this section and provides the public authority with a written  
 287 consent from the surety regarding the project or payment in  
 288 question, the public authority may not condition its payment to  
 289 the contractor on the production of a release, waiver, or like  
 290 documentation from a claimant demonstrating that the claimant  
 291 does not have an outstanding claim against the contractor, the  
 292 surety, the payment bond, or the public authority for payments  
 293 due on labor, services, or materials furnished on the public  
 294 works project. The surety may, in a writing served on the public  
 295 authority, revoke its consent or direct that the public  
 296 authority withhold a specified amount from a payment, which  
 297 shall be effective upon receipt. This subsection applies to  
 298 contracts entered into on or after October 1, 2012.

299 Section 3. Effective upon this act becoming a law, section  
 300 255.0518, Florida Statutes, is created  
 301 to read:

302 255.0518 Public bids; bid opening.—Notwithstanding s.  
 303 119.071(1)(b), the state or any county or municipality thereof  
 304 or any department or agency of the state, county, or  
 305 municipality or any other public body or institution shall:

306 (1) When opening sealed bids or the portion of any sealed  
 307 bids that include the prices submitted that are received  
 308 pursuant to a competitive solicitation for construction or

309 repairs on a public building or public work, open the sealed  
 310 bids at a public meeting conducted in compliance with s.  
 311 286.011.

312 (2) Announce at that meeting the name of each bidder and  
 313 the price submitted.

314 (3) Make available upon request the name of each bidder  
 315 and the price submitted.

316 Section 4. Paragraph (b) of subsection (2) of section  
 317 713.10, Florida Statutes, is amended to read:

318 713.10 Extent of liens.—

319 (2)

320 (b) The interest of the lessor is ~~shall~~ not ~~be~~ subject to  
 321 liens for improvements made by the lessee when:

322 1. The lease, or a short form or a memorandum of the lease  
 323 that contains the specific language in the lease prohibiting  
 324 such liability, is recorded in the official records of the  
 325 county where the premises are located before the recording of a  
 326 notice of commencement for improvements to the premises and the  
 327 terms of the lease expressly prohibit such liability; or

328 2. The terms of the lease expressly prohibit such  
 329 liability, and a notice advising that leases for the rental of  
 330 premises on a parcel of land prohibit such liability has been  
 331 recorded in the official records of the county in which the  
 332 parcel of land is located before the recording of a notice of  
 333 commencement for improvements to the premises, and the notice  
 334 includes the following:

335 a. The name of the lessor.

336 b. The legal description of the parcel of land to which

337 the notice applies.

338 c. The specific language contained in the various leases  
339 prohibiting such liability.

340 d. A statement that all or a majority of the leases  
341 entered into for premises on the parcel of land expressly  
342 prohibit such liability.

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

345  
346 A notice that is consistent with subparagraph 2. effectively  
347 prohibits liens for improvements made by a lessee even if other  
348 leases for premises on the parcel do not expressly prohibit  
349 liens or if provisions of each lease restricting the application  
350 of liens are not identical.

351 Section 5. Paragraphs (d) and (e) of subsection (1) of  
352 section 713.13, Florida Statutes, are amended to read:

353 713.13 Notice of commencement.—

354 (1)

355 (d) A notice of commencement must be in substantially the  
356 following form:

357  
358 Permit No..... Tax Folio No.....

359 NOTICE OF COMMENCEMENT

360 State of....

361 County of....

362  
363 The undersigned hereby gives notice that improvement will be  
364 made to certain real property, and in accordance with Chapter

365 713, Florida Statutes, the following information is provided in  
 366 this Notice of Commencement.

367 1. Description of property: ...(legal description of the  
 368 property, and street address if available)....

369 2. General description of improvement:.....

370 3. Owner information or Lessee information if the Lessee  
 371 contracted for the improvement:

372 a. Name and address:.....

373 b. Interest in property:.....

374 c. Name and address of fee simple titleholder (if  
 375 different from Owner listed above):.....

376 4.a. Contractor: ...(name and address)....

377 b. Contractor's phone number:.....

