

By the Committees on Commerce and Economic Opportunities;  
Judiciary; and Senator Webster

310-1964-99

1                                   A bill to be entitled  
2           An act relating to construction; amending s.  
3           468.621, F.S.; amending certain grounds for  
4           disciplinary action against building code  
5           administrators and building officials; amending  
6           s. 255.05, F.S., relating to payment bonds of  
7           contractors constructing public buildings;  
8           providing that the time periods required for  
9           providing certain notices or bringing certain  
10          actions are not determined by the issuance of a  
11          certificate of occupancy or a certificate of  
12          substantial completion; amending s. 713.06,  
13          F.S.; clarifying certain notice requirements  
14          with respect to perfecting a lien for labor,  
15          services, or materials furnished under  
16          contract; amending s. 713.08, F.S.; providing  
17          that the time period required for recording a  
18          claim of lien is not determined by the issuance  
19          of a certificate of occupancy or a certificate  
20          of substantial completion; amending s. 713.135,  
21          F.S.; requiring the issuing authority to verify  
22          certain information in the notice of  
23          commencement; providing an exemption for  
24          certain direct contracts for repair or  
25          replacement of heating or air-conditioning  
26          systems; amending s. 713.16, F.S.; defining the  
27          term "information"; specifying that the term  
28          does not affect the requirement that certain  
29          statements be given under oath; amending s.  
30          713.18, F.S., relating to service of notices  
31          and other instruments; amending s. 713.23,

1 F.S.; providing that the time periods required  
2 for serving a notice of nonpayment or bringing  
3 certain actions are not determined by the  
4 issuance of a certificate of occupancy or a  
5 certificate of substantial completion;  
6 specifying that amendments made to s. 713.16,  
7 F.S., are remedial in nature; providing for  
8 retroactive application; providing an effective  
9 date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Paragraph (a) of subsection (2) of section  
14 255.05, Florida Statutes, 1998 Supplement, is amended to read:

15 255.05 Bond of contractor constructing public  
16 buildings; form; action by materialmen.--

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

24  
25 NOTICE OF CONTEST OF CLAIM  
26 AGAINST PAYMENT BOND  
27

28  
29 To: ...(Name and address of claimant)...

30 You are notified that the undersigned contests your  
31 notice of nonpayment, dated ....., ....., and served

1 on the undersigned on ....., ....., and that the  
2 time within which you may file suit to enforce your claim is  
3 limited to 60 days after the date of service of this notice.

4

5 DATED on ....., .....

6

7

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

9

10

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

20

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

1 45 days after the first furnishing of labor, services, or  
2 materials, and not later than 90 days after the final  
3 furnishing of the labor, services, or materials by the  
4 claimant or, with respect to rental equipment, not later than  
5 90 days after the date that the rental equipment was last on  
6 the job site available for use. No action for the labor,  
7 materials, or supplies may be instituted against the  
8 contractor or the surety unless both notices have been given.  
9 Notices required or permitted under this section may be served  
10 in accordance with s. 713.18. An action, except for an action  
11 exclusively for recovery of retainage, must be instituted  
12 against the contractor or the surety on the payment bond or  
13 the payment provisions of a combined payment and performance  
14 bond within 1 year after the performance of the labor or  
15 completion of delivery of the materials or supplies. An action  
16 exclusively for recovery of retainage must be instituted  
17 against the contractor or the surety within 1 year after the  
18 performance of the labor or completion of delivery of the  
19 materials or supplies, or within 90 days after the  
20 contractor's receipt of final payment (or the payment estimate  
21 containing the owner's final reconciliation of quantities if  
22 no further payment is earned and due as a result of deductive  
23 adjustments) by the contractor or surety, whichever comes  
24 last. A claimant may not waive in advance his or her right to  
25 bring an action under the bond against the surety. In any  
26 action brought to enforce a claim against a payment bond under  
27 this section, the prevailing party is entitled to recover a  
28 reasonable fee for the services of his or her attorney for  
29 trial and appeal or for arbitration, in an amount to be  
30 determined by the court, which fee must be taxed as part of  
31 the prevailing party's costs, as allowed in equitable actions.

