

By Senator Webster

12-418D-99

1 A bill to be entitled
2 An act relating to construction liens and
3 bonds; amending s. 255.05, F.S., relating to
4 payment bonds of contractors constructing
5 public buildings; providing that the time
6 periods required for providing certain notices
7 or bringing certain actions are not determined
8 by the issuance of a certificate of occupancy
9 or a certificate of substantial completion;
10 amending s. 713.01, F.S.; redefining the term
11 "lienor" for purposes of chapter 713, F.S.;
12 amending s. 713.06, F.S.; clarifying certain
13 notice requirements with respect to perfecting
14 a lien for labor, services, or materials
15 furnished under contract; amending s. 713.08,
16 F.S.; providing that the time period required
17 for recording a claim of lien is not determined
18 by the issuance of a certificate of occupancy
19 or a certificate of substantial completion;
20 amending s. 713.135, F.S.; clarifying
21 circumstances under which an entity issuing a
22 building permit is subject to disciplinary
23 procedures; amending s. 468.621, F.S.;
24 providing for disciplinary action against
25 building code administrators and inspectors who
26 fail to enforce specified notice requirements;
27 amending s. 713.18, F.S., relating to service
28 of notices and other instruments; providing for
29 overnight delivery or second-day delivery under
30 certain circumstances; amending s. 713.23,
31 F.S.; providing that the time periods required

1 for serving a notice of nonpayment or bringing
2 certain actions are not determined by the
3 issuance of a certificate of occupancy or a
4 certificate of substantial completion;
5 providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Paragraph (a) of subsection (2) of section
10 255.05, Florida Statutes, 1998 Supplement, is amended to read:

11 255.05 Bond of contractor constructing public
12 buildings; form; action by materialmen.--

13 (2)(a)1. If a claimant is no longer furnishing labor,
14 services, or materials on a project, a contractor or the
15 contractor's agent or attorney may elect to shorten the
16 prescribed time in this paragraph within which an action to
17 enforce any claim against a payment bond provided pursuant to
18 this section may be commenced by recording in the clerk's
19 office a notice in substantially the following form:
20

21 NOTICE OF CONTEST OF CLAIM
22 AGAINST PAYMENT BOND
23

24
25 To: ...(Name and address of claimant)...

26 You are notified that the undersigned contests your
27 notice of nonpayment, dated,, and served
28 on the undersigned on,, and that the
29 time within which you may file suit to enforce your claim is
30 limited to 60 days after the date of service of this notice.
31

1 DATED on,

2
3

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

5
6

7 The claim of any claimant upon whom such notice is served and
8 who fails to institute a suit to enforce his or her claim
9 against the payment bond within 60 days after service of such
10 notice shall be extinguished automatically. The clerk shall
11 mail a copy of the notice of contest to the claimant at the
12 address shown in the notice of nonpayment or most recent
13 amendment thereto and shall certify to such service on the
14 face of such notice and record the notice. Service is complete
15 upon mailing.

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

1 90 days after the date that the rental equipment was last on
2 the job site available for use. No action for the labor,
3 materials, or supplies may be instituted against the
4 contractor or the surety unless both notices have been given.
5 An action, except for an action exclusively for recovery of
6 retainage, must be instituted against the contractor or the
7 surety on the payment bond or the payment provisions of a
8 combined payment and performance bond within 1 year after the
9 performance of the labor or completion of delivery of the
10 materials or supplies. An action exclusively for recovery of
11 retainage must be instituted against the contractor or the
12 surety within 1 year after the performance of the labor or
13 completion of delivery of the materials or supplies, or within
14 90 days after the contractor's receipt of final payment (or
15 the payment estimate containing the owner's final
16 reconciliation of quantities if no further payment is earned
17 and due as a result of deductive adjustments) by the
18 contractor or surety, whichever comes last. A claimant may not
19 waive in advance his or her right to bring an action under the
20 bond against the surety. In any action brought to enforce a
21 claim against a payment bond under this section, the
22 prevailing party is entitled to recover a reasonable fee for
23 the services of his or her attorney for trial and appeal or
24 for arbitration, in an amount to be determined by the court,
25 which fee must be taxed as part of the prevailing party's
26 costs, as allowed in equitable actions. The time periods for
27 service of a notice of nonpayment or for bringing an action
28 against a contractor or a surety may not be determined by the
29 issuance of a certificate of occupancy or the issuance of a
30 certificate of substantial completion.
31