378 5. Surety (if applicable, a copy of the payment bond is  
 379 attached):

380 a. Name and address:.....

381 b. Phone number:.....

382 c. Amount of bond: \$.....

383 6.a. Lender: ...(name and address)....

384 b. Lender's phone number:.....

385 7. Persons within the State of Florida designated by Owner  
 386 upon whom notices or other documents may be served as provided  
 387 by Section 713.13(1)(a)7., Florida Statutes:

388 a. Name and address:.....

389 b. Phone numbers of designated persons:.....

390 8.a. In addition to himself or herself, Owner designates  
 391 ..... of ..... to receive a copy of the Lienor's  
 392 Notice as provided in Section 713.13(1)(b), Florida Statutes.

393           b. Phone number of person or entity designated by  
394 owner:.....

395           9. Expiration date of notice of commencement (the  
396 expiration date ~~may not be before the completion of construction~~  
397 ~~and final payment to the contractor,~~ but will be 1 year from the  
398 date of recording unless a different date is specified).....

399  
400 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
401 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
402 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
403 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
404 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
405 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
406 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
407 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
408 COMMENCEMENT.

409  
410 ~~Under penalty of perjury, I declare that I have read the~~  
411 ~~foregoing notice of commencement and that the facts stated~~  
412 ~~therein are true to the best of my knowledge and belief.~~

413  
414 ... (Signature of Owner or Lessee, or Owner's or Lessee's  
415 Authorized Officer/Director/Partner/Manager) ...

416  
417 ... (Signatory's Title/Office) ...

418  
419 The foregoing instrument was acknowledged before me this ....  
420 day of ....., ... (year) ..., by ... (name of person) ... as ... (type

421 of authority, . . . e.g. officer, trustee, attorney in  
 422 fact)... for ...(name of party on behalf of whom instrument was  
 423 executed)....

424

425 ...(Signature of Notary Public - State of Florida)...

426

427 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

428

429 Personally Known .... OR Produced Identification ....

430

431 Type of Identification Produced.....

432

433 (e) A copy of any payment bond must be attached at the  
 434 time of recordation of the notice of commencement. The failure  
 435 to attach a copy of the bond to the notice of commencement when  
 436 the notice is recorded negates the exemption provided in s.  
 437 713.02(6). However, if a payment bond under s. 713.23 exists but  
 438 was not attached at the time of recordation of the notice of  
 439 commencement, the bond may be used to transfer any recorded lien  
 440 of a lienor except that of the contractor by the recordation and  
 441 service of a notice of bond pursuant to s. 713.23(2). The notice  
 442 requirements of s. 713.23 apply to any claim against the bond;  
 443 however, the time limits for serving any required notices shall,  
 444 at the option of the lienor, be calculated from the dates ~~begin~~  
 445 ~~running from the later of the time~~ specified in s. 713.23 or the  
 446 date the notice of bond is served on the lienor.

447 Section 6. Section 489.118, Florida Statutes, is reenacted  
 448 and amended to read:



449           489.118 Certification of registered contractors;  
450 grandfathering provisions.—The board shall, upon receipt of a  
451 completed application and appropriate fee, issue a certificate  
452 in the appropriate category to any contractor registered under  
453 this part who makes application to the board and can show that  
454 he or she meets each of the following requirements:

455           (1) Currently holds a valid registered local license in  
456 one of the contractor categories defined in s. 489.105(3)(a)-(q)  
457 ~~489.105(3)(a)-(p)~~.

458           (2) Has, for that category, passed a written examination  
459 that the board finds to be substantially similar to the  
460 examination required to be licensed as a certified contractor  
461 under this part. For purposes of this subsection, a written,  
462 proctored examination such as that produced by the National  
463 Assessment Institute, Block and Associates, NAI/Block, Experior  
464 Assessments, Professional Testing, Inc., or Assessment Systems,  
465 Inc., shall be considered to be substantially similar to the  
466 examination required to be licensed as a certified contractor.  
467 The board may not impose or make any requirements regarding the  
468 nature or content of these cited examinations.

