

By the Committee on Real Property & Probate and  
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; providing  
10          forms for waiver of rights to claim against the  
11          bond for progress payments and final payments;  
12          amending s. 713.06, F.S.; providing for service  
13          of notice of commencement rather than mailing  
14          with respect to liens of persons not in  
15          privity; amending s. 713.132, F.S.; providing  
16          that a notice of termination is effective under  
17          certain circumstances; amending s. 713.135,  
18          F.S.; providing that certain applicants for a  
19          building permit must file certain information  
20          with respect to the notice of commencement;  
21          providing an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. Paragraph (a) of subsection (1) and  
26           subsection (2) of section 255.05, Florida Statutes, are  
27           amended to read:

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

30           (1)(a) Any person entering into a formal contract with  
31           the state or any county, city, or political subdivision

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

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

12 (2)(a) A claimant, except a laborer, who is not in  
13 privity with the contractor shall, before commencing or not  
14 later than 45 days after commencing ~~within 45 days after~~  
15 ~~beginning~~ to furnish labor, materials, or supplies for the  
16 prosecution of the work, furnish the contractor with a notice  
17 that he or she intends to look to the bond for protection. A  
18 claimant who is not in privity with the contractor and who has  
19 not received payment for his or her labor, materials, or  
20 supplies shall, ~~within 90 days after performance of the labor~~  
21 ~~or after complete delivery of the materials or supplies or,~~  
22 ~~with respect to rental equipment, within 90 days after the~~  
23 ~~date that the rental equipment was last on the job site~~  
24 ~~available for use,~~ deliver to the contractor and to the surety  
25 written notice of the performance of the labor or delivery of  
26 the materials or supplies and of the nonpayment. The notice of  
27 nonpayment may be served at any time during the progress of  
28 the work or thereafter but not later than 90 days after the  
29 final furnishing of the labor, services, or materials by the  
30 claimant or, with respect to rental equipment, not later than  
31 90 days after the date that the rental equipment was last on

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

17 (b) When a person is required to execute a waiver of  
18 his or her right to make a claim against the payment bond in  
19 exchange for, or to induce payment of, a progress payment, the  
20 waiver may be in substantially the following form:

21 WAIVER OF RIGHT TO CLAIM

22 AGAINST THE PAYMENT BOND (PROGRESS PAYMENT)

23 The undersigned, in consideration of the sum of \$....,  
24 hereby waives its right to claim against the payment bond for  
25 labor, services, or materials furnished through ...(insert  
26 date)... to ...(insert the name of your customer)... on the  
27 job of ...(insert the name of the owner)..., for improvements  
28 to the following described project:

29 (description of project)

30 This waiver does not cover any retention or labor, services,  
31 or materials furnished after the date specified.



1           713.06 Liens of persons not in privity; proper  
2 payments.--

3           (2)

4           (b) If the owner, in his notice of commencement, has  
5 designated a person in addition to himself to receive a copy  
6 of such lienor's notice, as provided in s. 713.13(1)(b), the  
7 lienor shall serve ~~mail~~ a copy of his notice on ~~to~~ the person  
8 so designated. The failure by the lienor to serve ~~mail~~ such  
9 copy, however, does not invalidate an otherwise valid lien.

10           (d) A notice to an owner served on a lender must be in  
11 writing, must be served in accordance with s. 713.18, and  
12 shall be addressed ~~and delivered to the lender by certified~~  
13 ~~mail, return receipt requested,~~ to the persons designated, if  
14 any, and to the place and address designated in the notice of  
15 commencement. Any lender who, after receiving a notice  
16 provided under this subsection, pays a contractor on behalf of  
17 the owner for an improvement shall make proper payments as  
18 provided in paragraph (3)(c) as to each such notice received  
19 by the lender. The failure of a lender to comply with this  
20 paragraph renders the lender liable to the owner for all  
21 damages sustained by the owner as a result of that failure.  
22 This paragraph does not give any person other than an owner a  
23 claim or right of action against a lender for the failure of  
24 the lender to comply with this paragraph. Further, this  
25 paragraph does not prohibit a lender from disbursing  
26 construction funds at any time directly to the owner, in which  
27 event the lender has no obligation to make proper payments  
28 under this paragraph.

29           Section 3. Subsection (4) of section 713.132, Florida  
30 Statutes, is amended to read:

31           713.132 Notice of termination.--

1           (4) A notice of termination is effective to terminate  
2 the notice of commencement at the later of 30 days after  
3 recording of the notice of termination or the date stated in  
4 the notice of termination as the date on which the notice of  
5 commencement is terminated, provided that the notice of  
6 termination has been served pursuant to subsection (1)(f) on  
7 the contractor and on each lienor who has given notice.

8           Section 4. Paragraph (d) of subsection (1) of section  
9 713.135, Florida Statutes, 1996 Supplement, is amended to  
10 read:

11           713.135 Notice of commencement and applicability of  
12 lien.--

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

15           (d) Furnish to the applicant two or more copies of a  
16 form of notice of commencement conforming with s. 713.13. If  
17 the direct contract is greater than \$2,500, the applicant  
18 shall file with the issuing authority prior to the first  
19 inspection either a certified copy of the recorded notice of  
20 commencement or a notarized statement that the notice of  
21 commencement has been filed for recording, along with a copy  
22 thereof. In the absence of the filing of a certified copy of  
23 the recorded notice of commencement, the issuing authority  
24 shall not perform or approve subsequent inspections until the  
25 applicant files by mail, facsimile, hand delivery, or any  
26 other means such certified copy with the issuing authority.  
27 Nothing herein shall be interpreted as requiring or  
28 encouraging the recording of a notice of commencement prior to  
29 the issuance of a building permit. If a local government  
30 requires a separate permit or inspection for installation of  
31 temporary electrical service or other temporary utility

1 service, land clearing, or other preliminary site work, such  
2 permits may be issued and such inspections may be conducted  
3 without providing the issuing authority with a certified copy  
4 of a recorded notice of commencement or a notarized statement  
5 regarding a recorded notice of commencement.

6           Section 5. This act shall take effect October 1, 1997.  
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