

By the Committee on Judiciary and Senator Webster

308-1837-99

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. 713.06, F.S.; clarifying certain
11 notice requirements with respect to perfecting
12 a lien for labor, services, or materials
13 furnished under contract; amending s. 713.08,
14 F.S.; providing that the time period required
15 for recording a claim of lien is not determined
16 by the issuance of a certificate of occupancy
17 or a certificate of substantial completion;
18 amending s. 713.135, F.S.; requiring the
19 issuing authority to verify certain information
20 in the notice of commencement; providing an
21 exemption for certain direct contracts for
22 repair or replacement of heating or
23 air-conditioning systems; amending s. 713.18,
24 F.S., relating to service of notices and other
25 instruments; providing for overnight delivery
26 or second-day delivery under certain
27 circumstances; amending s. 713.23, F.S.;
28 providing that the time periods required for
29 serving a notice of nonpayment or bringing
30 certain actions are not determined by the
31 issuance of a certificate of occupancy or a

1 certificate of substantial completion;
2 providing an effective date.

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

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

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

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

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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 after the date of service of this notice.

DATED on,

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

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

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

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

30 Section 2. Subsection (2) of section 713.06, Florida
31 Statutes, 1998 Supplement, is amended to read:

1 713.06 Liens of persons not in privity; proper
2 payments.--
3 (2)(a) All lienors under this section, except
4 laborers, as a prerequisite to perfecting a lien under this
5 chapter and recording a claim of lien, must serve a notice on
6 the owner setting forth the lienor's name and address, a
7 description sufficient for identification of the real
8 property, and the nature of the services or materials
9 furnished or to be furnished. A sub-subcontractor or a
10 materialman to a subcontractor must serve a copy of the notice
11 on the contractor as a prerequisite to perfecting a lien under
12 this chapter and recording a claim of lien. A materialman to a
13 sub-subcontractor must serve a copy of the notice to owner on
14 the contractor as a prerequisite to perfecting a lien under
15 this chapter and recording a claim of lien. A materialman to a
16 sub-subcontractor shall serve the notice to owner on the
17 subcontractor if the materialman knows the name and address of
18 the subcontractor. The notice must be served before
19 commencing, or not later than 45 days after commencing, to
20 furnish his or her labor, services, or materials, but, in any
21 event, before the date of the owner's disbursement of the
22 final payment after the contractor has furnished the affidavit
23 under subparagraph (3)(d)1. The notice must be served
24 regardless of the method of payments by the owner, whether
25 proper or improper, and does not give to the lienor serving
26 the notice any priority over other lienors in the same
27 category; and the failure to serve the notice, or to timely
28 serve it, is a complete defense to enforcement of a lien by
29 any person. The serving of the notice does not dispense with
30 recording the claim of lien. The notice is not a lien, cloud,
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1 or encumbrance on the real property nor actual or constructive
2 notice of any of them.

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

10 (c) The notice may ~~must~~ be in substantially the
11 following form and must contain the information and the
12 warning contained in the following form:

13
14 WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE
15 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY
16 AND YOUR PAYING TWICE.

17
18 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
19 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

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21 NOTICE TO OWNER

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23 To ...(Owner's name and address)...

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25 The undersigned hereby informs you that he or she has
26 furnished or is furnishing services or materials as follows:

27 ...(General description of services or materials)... for the
28 improvement of the real property identified as ...(property
29 description)... under an order given by.....

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1 Florida law prescribes the serving of this notice and
2 restricts your right to make payments under your contract in
3 accordance with Section 713.06, Florida Statutes.

4
5 IMPORTANT INFORMATION FOR
6 YOUR PROTECTION
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8 Under Florida's laws, those who work on your property
9 or provide materials and are not paid have a right to enforce
10 their claim for payment against your property. This claim is
11 known as a construction lien.

12 If your contractor fails to pay subcontractors or
13 material suppliers or neglects to make other legally required
14 payments, the people who are owed money may look to your
15 property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN
16 FULL.

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18 PROTECT YOURSELF:

19 --RECOGNIZE that this Notice to Owner may result in a
20 lien against your property unless all those supplying a Notice
21 to Owner have been paid.

22 --LEARN more about the Construction Lien Law, Chapter
23 713, Part I, Florida Statutes, and the meaning of this notice
24 by contacting an attorney or the Florida Department of
25 Business and Professional Regulation.

26 ...(~~Lienor's~~ Signature)...

27 ...(~~Lienor's~~ Name)...

28 ...(~~Lienor's~~ Address)...

29
30 Copies to: ...(~~Those persons listed in Section 713.06(2)(a)~~
31 and (b), Florida Statutes)...

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2 The form may be combined with a notice to contractor given
3 under s. 713.23 or s. 255.05, and, if so, may be entitled
4 "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

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

23 (e) A lienor, in the absence of a recorded notice of
24 commencement, may rely on the information contained in the
25 building permit application to serve the notice prescribed in
26 paragraphs (a), (b), and (c).