1 The time periods for service of a notice of nonpayment or for  
2 bringing an action against a contractor or a surety shall be  
3 measured from the last day of furnishing labor, services, or  
4 materials by the claimant and may not be measured by other  
5 standards, such as the issuance of a certificate of occupancy  
6 or the issuance of a certificate of substantial completion.

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

9 713.06 Liens of persons not in privity; proper  
10 payments.--

11 (2)(a) All lienors under this section, except  
12 laborers, as a prerequisite to perfecting a lien under this  
13 chapter and recording a claim of lien, must serve a notice on  
14 the owner setting forth the lienor's name and address, a  
15 description sufficient for identification of the real  
16 property, and the nature of the services or materials  
17 furnished or to be furnished. A sub-subcontractor or a  
18 materialman to a subcontractor must serve a copy of the notice  
19 on the contractor as a prerequisite to perfecting a lien under  
20 this chapter and recording a claim of lien. A materialman to a  
21 sub-subcontractor must serve a copy of the notice to owner on  
22 the contractor as a prerequisite to perfecting a lien under  
23 this chapter and recording a claim of lien. A materialman to a  
24 sub-subcontractor shall serve the notice to owner on the  
25 subcontractor if the materialman knows the name and address of  
26 the subcontractor. The notice must be served before  
27 commencing, or not later than 45 days after commencing, to  
28 furnish his or her labor, services, or materials, but, in any  
29 event, before the date of the owner's disbursement of the  
30 final payment after the contractor has furnished the affidavit  
31 under subparagraph (3)(d)1. The notice must be served

1 regardless of the method of payments by the owner, whether  
2 proper or improper, and does not give to the lienor serving  
3 the notice any priority over other lienors in the same  
4 category; and the failure to serve the notice, or to timely  
5 serve it, is a complete defense to enforcement of a lien by  
6 any person. The serving of the notice does not dispense with  
7 recording the claim of lien. The notice is not a lien, cloud,  
8 or encumbrance on the real property nor actual or constructive  
9 notice of any of them.

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

17 (c) The notice may ~~must~~ be in substantially the  
18 following form and must contain the information and the  
19 warning contained in the following form:

20  
21 WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE  
22 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY  
23 AND YOUR PAYING TWICE.

24  
25 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN  
26 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

27  
28 NOTICE TO OWNER

29  
30 To ... (Owner's name and address) ...

31

1 The undersigned hereby informs you that he or she has  
2 furnished or is furnishing services or materials as follows:  
3 ...(General description of services or materials)... for the  
4 improvement of the real property identified as ...(property  
5 description)... under an order given by.....

6  
7 Florida law prescribes the serving of this notice and  
8 restricts your right to make payments under your contract in  
9 accordance with Section 713.06, Florida Statutes.

10

11 IMPORTANT INFORMATION FOR  
12 YOUR PROTECTION

13

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

18 If your contractor fails to pay subcontractors or  
19 material suppliers or neglects to make other legally required  
20 payments, the people who are owed money may look to your  
21 property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN  
22 FULL.

23

24 PROTECT YOURSELF:

25 --RECOGNIZE that this Notice to Owner may result in a  
26 lien against your property unless all those supplying a Notice  
27 to Owner have been paid.

28 --LEARN more about the Construction Lien Law, Chapter  
29 713, Part I, Florida Statutes, and the meaning of this notice  
30 by contacting an attorney or the Florida Department of  
31 Business and Professional Regulation.





1 building permit application to serve the notice prescribed in  
2 paragraphs (a), (b), and (c).

3 (f) If a lienor has substantially complied with the  
4 provisions of paragraphs (a), (b), and (c), errors or  
5 omissions do not prevent the enforcement of a claim against a  
6 person who has not been adversely affected by such omission or  
7 error. However, a lienor must strictly comply with the time  
8 requirements of paragraph (a).