1 Section 2. Subsection (16) of section 713.01, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 713.01 Definitions.--As used in this part, the term:

4 (16) "Lienor" means a person who is:

5 (a) A contractor;

6 (b) A subcontractor;

7 (c) A sub-subcontractor;

8 (d) A laborer;

9 (e) A materialman ~~who contracts with the owner, a~~
10 ~~contractor, a subcontractor, or a sub-subcontractor; or~~

11 (f) A professional lienor under s. 713.03;

12

13 and who has a lien or prospective lien upon real property
14 under this part, and includes his or her successor in
15 interest. No other person may have a lien under this part.

16 Section 3. Subsection (2) of section 713.06, Florida
17 Statutes, 1998 Supplement, is amended to read:

18 713.06 Liens of persons not in privity; proper
19 payments.--

20 (2)(a) All lienors under this section, except
21 laborers, as a prerequisite to perfecting a lien under this
22 chapter and recording a claim of lien, must serve a notice on
23 the owner setting forth the lienor's name and address, a
24 description sufficient for identification of the real
25 property, and the nature of the services or materials
26 furnished or to be furnished. A sub-subcontractor or a
27 materialman to a subcontractor must serve a copy of the notice
28 on the contractor as a prerequisite to perfecting a lien under
29 this chapter and recording a claim of lien. A materialman to a
30 sub-subcontractor must serve a copy of the notice to owner on
31 the contractor as a prerequisite to perfecting a lien under

1 this chapter and recording a claim of lien. A materialman to a
2 sub-subcontractor shall serve the notice to owner on the
3 subcontractor if the materialman knows the name and address of
4 the subcontractor. The notice must be served before
5 commencing, or not later than 45 days after commencing, to
6 furnish his or her labor, services, or materials, but, in any
7 event, before the date of the owner's disbursement of the
8 final payment after the contractor has furnished the affidavit
9 under subparagraph (3)(d)1. The notice must be served
10 regardless of the method of payments by the owner, whether
11 proper or improper, and does not give to the lienor serving
12 the notice any priority over other lienors in the same
13 category; and the failure to serve the notice, or to timely
14 serve it, is a complete defense to enforcement of a lien by
15 any person. The serving of the notice does not dispense with
16 recording the claim of lien. The notice is not a lien, cloud,
17 or encumbrance on the real property nor actual or constructive
18 notice of any of them.

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

26 (c) The notice may ~~must~~ be in substantially the
27 following form and must contain the information and the
28 warning contained in the following form:
29
30
31

1 WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
2 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY
3 AND YOUR PAYING TWICE.

4
5 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
6 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

7
8 NOTICE TO OWNER

9
10 To ...(Owner's name and address)...

11
12 The undersigned hereby informs you that he or she has
13 furnished or is furnishing services or materials as follows:
14 ...(General description of services or materials)... for the
15 improvement of the real property identified as ...(property
16 description)... under an order given by.....

17
18 Florida law prescribes the serving of this notice and
19 restricts your right to make payments under your contract in
20 accordance with Section 713.06, Florida Statutes.

21
22 IMPORTANT INFORMATION FOR
23 YOUR PROTECTION

24
25 Under Florida's laws, those who work on your property
26 or provide materials and are not paid have a right to enforce
27 their claim for payment against your property. This claim is
28 known as a construction lien.

29 If your contractor fails to pay subcontractors or
30 material suppliers or neglects to make other legally required
31 payments, the people who are owed money may look to your

1 property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
2 FULL.

3
4 PROTECT YOURSELF:

5 --RECOGNIZE that this Notice to Owner may result in a
6 lien against your property unless all those supplying a Notice
7 to Owner have been paid.

8 --LEARN more about the Construction Lien Law, Chapter
9 713, Part I, Florida Statutes, and the meaning of this notice
10 by contacting an attorney or the Florida Department of
11 Business and Professional Regulation.

12 ... (Lienor's Signature)...

13 ... (Lienor's Name)...

14 ... (Lienor's Address)...

15
16 Copies to: ... (Those persons listed in Section 713.06(2)(a)
17 and (b), Florida Statutes)...