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

476           (4) Has not had his or her contractor's license revoked at

477 any time, had his or her contractor's license suspended within  
478 the last 5 years, or been assessed a fine in excess of \$500  
479 within the last 5 years.

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

482

483 Applicants wishing to obtain a certificate pursuant to this  
484 section must make application by November 1, 2015 ~~2005~~.

485 Section 7. Paragraph (f) of subsection (1) and subsection  
486 (4) of section 713.132, Florida Statutes, are amended to read:

487 713.132 Notice of termination.—

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

491 (f) A statement that the owner has, before recording the  
492 notice of termination, served a copy of the notice of  
493 termination on the contractor and on each lienor who has a  
494 direct contract with the owner or who has served a notice to  
495 owner ~~given notice~~. The owner is not required to serve a copy of  
496 the notice of termination on any lienor who has executed a  
497 waiver and release of lien upon final payment in accordance with  
498 s. 713.20.

499 (4) A notice of termination is effective to terminate the  
500 notice of commencement at the later of 30 days after recording  
501 of the notice of termination or the date stated in the notice of  
502 termination as the date on which the notice of commencement is  
503 terminated, if ~~provided that~~ the notice of termination has been  
504 served pursuant to paragraph (1)(f) on the contractor and on

505 each lienor who has a direct contract with the owner or who has  
506 served a notice to owner ~~given notice~~.

507 Section 8. Section 713.16, Florida Statutes, is amended to  
508 read:

509 713.16 Demand for copy of contract and statements of  
510 account; form.—

511 (1) A copy of the contract of a lienor or owner and a  
512 statement of the amount due or to become due if fixed or  
513 ascertainable thereon must be furnished by any party thereto,  
514 upon written demand of an owner or a lienor contracting with or  
515 employed by the other party to such contract. If the owner or  
516 lienor refuses or neglects to furnish such copy of the contract  
517 or such statement, or willfully and falsely states the amount  
518 due or to become due if fixed or ascertainable under such  
519 contract, any person who suffers any detriment thereby has a  
520 cause of action against the person refusing or neglecting to  
521 furnish the same or willfully and falsely stating the amount due  
522 or to become due for his or her damages sustained thereby. The  
523 information contained in such copy or statement furnished  
524 pursuant to such written demand is binding upon the owner or  
525 lienor furnishing it unless actual notice of any modification is  
526 given to the person demanding the copy or statement before such  
527 person acts in good faith in reliance on it. The person  
528 demanding such documents must pay for the reproduction thereof;  
529 and, if such person fails or refuses to do so, he or she is  
530 entitled only to inspect such documents at reasonable times and  
531 places.

532 (2) The owner may serve in writing a demand of any lienor

533 | for a written statement under oath of his or her account showing  
534 | the nature of the labor or services performed and to be  
535 | performed, if any, the materials furnished, the materials to be  
536 | furnished, if known, the amount paid on account to date, the  
537 | amount due, and the amount to become due, if known, as of the  
538 | date of the statement by the lienor. Any such demand to a lienor  
539 | must be served on the lienor at the address and to the attention  
540 | of any person who is designated to receive the demand in the  
541 | notice to owner served by such lienor and must include a  
542 | description of the property and the names of the owner, the  
543 | contractor, and the lienor's customer, as set forth in the  
544 | lienor's notice to owner. The failure or refusal to furnish the  
545 | statement does not deprive the lienor of his or her lien if the  
546 | demand is not served at the address of the lienor or directed to  
547 | the attention of the person designated to receive the demand in  
548 | the notice to owner. The failure or refusal to furnish the  
549 | statement under oath within 30 days after the demand, or the  
550 | furnishing of a false or fraudulent statement, deprives the  
551 | person so failing or refusing to furnish such statement of his  
552 | or her lien. If the owner serves more than one demand for  
553 | statement of account on a lienor and none of the information  
554 | regarding the account has changed since the lienor's last  
555 | response to a demand, the failure or refusal to furnish such  
556 | statement does not deprive the lienor of his or her lien. The  
557 | negligent inclusion or omission of any information deprives the  
558 | person of his or her lien to the extent the owner can  
559 | demonstrate prejudice from such act or omission by the lienor.  
560 | The failure to furnish a response to a demand for statement of

561 account does not affect the validity of any claim of lien being  
 562 enforced through a foreclosure case filed before ~~prior to~~ the  
 563 date the demand for statement is received by the lienor.

