

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 amending s. 713.20, F.S.; allowing an owner to
22 withhold certain amounts from payments to
23 contractors in certain situations; providing an
24 effective date.

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

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28 Section 1. Paragraph (a) of subsection (1) and
29 subsection (2) of section 255.05, Florida Statutes, are
30 amended to read:

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1 255.05 Bond of contractor constructing public
2 buildings; form; action by materialmen.--

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

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

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

1 the work or thereafter but not before 45 days after the first
 2 furnishing of labor, services, or materials, and not later
 3 than 90 days after the final furnishing of the labor,
 4 services, or materials by the claimant or, with respect to
 5 rental equipment, not later than 90 days after the date that
 6 the rental equipment was last on the job site available for
 7 use.No action for the labor, materials, or supplies may be
 8 instituted against the contractor or the surety unless both
 9 notices have been given. No action shall be instituted
 10 against the contractor or the surety on the payment bond or
 11 the payment provisions of a combined payment and performance
 12 bond after 1 year from the performance of the labor or
 13 completion of delivery of the materials or supplies. A
 14 claimant may not waive in advance his or her right to bring an
 15 action under the bond against the surety. In any action
 16 brought to enforce a claim against a payment bond under this
 17 section, the prevailing party is entitled to recover a
 18 reasonable fee for the services of his or her attorney for
 19 trial and appeal or for arbitration, in an amount to be
 20 determined by the court, which fee must be taxed as part of
 21 the prevailing party's costs, as allowed in equitable actions.

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

26 WAIVER OF RIGHT TO CLAIM

27 AGAINST THE PAYMENT BOND (PROGRESS PAYMENT)

28 The undersigned, in consideration of the sum of \$....,
 29 hereby waives its right to claim against the payment bond for
 30 labor, services, or materials furnished through ...(insert
 31 date)... to ...(insert the name of your customer)... on the

1 job of ...(insert the name of the owner)..., for improvements
2 to the following described project:

3 (description of project)

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

6 DATED ON, 19....

7 ...(Claimant)...

8 By:.....

9 (c) When a person is required to execute a waiver of
10 his or her right to make a claim against the payment bond, in
11 exchange for, or to induce payment of, the final payment, the
12 waiver may be in substantially the following form:

13 WAIVER OF RIGHT TO CLAIM

14 AGAINST THE PAYMENT BOND (FINAL PAYMENT)

15 The undersigned, in consideration of the final payment
16 in the amount of \$...., hereby waives its right to claim
17 against the payment bond for labor, services, or materials
18 furnished to ...(insert the name of your customer)... on the
19 job of ...(insert the name of the owner)..., for improvements
20 to the following described project:

21 (description of project)

22 DATED ON, 19....

23 ...(Claimant)...

24 By:.....

25 (d) A person may not require a claimant to furnish a
26 waiver that is different from the forms in paragraphs (b) and
27 (c) of this subsection.

28 (e) A claimant who executes a waiver in exchange for a
29 check may condition the waiver on payment of the check.

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1 (f) A waiver that is not substantially similar to the
2 forms in this subsection is enforceable in accordance with its
3 terms.

4 Section 2. Paragraphs (b) and (d) of subsection (2) of
5 section 713.06, Florida Statutes, 1996 Supplement, are amended
6 to read:

7 713.06 Liens of persons not in privity; proper
8 payments.--

9 (2)

10 (b) If the owner, in his notice of commencement, has
11 designated a person in addition to himself to receive a copy
12 of such lienor's notice, as provided in s. 713.13(1)(b), the
13 lienor shall serve ~~mail~~ a copy of his notice on ~~to~~ the person
14 so designated. The failure by the lienor to serve ~~mail~~ such
15 copy, however, does not invalidate an otherwise valid lien.

16 (d) A notice to an owner served on a lender must be in
17 writing, must be served in accordance with s. 713.18, and
18 shall be addressed ~~and delivered to the lender by certified~~
19 ~~mail, return receipt requested,~~ to the persons designated, if
20 any, and to the place and address designated in the notice of
21 commencement. Any lender who, after receiving a notice
22 provided under this subsection, pays a contractor on behalf of
23 the owner for an improvement shall make proper payments as
24 provided in paragraph (3)(c) as to each such notice received
25 by the lender. The failure of a lender to comply with this
26 paragraph renders the lender liable to the owner for all
27 damages sustained by the owner as a result of that failure.
28 This paragraph does not give any person other than an owner a
29 claim or right of action against a lender for the failure of
30 the lender to comply with this paragraph. Further, this
31 paragraph does not prohibit a lender from disbursing

1 construction funds at any time directly to the owner, in which
2 event the lender has no obligation to make proper payments
3 under this paragraph.

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

6 713.132 Notice of termination.--

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

14 Section 4. Paragraph (d) of subsection (1) of section
15 713.135, Florida Statutes, 1996 Supplement, is amended to
16 read:

17 713.135 Notice of commencement and applicability of
18 lien.--

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

21 (d) Furnish to the applicant two or more copies of a
22 form of notice of commencement conforming with s. 713.13. If
23 the direct contract is greater than \$2,500, the applicant
24 shall file with the issuing authority prior to the first
25 inspection either a certified copy of the recorded notice of
26 commencement or a notarized statement that the notice of
27 commencement has been filed for recording, along with a copy
28 thereof. In the absence of the filing of a certified copy of
29 the recorded notice of commencement, the issuing authority
30 shall not perform or approve subsequent inspections until the
31 applicant files by mail, facsimile, hand delivery, or any

1 other means such certified copy with the issuing authority.
2 Nothing herein shall be interpreted as requiring or
3 encouraging the recording of a notice of commencement prior to
4 the issuance of a building permit. If a local government
5 requires a separate permit or inspection for installation of
6 temporary electrical service or other temporary utility
7 service, land clearing, or other preliminary site work, such
8 permits may be issued and such inspections may be conducted
9 without providing the issuing authority with a certified copy
10 of a recorded notice of commencement or a notarized statement
11 regarding a recorded notice of commencement.

12 Section 5. Subsections (6) and (7) of section 713.20,
13 Florida Statutes, 1996 Supplement, are amended to read:

14 713.20 Waiver or release of liens.--

15 (6) A person may not require a lienor to furnish a
16 lien waiver or release of lien that is different from the
17 forms in subsection (4) or subsection (5).

18 (7) A lienor who executes a lien waiver and release in
19 exchange for a check may condition the waiver and release on
20 payment of the check. However, in the absence of a payment
21 bond protecting the owner, the owner may withhold from any
22 payment to the contractor the amount of any such unpaid check
23 until any such condition is satisfied.

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