

By Representative Sublette

1 A bill to be entitled
2 An act relating to liens; amending s. 255.05,
3 F.S.; including unpaid finance charges due
4 under a claimant's contract among charges which
5 may be assessed against certain contractors'
6 bonds; revising language with respect to the
7 timeframe for notice of intent to look to such
8 a bond for recovery; providing for the time
9 period for notice of nonpayment; amending s.
10 713.06, F.S.; providing for service of notice
11 of commencement rather than mailing with
12 respect to liens of persons not in privity;
13 amending s. 713.132, F.S.; providing that an
14 owner may not record a notice of termination
15 except after completion of construction;
16 amending s. 713.135, F.S.; providing that
17 certain applicants for a building permit must
18 file certain information with respect to the
19 notice of commencement; providing an effective
20 date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Paragraph (a) of subsection (1) and
25 subsection (2) of section 255.05, Florida Statutes, are
26 amended to read:

27 255.05 Bond of contractor constructing public
28 buildings; form; action by materialmen.--

29 (1)(a) Any person entering into a formal contract with
30 the state or any county, city, or political subdivision
31 thereof, or other public authority, for the construction of a

1 public building, for the prosecution and completion of a
2 public work, or for repairs upon a public building or public
3 work shall be required, before commencing the work, to
4 execute, deliver to the public owner, and record in the public
5 records of the county where the improvement is located, a
6 payment and performance bond with a surety insurer authorized
7 to do business in this state as surety. The bond must state
8 the name and principal business address of both the principal
9 and the surety and must contain a description of the project
10 sufficient to identify it. Such bond shall be conditioned that
11 the contractor perform the contract in the time and manner
12 prescribed in the contract and promptly make payments to all
13 persons defined in s. 713.01 whose claims derive directly or
14 indirectly from the prosecution of the work provided for in
15 the contract. Any claimant may apply to the governmental
16 entity having charge of the work for copies of the contract
17 and bond and shall thereupon be furnished with a certified
18 copy of the contract and bond. The claimant shall have a right
19 of action against the contractor and surety for the amount due
20 him or her, including unpaid finance charges due under the
21 claimant's contract. Such action shall not involve the public
22 authority in any expense. When such work is done for the
23 state and the contract is for \$100,000 or less, no payment and
24 performance bond shall be required. At the discretion of the
25 official or board awarding such contract when such work is
26 done for any county, city, political subdivision, or public
27 authority, any person entering into such a contract which is
28 for \$200,000 or less may be exempted from executing the
29 payment and performance bond. When such work is done for the
30 state, the director of the Department of Management Services
31 may delegate to state agencies the authority to exempt any

1 person entering into such a contract amounting to more than
2 \$100,000 but less than \$200,000 from executing the payment and
3 performance bond. In the event such exemption is granted, the
4 officer or officials shall not be personally liable to persons
5 suffering loss because of granting such exemption. The
6 Department of Management Services shall maintain information
7 on the number of requests by state agencies for delegation of
8 authority to waive the bond requirements by agency and project
9 number and whether any request for delegation was denied and
10 the justification for the denial.

11 (2) A claimant, except a laborer, who is not in
12 privity with the contractor shall, before commencing or not
13 later than 45 days after commencing ~~within 45 days after~~
14 ~~beginning~~ to furnish labor, materials, or supplies for the
15 prosecution of the work, furnish the contractor with a notice
16 that he or she intends to look to the bond for protection. A
17 claimant who is not in privity with the contractor and who has
18 not received payment for his or her labor, materials, or
19 supplies shall, ~~within 90 days after performance of the labor~~
20 ~~or after complete delivery of the materials or supplies or,~~
21 ~~with respect to rental equipment, within 90 days after the~~
22 ~~date that the rental equipment was last on the job site~~
23 ~~available for use,~~ deliver to the contractor and to the surety
24 written notice of the performance of the labor or delivery of
25 the materials or supplies and of the nonpayment. The notice
26 of nonpayment may be served at any time during the progress of
27 the work or thereafter but not later than 90 days after the
28 final furnishing of the labor, services, or materials by the
29 claimant or, with respect to rental equipment, not later than
30 90 days after the date that the rental equipment was last on
31 the job site available for use. No action for the labor,

1 materials, or supplies may be instituted against the
2 contractor or the surety unless both notices have been given.
3 No action shall be instituted against the contractor or the
4 surety on the payment bond or the payment provisions of a
5 combined payment and performance bond after 1 year from the
6 performance of the labor or completion of delivery of the
7 materials or supplies. A claimant may not waive in advance
8 his or her right to bring an action under the bond against the
9 surety. In any action brought to enforce a claim against a
10 payment bond under this section, the prevailing party is
11 entitled to recover a reasonable fee for the services of his
12 or her attorney for trial and appeal or for arbitration, in an
13 amount to be determined by the court, which fee must be taxed
14 as part of the prevailing party's costs, as allowed in
15 equitable actions.