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

566  
 567 REQUEST FOR SWORN STATEMENT OF ACCOUNT

568  
 569 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED  
 570 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE  
 571 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

572  
 573 To: ...(Lienor's name and address)...

574  
 575 The undersigned hereby demands a written statement under oath of  
 576 his or her account showing the nature of the labor or services  
 577 performed and to be performed, if any, the materials furnished,  
 578 the materials to be furnished, if known, the amount paid on  
 579 account to date, the amount due, and the amount to become due,  
 580 if known, as of the date of the statement for the improvement of  
 581 real property identified as ...(property description)....

582  
 583 ...(name of contractor)...

584  
 585 ...(name of the lienor's customer, as set forth in the  
 586 lienor's Notice to Owner, if such notice has been served)...

587  
 588 ...(signature and address of owner)...

589                   ... (date of request for sworn statement of account)...

590

591           (4) When a contractor has furnished a payment bond  
592 pursuant to s. 713.23, he or she may, when an owner makes any  
593 payment to the contractor or directly to a lienor, serve a  
594 written demand on any other lienor for a written statement under  
595 oath of his or her account showing the nature of the labor or  
596 services performed and to be performed, if any, the materials  
597 furnished, the materials to be furnished, if known, the amount  
598 paid on account to date, the amount due, and the amount to  
599 become due, if known, as of the date of the statement by the  
600 lienor. Any such demand to a lienor must be served on the lienor  
601 at the address and to the attention of any person who is  
602 designated to receive the demand in the notice to contractor  
603 served by such lienor. The demand must include a description of  
604 the property and the names of the owner, the contractor, and the  
605 lienor's customer, as set forth in the lienor's notice to  
606 contractor. The failure or refusal to furnish the statement does  
607 not deprive the lienor of his or her rights under the bond if  
608 the demand is not served at the address of the lienor or  
609 directed to the attention of the person designated to receive  
610 the demand in the notice to contractor. The failure to furnish  
611 the statement within 30 days after the demand, or the furnishing  
612 of a false or fraudulent statement, deprives the person who  
613 fails to furnish the statement, or who furnishes the false or  
614 fraudulent statement, of his or her rights under the bond. If  
615 the contractor serves more than one demand for statement of  
616 account on a lienor and none of the information regarding the

617 account has changed since the lienor's last response to a  
 618 demand, the failure or refusal to furnish such statement does  
 619 not deprive the lienor of his or her rights under the bond. The  
 620 negligent inclusion or omission of any information deprives the  
 621 person of his or her rights under the bond to the extent the  
 622 contractor can demonstrate prejudice from such act or omission  
 623 by the lienor. The failure to furnish a response to a demand for  
 624 statement of account does not affect the validity of any claim  
 625 on the bond being enforced in a lawsuit filed prior to the date  
 626 the demand for statement of account is received by the lienor.

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

631 1. The amount of the direct contract under which the lien  
 632 was recorded;

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

636 3. The reasonable estimated costs of completing the direct  
 637 contract under which the lien was claimed pursuant to the scope  
 638 of the direct contract; and

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

640 (b) Any owner who does not provide the statement within 30  
 641 days after demand, or who provides a false or fraudulent  
 642 statement, is not a prevailing party for purposes of an award of  
 643 attorney ~~attorney's~~ fees under s. 713.29. The written demand  
 644 must include the following warning in conspicuous type in

645 substantially the following form:

646

647 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN  
648 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN  
649 THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO  
650 ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS  
651 STATEMENT.

652 (6) Any written demand served on the owner must include a  
653 description of the property and the names of the contractor and  
654 the lienor's customer, as set forth in the lienor's notice to  
655 owner.