18
19 The notice may differ in format from the form set forth in
20 this paragraph and may contain additional information. The
21 form may be combined with a notice to contractor given under
22 s. 713.23 or s. 255.05, and, if so, may be entitled "NOTICE TO
23 OWNER/NOTICE TO CONTRACTOR."

24 (d) A notice to an owner served on a lender must be in
25 writing, must be served in accordance with s. 713.18, and
26 shall be addressed to the persons designated, if any, and to
27 the place and address designated in the notice of
28 commencement. Any lender who, after receiving a notice
29 provided under this subsection, pays a contractor on behalf of
30 the owner for an improvement shall make proper payments as
31 provided in paragraph (3)(c) as to each such notice received

1 by the lender. The failure of a lender to comply with this
2 paragraph renders the lender liable to the owner for all
3 damages sustained by the owner as a result of that failure.
4 This paragraph does not give any person other than an owner a
5 claim or right of action against a lender for the failure of
6 the lender to comply with this paragraph. Further, this
7 paragraph does not prohibit a lender from disbursing
8 construction funds at any time directly to the owner, in which
9 event the lender has no obligation to make proper payments
10 under this paragraph.

11 (e) A lienor, in the absence of a recorded notice of
12 commencement, may rely on the information contained in the
13 building permit application to serve the notice prescribed in
14 paragraphs (a), (b), and (c).

15 (f) If a lienor has substantially complied with the
16 provisions of paragraphs (a), (b), and (c), errors or
17 omissions do not prevent the enforcement of a claim against a
18 person who has not been adversely affected by such omission or
19 error. However, a lienor must strictly comply with the time
20 requirements of paragraph (a).

21 Section 4. Subsection (5) of section 713.08, Florida
22 Statutes, 1998 Supplement, is amended to read:

23 713.08 Claim of lien.--

24 (5) The claim of lien may be recorded at any time
25 during the progress of the work or thereafter but not later
26 than 90 days after the final furnishing of the labor or
27 services or materials by the lienor; or, with respect to
28 rental equipment, within 90 days after the date that the
29 rental equipment was last on the job site available for use;
30 provided if the original contractor defaults or the contract
31 is terminated under s. 713.07(4), no claim for a lien

1 attaching prior to such default shall be recorded after 90
2 days from the date of such default or 90 days after the final
3 performance of labor or services or furnishing of materials,
4 whichever occurs first. The time period for recording a claim
5 of lien may not be determined by the issuance of a certificate
6 of occupancy or the issuance of a certificate of substantial
7 completion.The claim of lien shall be recorded in the clerk's
8 office. If such real property is situated in two or more
9 counties, the claim of lien shall be recorded in the clerk's
10 office in each of such counties. The recording of the claim
11 of lien shall be constructive notice to all persons of the
12 contents and effect of such claim. The validity of the lien
13 and the right to record a claim therefor shall not be affected
14 by the insolvency, bankruptcy, or death of the owner before
15 the claim of lien is recorded.

16 Section 5. Subsections (1) and (4) of section 713.135,
17 Florida Statutes, 1998 Supplement, are amended to read:

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

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

22 (a) Print on the face of each permit card in no less
23 than 18-point, capitalized, boldfaced type: "WARNING TO
24 OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY
25 RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.
26 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR
27 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

28 (b) Provide the applicant and the owner of the real
29 property upon which improvements are to be constructed with a
30 printed statement stating that the right, title, and interest
31 of the person who has contracted for the improvement may be

1 subject to attachment under the Construction Lien Law. The
2 Department of Business and Professional Regulation shall
3 furnish, for distribution, the statement described in this
4 paragraph, and the statement must be a summary of the
5 Construction Lien Law and must include an explanation of the
6 provisions of the Construction Lien Law relating to the
7 recording, and the posting of copies, of notices of
8 commencement and a statement encouraging the owner to record a
9 notice of commencement and post a copy of the notice of
10 commencement ~~thereof~~ in accordance with s. 713.13. However,
11 the failure by the authorities to provide the summary does not
12 subject the issuing authority to liability.

13 (c) Inform each applicant who is not the person whose
14 right, title, and interest is subject to attachment that, as a
15 condition to the issuance of a building permit, the applicant
16 must promise in good faith that the statement will be
17 delivered to the person whose property is subject to
18 attachment.