27 (f) If a lienor has substantially complied with the
28 provisions of paragraphs (a), (b), and (c), errors or
29 omissions do not prevent the enforcement of a claim against a
30 person who has not been adversely affected by such omission or
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1 error. However, a lienor must strictly comply with the time
2 requirements of paragraph (a).

3 Section 3. Subsection (5) of section 713.08, Florida
4 Statutes, 1998 Supplement, is amended to read:

5 713.08 Claim of lien.--

6 (5) The claim of lien may be recorded at any time
7 during the progress of the work or thereafter but not later
8 than 90 days after the final furnishing of the labor or
9 services or materials by the lienor; or, with respect to
10 rental equipment, within 90 days after the date that the
11 rental equipment was last on the job site available for use;
12 provided if the original contractor defaults or the contract
13 is terminated under s. 713.07(4), no claim for a lien
14 attaching prior to such default shall be recorded after 90
15 days from the date of such default or 90 days after the final
16 performance of labor or services or furnishing of materials,
17 whichever occurs first. The time period for recording a claim
18 of lien shall be measured from the last day of furnishing
19 labor, services, or materials by the lienor and may not be
20 measured by other standards, such as the issuance of a
21 certificate of occupancy or the issuance of a certificate of
22 substantial completion.The claim of lien shall be recorded in
23 the clerk's office. If such real property is situated in two
24 or more counties, the claim of lien shall be recorded in the
25 clerk's office in each of such counties. The recording of the
26 claim of lien shall be constructive notice to all persons of
27 the contents and effect of such claim. The validity of the
28 lien and the right to record a claim therefor shall not be
29 affected by the insolvency, bankruptcy, or death of the owner
30 before the claim of lien is recorded.

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

3 713.135 Notice of commencement and applicability of
4 lien.--

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

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

13 (b) Provide the applicant and the owner of the real
14 property upon which improvements are to be constructed with a
15 printed statement stating that the right, title, and interest
16 of the person who has contracted for the improvement may be
17 subject to attachment under the Construction Lien Law. The
18 Department of Business and Professional Regulation shall
19 furnish, for distribution, the statement described in this
20 paragraph, and the statement must be a summary of the
21 Construction Lien Law and must include an explanation of the
22 provisions of the Construction Lien Law relating to the
23 recording, and the posting of copies, of notices of
24 commencement and a statement encouraging the owner to record a
25 notice of commencement and post a copy of the notice of
26 commencement ~~thereof~~ in accordance with s. 713.13. However,
27 the failure by the authorities to provide the summary does not
28 subject the issuing authority to liability.

29 (c) Inform each applicant who is not the person whose
30 right, title, and interest is subject to attachment that, as a
31 condition to the issuance of a building permit, the applicant

1 must promise in good faith that the statement will be
2 delivered to the person whose property is subject to
3 attachment.

4 (d) Furnish to the applicant two or more copies of a
5 form of notice of commencement conforming with s. 713.13. If
6 the direct contract is greater than \$2,500, the applicant
7 shall file with the issuing authority prior to the first
8 inspection either a certified copy of the recorded notice of
9 commencement or a notarized statement that the notice of
10 commencement has been filed for recording, along with a copy
11 thereof. In the absence of the filing of a certified copy of
12 the recorded notice of commencement, the issuing authority
13 shall not perform or approve subsequent inspections until the
14 applicant files by mail, facsimile, hand delivery, or any
15 other means such certified copy with the issuing authority.
16 The certified copy of the notice of commencement must contain
17 the name and address of the owner, the name and address of the
18 contractor, and the location or address of the property being
19 improved. The issuing authority shall verify that this
20 information in the certified copy of the notice of
21 commencement is consistent with the same information in the
22 building permit application. The issuing authority shall
23 provide the recording information on the certified copy of the
24 recorded notice of commencement to any person upon request.
25 This subsection does not require ~~Nothing herein shall be~~
26 ~~interpreted as requiring or encouraging~~ the recording of a
27 notice of commencement prior to the issuance of a building
28 permit. If a local government requires a separate permit or
29 inspection for installation of temporary electrical service or
30 other temporary utility service, land clearing, or other
31 preliminary site work, such permits may be issued and such

1 inspections may be conducted without providing the issuing
2 authority with a certified copy of a recorded notice of
3 commencement or a notarized statement regarding a recorded
4 notice of commencement. This paragraph does not apply to a
5 direct contract to repair or replace an existing heating or
6 air-conditioning system in an amount less than \$5,000.

7 (4) An issuing authority under subsection (1) is not
8 liable in any civil action for the failure to verify that a
9 certified copy of the recorded notice of commencement has been
10 filed in accordance with this section.

11 Section 5. Section 713.18, Florida Statutes, 1998
12 Supplement, is amended to read:

13 713.18 Manner of serving notices and other
14 instruments.--

15 (1) Service of notices, claims of lien, affidavits,
16 assignments, and other instruments permitted or required under
17 this part, or copies thereof when so permitted or required,
18 unless otherwise specifically provided in this part, must be
19 made by one of the following methods:

20 (a) By actual delivery to the person to be served; or,
21 if a partnership, to one of the partners; or, if a
22 corporation, to an officer, director, managing agent, or
23 business agent thereof.