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

11 713.08 Claim of lien.--

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

1 claim of lien shall be constructive notice to all persons of  
2 the contents and effect of such claim. The validity of the  
3 lien and the right to record a claim therefor shall not be  
4 affected by the insolvency, bankruptcy, or death of the owner  
5 before the claim of lien is recorded.

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

8 713.135 Notice of commencement and applicability of  
9 lien.--

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

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

18 (b) Provide the applicant and the owner of the real  
19 property upon which improvements are to be constructed with a  
20 printed statement stating that the right, title, and interest  
21 of the person who has contracted for the improvement may be  
22 subject to attachment under the Construction Lien Law. The  
23 Department of Business and Professional Regulation shall  
24 furnish, for distribution, the statement described in this  
25 paragraph, and the statement must be a summary of the  
26 Construction Lien Law and must include an explanation of the  
27 provisions of the Construction Lien Law relating to the  
28 recording, and the posting of copies, of notices of  
29 commencement and a statement encouraging the owner to record a  
30 notice of commencement and post a copy of the notice of  
31 commencement ~~thereof~~ in accordance with s. 713.13. However,

1 the failure by the authorities to provide the summary does not  
2 subject the issuing authority to liability.

3 (c) Inform each applicant who is not the person whose  
4 right, title, and interest is subject to attachment that, as a  
5 condition to the issuance of a building permit, the applicant  
6 must promise in good faith that the statement will be  
7 delivered to the person whose property is subject to  
8 attachment.

9 (d) Furnish to the applicant two or more copies of a  
10 form of notice of commencement conforming with s. 713.13. If  
11 the direct contract is greater than \$2,500, the applicant  
12 shall file with the issuing authority prior to the first  
13 inspection either a certified copy of the recorded notice of  
14 commencement or a notarized statement that the notice of  
15 commencement has been filed for recording, along with a copy  
16 thereof. In the absence of the filing of a certified copy of  
17 the recorded notice of commencement, the issuing authority  
18 shall not perform or approve subsequent inspections until the  
19 applicant files by mail, facsimile, hand delivery, or any  
20 other means such certified copy with the issuing authority.  
21 The certified copy of the notice of commencement must contain  
22 the name and address of the owner, the name and address of the  
23 contractor, and the location or address of the property being  
24 improved. The issuing authority shall verify that the name and  
25 address of the owner, the name of the contractor, and the  
26 location or address of the property being improved which is  
27 contained in the certified copy of the notice of commencement  
28 is consistent with the same information in the building permit  
29 application. The issuing authority shall provide the recording  
30 information on the certified copy of the recorded notice of  
31 commencement to any person upon request. This subsection does

1 not require ~~Nothing herein shall be interpreted as requiring~~  
2 ~~or encouraging~~ the recording of a notice of commencement prior  
3 to the issuance of a building permit. If a local government  
4 requires a separate permit or inspection for installation of  
5 temporary electrical service or other temporary utility  
6 service, land clearing, or other preliminary site work, such  
7 permits may be issued and such inspections may be conducted  
8 without providing the issuing authority with a certified copy  
9 of a recorded notice of commencement or a notarized statement  
10 regarding a recorded notice of commencement. This paragraph  
11 does not apply to a direct contract to repair or replace an  
12 existing heating or air-conditioning system in an amount less  
13 than \$5,000.

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

18 Section 5. Subsection (6) is added to section 713.16,  
19 Florida Statutes, to read:

20 713.16 Demand for copy of contract and statements of  
21 account; form.--

22 (6) For purposes of this section, the term  
23 "information" means information concerning the nature and  
24 quantity of the labor, services, and materials furnished or to  
25 be furnished and the amount paid, the amount due, and the  
26 amount to become due on the account. The term "information"  
27 does not mean or affect, in any way, the requirement in this  
28 section that the statement must be given under oath.