19 (d) Furnish to the applicant two or more copies of a
20 form of notice of commencement conforming with s. 713.13. If
21 the direct contract is greater than \$2,500, the applicant
22 shall file with the issuing authority prior to the first
23 inspection either a certified copy of the recorded notice of
24 commencement or a notarized statement that the notice of
25 commencement has been filed for recording, along with a copy
26 thereof. In the absence of the filing of a certified copy of
27 the recorded notice of commencement, the issuing authority
28 shall not perform or approve subsequent inspections until the
29 applicant files by mail, facsimile, hand delivery, or any
30 other means such certified copy with the issuing authority.
31 This subsection does not require ~~Nothing herein shall be~~

1 ~~interpreted as requiring or encouraging~~ the recording of a
2 notice of commencement prior to the issuance of a building
3 permit. If a local government requires a separate permit or
4 inspection for installation of temporary electrical service or
5 other temporary utility service, land clearing, or other
6 preliminary site work, such permits may be issued and such
7 inspections may be conducted without providing the issuing
8 authority with a certified copy of a recorded notice of
9 commencement or a notarized statement regarding a recorded
10 notice of commencement.

11 (4) An issuing authority under subsection (1) is not
12 liable in any civil action for the failure to verify that a
13 certified copy of the recorded notice of commencement has been
14 filed in accordance with this section. If an issuing authority
15 fails to obtain a certified copy of the recorded notice of
16 commencement in accordance with paragraph (1)(d), the building
17 code administrator or building official is in violation of s.
18 468.621(1)(g) and is subject to discipline in accordance with
19 s. 468.621(2). Any lienor may file a complaint against the
20 building code administrator or building official for a
21 violation of paragraph (1)(d).

22 Section 6. Paragraph (h) is added to subsection (1) of
23 section 468.621, Florida Statutes, 1998 Supplement, to read:

24 468.621 Disciplinary proceedings.--

25 (1) The following acts constitute grounds for which
26 the disciplinary actions in subsection (2) may be taken:

27 (h) The failure to enforce the notice of commencement
28 requirements set forth in section 713.135(1).

29 Section 7. Effective January 1, 2001, paragraph (h) of
30 subsection (1) of section 468.621, Florida Statutes, as added

31

1 by section 9 of chapter 98-287, Laws of Florida, is
2 redesignated as paragraph (i) of that subsection.

3 Section 8. Section 713.18, Florida Statutes, 1998
4 Supplement, is amended to read:

5 713.18 Manner of serving notices and other
6 instruments.--

7 (1) Service of notices, claims of lien, affidavits,
8 assignments, and other instruments permitted or required under
9 this part, or copies thereof when so permitted or required,
10 unless otherwise specifically provided in this part, must be
11 made by one of the following methods:

12 (a) By actual delivery to the person to be served; or,
13 if a partnership, to one of the partners; or, if a
14 corporation, to an officer, director, managing agent, or
15 business agent thereof.

16 (b) By mailing the same, postage prepaid, by
17 registered or certified mail to the person to be served at her
18 or his last known address and evidence of delivery. If a
19 notice to owner, a preliminary notice under s. 713.23, or a
20 preliminary notice under s. 255.05 is mailed pursuant to this
21 paragraph within 40 days after the date the lienor first
22 furnishes labor, services, or materials, service of that
23 notice is effective as of the date of mailing if the person
24 who served the notice maintains a registered or certified mail
25 log that shows the date the notice was served, the registered
26 or certified mail number issued by the United States Postal
27 Service, the name and address of the person served, and the
28 date stamp of the United States Postal Service confirming the
29 date of mailing. If an instrument served pursuant to this
30 paragraph to the last address shown in the notice of
31 commencement or any amendment thereto or, in the absence of a

1 notice of commencement, to the last address shown in the
2 building permit application is not received, but is returned
3 by the United States Postal Service as being "refused,"
4 "moved, not forwardable," or "unclaimed," or is otherwise not
5 delivered or deliverable through no fault of the person
6 serving the item, then service is effective as of the date of
7 mailing.

8 (c) By overnight delivery or second-day delivery using
9 a delivery service that maintains, in the ordinary course of
10 business, records that specify when and where delivery was
11 made.

12 (d)~~(c)~~ If none ~~neither~~ of the foregoing methods can be
13 accomplished, by posting on the premises.