656 (7)~~(6)~~ For purposes of this section, the term  
657 "information" means the nature and quantity of the labor,  
658 services, and materials furnished or to be furnished by a lienor  
659 and the amount paid, the amount due, and the amount to become  
660 due on the lienor's account.

661 Section 9. Section 713.18, Florida Statutes, is amended to  
662 read:

663 713.18 Manner of serving notices and other instruments.—

664 (1) Service of notices, claims of lien, affidavits,  
665 assignments, and other instruments permitted or required under  
666 this part, or copies thereof when so permitted or required,  
667 unless otherwise specifically provided in this part, must be  
668 made by one of the following methods:

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



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

678 (c) ~~If the method specified in paragraph (a) or paragraph~~  
 679 ~~(b) cannot be accomplished~~, By posting on the site of the  
 680 improvement if service as provided by paragraph (a) or paragraph  
 681 (b) cannot be accomplished premises.

682 (2) Notwithstanding subsection (1), service of ~~if~~ a notice  
 683 to owner ~~or~~ a preliminary notice to contractor under s. 255.05,  
 684 s. 337.18, or s. 713.23, ~~or a preliminary notice under s. 255.05~~  
 685 ~~is mailed by registered or certified mail with postage prepaid~~  
 686 ~~to the person to be served at any of the addresses set forth in~~  
 687 ~~subsection (3) within 40 days after the date the lienor first~~  
 688 ~~furnishes labor, services, or materials, service of that notice~~  
 689 is effective as of the date of mailing if:

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

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

696 (c)1. The person who served the notice maintains a  
 697 registered or certified mail log that shows the registered or  
 698 certified mail number issued by the United States Postal  
 699 Service, the name and address of the person served, and the date  
 700 stamp of the United States Postal Service confirming the date of

701 mailing; or ~~if~~

702 2. The person who served the notice maintains electronic  
 703 tracking records generated by ~~through use of~~ the United States  
 704 Postal Service ~~Confirm service or a similar service~~ containing  
 705 the postal tracking number, the name and address of the person  
 706 served, and verification of the date of receipt by the United  
 707 States Postal Service.

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

711 1. Is sent to the last address shown in the notice of  
 712 commencement or any amendment thereto or, in the absence of a  
 713 notice of commencement, to the last address shown in the  
 714 building permit application, or to the last known address of the  
 715 person to be served; and, ~~is not received, but~~

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

720 (b) If the address shown in the notice of commencement or  
 721 any amendment to the notice of commencement, or, in the absence  
 722 of a notice of commencement, in the building permit application,  
 723 is incomplete for purposes of mailing or delivery, the person  
 724 serving the item may complete the address and properly format it  
 725 according to United States Postal Service addressing standards  
 726 using information obtained from the property appraiser or  
 727 another public record without affecting the validity of service  
 728 under this section.

729           (4) A notice served by a lienor on one owner or one  
730 partner of a partnership owning the real property ~~If the real~~  
731 ~~property is owned by more than one person or a partnership, a~~  
732 ~~lienor may serve any notices or other papers under this part on~~  
733 ~~any one of such owners or partners, and such notice is deemed~~  
734 notice to all owners and partners.

735           Section 10. Section 713.22, Florida Statutes, is amended  
736 to read:

737           713.22 Duration of lien.—

738           (1) A ~~No~~ lien provided by this part does not shall  
739 continue for a longer period than 1 year after the claim of lien  
740 has been recorded or 1 year after the recording of an amended  
741 claim of lien that shows a later date of final furnishing of  
742 labor, services, or materials, unless within that time an action  
743 to enforce the lien is commenced in a court of competent  
744 jurisdiction. A lien that has been continued beyond the 1-year  
745 period ~~The continuation of the lien effected by the commencement~~  
746 of an ~~the~~ action is shall not enforceable be good against  
747 creditors or subsequent purchasers for a valuable consideration  
748 and without notice, unless a notice of lis pendens is recorded.