29 Section 6. Section 713.18, Florida Statutes, 1998  
30 Supplement, is amended to read:

31

1           713.18 Manner of serving notices and other  
2 instruments.--

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

8           (a) By actual delivery to the person to be served; or,  
9 if a partnership, to one of the partners; or, if a  
10 corporation, to an officer, director, managing agent, or  
11 business agent thereof.

12           (b) By mailing the same, postage prepaid, by  
13 registered or certified mail to the person to be served at her  
14 or his last known address and evidence of delivery. If a  
15 notice to owner or a notice to contractor under s. 713.23 is  
16 mailed pursuant to this paragraph within 40 days after the  
17 date the lienor first furnishes labor, services, or materials,  
18 service of that notice is effective as of the date of mailing  
19 if the person who served the notice maintains a registered or  
20 certified mail log that shows the date the notice was served,  
21 the registered or certified mail number issued by the United  
22 States Postal Service, the name and address of the person  
23 served, and the date stamp of the United States Postal Service  
24 confirming the date of mailing. If an instrument served  
25 pursuant to this paragraph to the last address shown in the  
26 notice of commencement or any amendment thereto or, in the  
27 absence of a notice of commencement, to the last address shown  
28 in the building permit application is not received, but is  
29 returned by the United States Postal Service as being  
30 "refused," "moved, not forwardable," or "unclaimed," or is  
31 otherwise not delivered or deliverable through no fault of the

1 person serving the item, then service is effective as of the  
2 date of mailing.

3 (c) If neither of the foregoing methods can be  
4 accomplished, by posting on the premises.

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

9 (3) Service of notices or copies thereof, permitted or  
10 required under this part, may be made by facsimile  
11 transmission when the person being served has listed that  
12 person's facsimile phone number in the Notice of Commencement.  
13 The lienor's facsimile confirmation sheet with the correct  
14 facsimile phone number shall be proof of the date and time the  
15 notice was served.

16 Section 7. Paragraphs (d) and (e) of subsection (1) of  
17 section 713.23, Florida Statutes, 1998 Supplement, are amended  
18 to read:

19 713.23 Payment bond.--

20 (1)

21 (d) In addition, a lienor is required, as a condition  
22 precedent to recovery under the bond, to serve a written  
23 notice of nonpayment to the contractor and the surety not  
24 later than 90 days after the final furnishing of labor,  
25 services, or materials by the lienor. A written notice  
26 satisfies this condition precedent with respect to the payment  
27 described in the notice of nonpayment and with respect to any  
28 other payments which become due to the lienor after the date  
29 of the notice of nonpayment. The time period for serving a  
30 written notice of nonpayment shall be measured from the last  
31 day of furnishing labor, services, or materials by the lienor

1 and may not be measured by other standards, such as the  
2 issuance of a certificate of occupancy or the issuance of a  
3 certificate of substantial completion.The failure of a lienor  
4 to receive retainage sums not in excess of 10 percent of the  
5 value of labor, services, or materials furnished by the lienor  
6 is not considered a nonpayment requiring the service of the  
7 notice provided under this paragraph. The notice under this  
8 paragraph may be in substantially the following form:

9  
10 NOTICE OF NONPAYMENT

11  
12 To ...(name of contractor and address)...

13  
14 ...(name of surety and address)...

15  
16 The undersigned notifies you that he or she has furnished  
17 ...(describe labor, services, or materials)... for the  
18 improvement of the real property identified as ...(property  
19 description).... The amount now due and unpaid is \$.....

20  
21 ...(signature and address of lienor)...