14 (2) If the real property is owned by more than one
15 person, a lienor may serve any notices or other papers under
16 this part on any one of such owners, and such notice is deemed
17 notice to all owners.

18 (3) Service of notices or copies thereof, permitted or
19 required under this part, may be made by facsimile
20 transmission when the person being served has listed that
21 person's facsimile phone number in the Notice of Commencement.
22 The lienor's facsimile confirmation sheet with the correct
23 facsimile phone number shall be proof of the date and time the
24 notice was served.

25 Section 9. Paragraphs (d) and (e) of subsection (1) of
26 section 713.23, Florida Statutes, 1998 Supplement, are amended
27 to read:

28 713.23 Payment bond.--

29 (1)

30 (d) In addition, a lienor is required, as a condition
31 precedent to recovery under the bond, to serve a written

1 notice of nonpayment to the contractor and the surety not
2 later than 90 days after the final furnishing of labor,
3 services, or materials by the lienor. A written notice
4 satisfies this condition precedent with respect to the payment
5 described in the notice of nonpayment and with respect to any
6 other payments which become due to the lienor after the date
7 of the notice of nonpayment. The time period for serving a
8 written notice of nonpayment may not be determined by the
9 issuance of a certificate of occupancy or the issuance of a
10 certificate of substantial completion.The failure of a lienor
11 to receive retainage sums not in excess of 10 percent of the
12 value of labor, services, or materials furnished by the lienor
13 is not considered a nonpayment requiring the service of the
14 notice provided under this paragraph. The notice under this
15 paragraph may be in substantially the following form:

16
17 NOTICE OF NONPAYMENT

18
19 To ...(name of contractor and address)...

20
21 ...(name of surety and address)...

22
23 The undersigned notifies you that he or she has furnished
24 ...(describe labor, services, or materials)... for the
25 improvement of the real property identified as ...(property
26 description).... The amount now due and unpaid is \$.....

27
28 ...(signature and address of lienor)...

29
30 (e) No action for the labor or materials or supplies
31 may be instituted or prosecuted against the contractor or

1 surety unless both notices have been given. No action shall
2 be instituted or prosecuted against the contractor or against
3 the surety on the bond under this section after 1 year from
4 the performance of the labor or completion of delivery of the
5 materials and supplies. The time period for bringing an action
6 against the contractor or surety on the bond may not be
7 determined by the issuance of a certificate of occupancy or
8 the issuance of a certificate of substantial completion.A
9 contractor or the contractor's agent or attorney may elect to
10 shorten the prescribed time within which an action to enforce
11 any claim against a payment bond provided pursuant to this
12 section or s. 713.245 may be commenced by recording in the
13 clerk's office a notice in substantially the following form:

14
15 NOTICE OF CONTEST OF CLAIM
16 AGAINST PAYMENT BOND
17

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

19 You are notified that the undersigned contests your
20 notice of nonpayment, dated,, and served on the
21 undersigned on,, and that the time within which you
22 may file suit to enforce your claim is limited to 60 days from
23 the date of service of this notice.

24
25 DATED on,

26
27 Signed: ...(Contractor or Attorney)...

28
29
30 The claim of any lienor upon whom such notice is served and
31 who fails to institute a suit to enforce his or her claim

1 against the payment bond within 60 days after service of such
2 notice shall be extinguished automatically. The clerk shall
3 mail a copy of the notice of contest to the lienor at the
4 address shown in the notice of nonpayment or most recent
5 amendment thereto and shall certify to such service on the
6 face of such notice and record the notice. Service is complete
7 upon mailing.

8 Section 10. This act shall take effect October 1,
9 1999.

10 *****

11 SENATE SUMMARY

12
13 Revises various provisions governing construction liens
14 and bonds. Clarifies that the time periods required for
15 providing notice, recording a claim, or bringing an
16 action are not determined by the issuance of a
17 certificate of occupancy or a certificate of substantial
18 completion. Clarifies notice requirements for perfecting
19 a lien for labor, services, or materials. Provides that
20 the authority issuing building permits is subject to
21 disciplinary procedures for failing to obtain a certified
22 copy of the notice of commencement. Provides for
23 disciplinary action against building code administrators
24 and inspectors who fail to enforce specified notice
25 requirements. Authorizes the use of overnight delivery or
26 second-day delivery for serving notices and other
27 instruments. (See bill for details.)
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