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

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756

NOTICE OF CONTEST OF LIEN

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

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

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

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, ~~mail~~ a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the ~~such~~ notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 11. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who

785 is not in privity with the contractor, except a laborer, shall  
 786 serve the contractor with notice in writing that the lienor will  
 787 look to the contractor's bond for protection on the work. If a  
 788 notice of commencement with the attached bond is not recorded  
 789 before commencement of construction, ~~or a reference to the bond~~  
 790 ~~is not given in the notice of commencement, and in either case~~  
 791 ~~if the lienor not in privity with the contractor is not~~  
 792 ~~otherwise notified in writing of the existence of the bond, the~~  
 793 lienor not in privity with the contractor may, in the  
 794 alternative, elect to serve the notice to the contractor up to  
 795 ~~shall have~~ 45 days after ~~from~~ the date the lienor is served with  
 796 a copy notified of the existence of the bond within which to  
 797 serve the notice. A notice to owner pursuant to s. 713.06 that  
 798 has been timely served on the contractor satisfies the  
 799 requirements of this paragraph. However, the limitation period  
 800 for commencement of an action on the payment bond as established  
 801 in paragraph (e) may not be expanded. The notice may be in  
 802 substantially the following form and may be combined with a  
 803 notice to owner given under s. 713.06 and, if so, may be  
 804 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR:

805  
 806 NOTICE TO CONTRACTOR

807  
 808 To ... (name and address of contractor) ...

809  
 810 The undersigned hereby informs you that he or she has furnished  
 811 or is furnishing services or materials as follows:

813 ...(general description of services or materials)... for the  
 814 improvement of the real property identified as ...(property  
 815 description)... under an order given by ...(lienor's  
 816 customer)....

817  
 818 This notice is to inform you that the undersigned intends to  
 819 look to the contractor's bond to secure payment for the  
 820 furnishing of materials or services for the improvement of the  
 821 real property.

822  
 823 ...(name of lienor)...  
 824 ...(signature of lienor or lienor's representative)...  
 825 ...(date)...  
 826 ...(lienor's address)...

827  
 828 ~~The undersigned notifies you that he or she has furnished or is~~  
 829 ~~furnishing ...(services or materials)... for the improvement of~~  
 830 ~~the real property identified as ...(property description)...~~  
 831 ~~owned by ...(owner's name and address)... under an order given~~  
 832 ~~by .... and that the undersigned will look to the contractor's~~  
 833 ~~bond for protection on the work.~~

834  
 835 ~~...(Lienor's signature and address)...~~

836  
 837 (d) In addition, a lienor is required, as a condition  
 838 precedent to recovery under the bond, to serve a written notice  
 839 of nonpayment to the contractor and the surety not later than 90  
 840 days after the final furnishing of labor, services, or materials

841 by the lienor. A written notice satisfies this condition  
842 precedent with respect to the payment described in the notice of  
843 nonpayment, including unpaid finance charges due under the  
844 lienor's contract, and with respect to any other payments which  
845 become due to the lienor after the date of the notice of  
846 nonpayment. The time period for serving a written notice of  
847 nonpayment shall be measured from the last day of furnishing  
848 labor, services, or materials by the lienor and shall not be  
849 measured by other standards, such as the issuance of a  
850 certificate of occupancy or the issuance of a certificate of  
851 substantial completion. The failure of a lienor to receive  
852 retainage sums not in excess of 10 percent of the value of  
853 labor, services, or materials furnished by the lienor is not  
854 considered a nonpayment requiring the service of the notice  
855 provided under this paragraph. If the payment bond is not  
856 recorded before commencement of construction, the time period  
857 for the lienor to serve a notice of nonpayment may at the option  
858 of the lienor be calculated from the date specified in this  
859 section or the date the lienor is served a copy of the bond.  
860 However, the limitation period for commencement of an action on  
861 the payment bond as established in paragraph (e) may not be  
862 expanded. The notice under this paragraph may be in  
863 substantially the following form:

864  
865 NOTICE OF NONPAYMENT

866  
867 To ... (name of contractor and address) ...  
868

869 ... (name of surety and address) ...