24 (b) By mailing the same, postage prepaid, by
25 registered or certified mail to the person to be served at her
26 or his last known address and evidence of delivery. If a
27 notice to owner, a preliminary notice under s. 713.23, or a
28 preliminary notice under s. 255.05 is mailed pursuant to this
29 paragraph within 40 days after the date the lienor first
30 furnishes labor, services, or materials, service of that
31 notice is effective as of the date of mailing if the person

1 who served the notice maintains a registered or certified mail
2 log that shows the date the notice was served, the registered
3 or certified mail number issued by the United States Postal
4 Service, the name and address of the person served, and the
5 date stamp of the United States Postal Service confirming the
6 date of mailing. If an instrument served pursuant to this
7 paragraph to the last address shown in the notice of
8 commencement or any amendment thereto or, in the absence of a
9 notice of commencement, to the last address shown in the
10 building permit application is not received, but is returned
11 by the United States Postal Service as being "refused,"
12 "moved, not forwardable," or "unclaimed," or is otherwise not
13 delivered or deliverable through no fault of the person
14 serving the item, then service is effective as of the date of
15 mailing.

16 (c) By overnight delivery or second-day delivery using
17 a delivery service that maintains, in the ordinary course of
18 business, records that specify when and where delivery was
19 made.

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

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

26 (3) Service of notices or copies thereof, permitted or
27 required under this part, may be made by facsimile
28 transmission when the person being served has listed that
29 person's facsimile phone number in the Notice of Commencement.
30 The lienor's facsimile confirmation sheet with the correct
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1 facsimile phone number shall be proof of the date and time the
2 notice was served.

3 Section 6. Paragraphs (d) and (e) of subsection (1) of
4 section 713.23, Florida Statutes, 1998 Supplement, are amended
5 to read:

6 713.23 Payment bond.--

7 (1)

8 (d) In addition, a lienor is required, as a condition
9 precedent to recovery under the bond, to serve a written
10 notice of nonpayment to the contractor and the surety not
11 later than 90 days after the final furnishing of labor,
12 services, or materials by the lienor. A written notice
13 satisfies this condition precedent with respect to the payment
14 described in the notice of nonpayment and with respect to any
15 other payments which become due to the lienor after the date
16 of the notice of nonpayment. The time period for serving a
17 written notice of nonpayment shall be measured from the last
18 day of furnishing labor, services, or materials by the lienor
19 and may not be measured by other standards, such as the
20 issuance of a certificate of occupancy or the issuance of a
21 certificate of substantial completion.The failure of a lienor
22 to receive retainage sums not in excess of 10 percent of the
23 value of labor, services, or materials furnished by the lienor
24 is not considered a nonpayment requiring the service of the
25 notice provided under this paragraph. The notice under this
26 paragraph may be in substantially the following form:

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28 NOTICE OF NONPAYMENT

29

30 To ...(name of contractor and address)...

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

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

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

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10 (e) No action for the labor or materials or supplies
11 may be instituted or prosecuted against the contractor or
12 surety unless both notices have been given. No action shall
13 be instituted or prosecuted against the contractor or against
14 the surety on the bond under this section after 1 year from
15 the performance of the labor or completion of delivery of the
16 materials and supplies. The time period for bringing an action
17 against the contractor or surety on the bond shall be measured
18 from the last day of furnishing labor, services, or materials
19 by the lienor and shall not be measured by other standards,
20 such as the issuance of a certificate of occupancy or the
21 issuance of a certificate of substantial completion.A

22 contractor or the contractor's agent or attorney may elect to
23 shorten the prescribed time within which an action to enforce
24 any claim against a payment bond provided pursuant to this
25 section or s. 713.245 may be commenced by recording in the
26 clerk's office a notice in substantially the following form:

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28 NOTICE OF CONTEST OF CLAIM
29 AGAINST PAYMENT BOND

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

1 You are notified that the undersigned contests your
2 notice of nonpayment, dated,, and served on the
3 undersigned on,, and that the time within which you
4 may file suit to enforce your claim is limited to 60 days from
5 the date of service of this notice.

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7 DATED on,

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

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

21 Section 7. This act shall take effect October 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1206
4 Clarifies that the statutory time periods required for
5 providing notice, recording a claim or bringing an action are
6 to be measured from the last day of furnishing labor,
7 services, or materials by the claimant or lienor (as
8 applicable).
9 Eliminates provisions relating to a new definition for
10 "lienor".
11 Eliminates provisions imposing disciplinary action against the
12 authority issuing building permits for failing to obtain a
13 certified copy of the Notice of Commencement and enforce
14 Notice of Commencement requirements.
15 Requires certain information to be included in the Notice of
16 Commencement.
17 Requires the authority issuing building permits to verify
18 information in the Notice of Commencement against information
19 in the building permit application.
20 Provides an exemption for a Notice of Commencement on certain
21 direct contracts for repair or replacement of heating or
22 air-conditioning systems.
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