16 Section 2. Paragraphs (b) and (d) of subsection (2) of
17 section 713.06, Florida Statutes, 1996 Supplement, are amended
18 to read:

19 713.06 Liens of persons not in privity; proper
20 payments.--

21 (2)

22 (b) If the owner, in his notice of commencement, has
23 designated a person in addition to himself to receive a copy
24 of such lienor's notice, as provided in s. 713.13(1)(b), the
25 lienor shall serve ~~mail~~ a copy of his notice on ~~to~~ the person
26 so designated. The failure by the lienor to serve ~~mail~~ such
27 copy, however, does not invalidate an otherwise valid lien.

28 (d) A notice to an owner served on a lender must be in
29 writing, must be served in accordance with s. 713.18, and
30 shall be addressed ~~and delivered to the lender by certified~~
31 ~~mail, return receipt requested,~~ to the persons designated, if

1 any, and to the place and address designated in the notice of
2 commencement. Any lender who, after receiving a notice
3 provided under this subsection, pays a contractor on behalf of
4 the owner for an improvement shall make proper payments as
5 provided in paragraph (3)(c) as to each such notice received
6 by the lender. The failure of a lender to comply with this
7 paragraph renders the lender liable to the owner for all
8 damages sustained by the owner as a result of that failure.
9 This paragraph does not give any person other than an owner a
10 claim or right of action against a lender for the failure of
11 the lender to comply with this paragraph. Further, this
12 paragraph does not prohibit a lender from disbursing
13 construction funds at any time directly to the owner, in which
14 event the lender has no obligation to make proper payments
15 under this paragraph.

16 Section 3. Subsection (3) of section 713.132, Florida
17 Statutes, is amended to read:

18 713.132 Notice of termination.--

19 (3) An owner may not record a notice of termination
20 except after completion of construction, ~~or after construction~~
21 ~~ceases before completion and all lienors have been paid in~~
22 ~~full or pro rata in accordance with s. 713.06(4)~~. If an owner
23 or a contractor, by fraud or collusion, knowingly makes any
24 fraudulent statement or affidavit in a notice of termination
25 or any accompanying affidavit, the owner and the contractor,
26 or either of them, as the case may be, is liable to any lienor
27 who suffers damages as a result of the filing of the
28 fraudulent notice of termination; and any such lienor has a
29 right of action for damages occasioned thereby.

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1 Section 4. Paragraph (d) of subsection (1) of section
2 713.135, Florida Statutes, 1996 Supplement, is amended to
3 read:

4 713.135 Notice of commencement and applicability of
5 lien.--

6 (1) When any person applies for a building permit, the
7 authority issuing such permit shall:

8 (d) Furnish to the applicant two or more copies of a
9 form of notice of commencement conforming with s. 713.13.
10 Each ~~The~~ applicant who has a direct contract with the owner in
11 an amount greater than \$2,500 shall file with the issuing
12 authority prior to the first inspection either a certified
13 copy of the recorded notice of commencement or a notarized
14 statement that the notice of commencement has been filed for
15 recording, along with a copy thereof. In the absence of the
16 filing of a certified copy of the recorded notice of
17 commencement, the issuing authority shall not perform or
18 approve subsequent inspections until the applicant files by
19 mail, facsimile, hand delivery, or any other means such
20 certified copy with the issuing authority. Nothing herein
21 shall be interpreted as requiring or encouraging the recording
22 of a notice of commencement prior to the issuance of a
23 building permit.

24 Section 5. This act shall take effect October 1, 1997.
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HOUSE SUMMARY

Provides, with respect to the bond of a contractor constructing public buildings, that the claimant against the contractor may include unpaid finance charges due under the claimant's contract in a claim against the contractor. Revises language with respect to the time period to notify the contractor that a person intends to look to the bond for protection.

Revises language with respect to liens to:

- 1. Provide for service, rather than mailing, of certain copies of the notice of commencement.
- 2. Provide for service of the notice to owner.
- 3. Provide that an owner may not record a notice of termination except after completion of construction.

See bill for details.