870

871 The undersigned notifies you that he or she has furnished  
 872 ... (describe labor, services, or materials) ... for the  
 873 improvement of the real property identified as ... (property  
 874 description) .... The amount now due and unpaid is \$.....

875

876 ... (signature and address of lienor) ...

877

878 (e) An ~~No~~ action for the labor or materials or supplies  
 879 may not be instituted or prosecuted against the contractor or  
 880 surety unless both notices have been given, if required by this  
 881 section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted  
 882 against the contractor or against the surety on the bond under  
 883 this section after 1 year from the performance of the labor or  
 884 completion of delivery of the materials and supplies. The time  
 885 period for bringing an action against the contractor or surety  
 886 on the bond shall be measured from the last day of furnishing  
 887 labor, services, or materials by the lienor. The time period ~~and~~  
 888 may ~~shall~~ not be measured by other standards, such as the  
 889 issuance of a certificate of occupancy or the issuance of a  
 890 certificate of substantial completion. A contractor or the  
 891 contractor's ~~agent or~~ attorney may elect to shorten the  
 892 ~~prescribed~~ time within which an action to enforce any claim  
 893 against a payment bond provided under this section or s. 713.245  
 894 must ~~may~~ be commenced at any time after a notice of nonpayment,  
 895 if required, has been served for the claim by recording in the  
 896 clerk's office a notice in substantially the following form:



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924

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 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 notice shall be extinguished automatically. The contractor or the contractor's attorney ~~clerk~~ shall serve ~~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 notice and record the notice. ~~Service is complete upon mailing.~~

(f) A ~~Any~~ lienor has a direct right of action on the bond against the surety. Any provision in a payment bond issued on or after October 1, 2012, which further restricts ~~A bond must not~~

925 ~~contain any provisions restricting~~ the classes of persons who  
 926 are protected by the payment bond, which restricts ~~thereby or~~  
 927 the venue of any proceeding relating to such payment bond, which  
 928 limits or expands the effective duration of the payment bond, or  
 929 which adds conditions precedent to the enforcement of a claim  
 930 against a payment bond beyond those provided in this part is  
 931 unenforceable. The surety is not entitled to the defense of pro  
 932 tanto discharge as against any lienor because of changes or  
 933 modifications in the contract to which the surety is not a  
 934 party; but the liability of the surety may not be increased  
 935 beyond the penal sum of the bond. A lienor may not waive in  
 936 advance his or her right to bring an action under the bond  
 937 against the surety.

938 (2) The bond shall secure every lien under the direct  
 939 contract accruing subsequent to its execution and delivery,  
 940 except that of the contractor. Every claim of lien, except that  
 941 of the contractor, filed subsequent to execution and delivery of  
 942 the bond shall be transferred to it with the same effect as  
 943 liens transferred under s. 713.24. Record notice of the transfer  
 944 shall be effected by the contractor, or any person having an  
 945 interest in the property against which the claim of lien has  
 946 been asserted, by recording in the clerk's office a notice, with  
 947 the bond attached, in substantially the following form:

948  
 949 NOTICE OF BOND

950  
 951 To ... (Name and Address of Lienor) ...  
 952

953 You are notified that the claim of lien filed by you on . . . . ,  
 954 . . . . , and recorded in Official Records Book . . . . at page . . . . of  
 955 the public records of . . . . County, Florida, is secured by a  
 956 bond, a copy being attached.

957  
 958 Signed: . . . (Name of person recording notice) . . .  
 959

960 The notice shall be verified. The person recording the notice of  
 961 bond ~~clerk~~ shall serve mail a copy of the notice with a copy of  
 962 the bond to the lienor at the address shown in the claim of  
 963 lien, or the most recent amendment to it; shall certify to the  
 964 service on the face of the notice; and shall record the notice.  
 965 ~~The clerk shall receive the same fee as prescribed in s.~~  
 966 ~~713.24(1) for certifying to a transfer of lien.~~

967 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds  
 968 under this section except when those provisions conflict with  
 969 this section.

970 Section 12. Except as otherwise expressly provided in this  
 971 act, this act shall take effect October 1, 2012.  
 972