22  
23 (e) No action for the labor or materials or supplies  
24 may be instituted or prosecuted against the contractor or  
25 surety unless both notices have been given. No action shall  
26 be instituted or prosecuted against the contractor or against  
27 the surety on the bond under this section after 1 year from  
28 the performance of the labor or completion of delivery of the  
29 materials and supplies. The time period for bringing an action  
30 against the contractor or surety on the bond shall be measured  
31 from the last day of furnishing labor, services, or materials

1 by the lienor and shall not be measured by other standards,  
2 such as the issuance of a certificate of occupancy or the  
3 issuance of a certificate of substantial completion.A  
4 contractor or the contractor's agent or attorney may elect to  
5 shorten the prescribed time within which an action to enforce  
6 any claim against a payment bond provided pursuant to this  
7 section or s. 713.245 may be commenced by recording in the  
8 clerk's office a notice in substantially the following form:

9  
10 NOTICE OF CONTEST OF CLAIM  
11 AGAINST PAYMENT BOND  
12

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

14 You are notified that the undersigned contests your  
15 notice of nonpayment, dated ....., ....., and served on the  
16 undersigned on ....., ....., and that the time within which you  
17 may file suit to enforce your claim is limited to 60 days from  
18 the date of service of this notice.

19  
20 DATED on ....., .....

21  
22 Signed: ...(Contractor or Attorney)...

23  
24  
25 The claim of any lienor upon whom such notice is served and  
26 who fails to institute a suit to enforce his or her claim  
27 against the payment bond within 60 days after service of such  
28 notice shall be extinguished automatically. The clerk shall  
29 mail a copy of the notice of contest to the lienor at the  
30 address shown in the notice of nonpayment or most recent  
31 amendment thereto and shall certify to such service on the



1 face of such notice and record the notice. Service is complete  
2 upon mailing.

3 Section 8. Paragraph (g) of subsection (1) of section  
4 468.621, Florida Statutes, 1998 Supplement, is amended to  
5 read:

6 468.621 Disciplinary proceedings.--

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

9 (g) Failing to properly enforce applicable building  
10 codes by committing ~~Committing~~ willful misconduct, gross  
11 negligence, gross misconduct, repeated negligence, or  
12 negligence resulting in a significant danger to life or  
13 property ~~by failure to properly enforce applicable building~~  
14 ~~codes~~.

15 Section 9. The amendment to section 713.16, Florida  
16 Statutes, in this act is remedial in nature. The amendment is  
17 consistent with plain meaning and the original intent of  
18 section 319 of chapter 94-119, Laws of Florida. Accordingly,  
19 it is the intent of the Legislature that the amendment to  
20 section 713.16, Florida Statutes, in this act apply  
21 retroactively to May 4, 1994.

22 Section 10. This act shall take effect October 1,  
23 1999.

24  
25  
26  
27  
28  
29  
30  
31

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS for Senate Bill 1206  
4 Provides that notices required or permitted under s. 255.05,  
5 F.S., may be served in accordance with s. 713.18, F.S., which  
6 provides for delivery, delivery by certified mail, and posting  
7 in certain circumstances.  
8 Removes a provision that would have permitted service of  
9 notices, claims of lien, affidavits, and other instruments by  
10 overnight or second-day delivery under s. 713.18, F.S.  
11 Amends s. 713.16, F.S., to provide that the term "information"  
12 means the nature and quantity of labor, services, and  
13 materials furnished or to be furnished and the amount paid,  
14 the amount due, and the amount to become due on account and to  
15 provide that the term information does not mean or affect, in  
16 any way, the requirement in this section that a statement of  
17 account must be given under oath. Provides that this revision  
18 to the statute is to be applied retroactively to 1994.  
19 Removes a requirement that an issuing authority verify that  
20 the address of the contractor contained in the copy of the  
21 notice of commencement is consistent with the building permit  
22 application.  
23 Amends s. 468.621, F.S., to provide that failing to properly  
24 enforce applicable building codes by committing willful  
25 misconduct, gross negligence, gross misconduct, repeated  
26 negligence, or negligence resulting in a significant danger to  
27 life or property is a ground for disciplinary proceedings  
28 against certain building code administrators and inspectors.  
29  
30  
31