

513-190AXB-06

Bill No. CS/HB 681

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Merchant offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

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

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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 ....., .....

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

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

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor

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

1 reasonable fee for the services of his or her attorney for  
 2 trial and appeal or for arbitration, in an amount to be  
 3 determined by the court, which fee must be taxed as part of  
 4 the prevailing party's costs, as allowed in equitable actions.  
 5 The time periods for service of a notice of nonpayment or for  
 6 bringing an action against a contractor or a surety shall be  
 7 measured from the last day of furnishing labor, services, or  
 8 materials by the claimant and shall not be measured by other  
 9 standards, such as the issuance of a certificate of occupancy  
 10 or the issuance of a certificate of substantial completion.

11 Section 2. Effective upon becoming a law, subsection  
 12 (2) of section 713.06, Florida Statutes, 1998 Supplement, is  
 13 amended to read:

14 713.06 Liens of persons not in privity; proper  
 15 payments.--

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

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

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

22 (c) The notice may ~~must~~ be in substantially the  
23 following form and must include the information and the  
24 warning contained in the following form:

25  
26 WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE  
27 THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY  
28 AND YOUR PAYING TWICE.

29  
30 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN  
31 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

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NOTICE TO OWNER

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

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

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

IMPORTANT INFORMATION FOR YOUR PROTECTION

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

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

PROTECT YOURSELF:

--RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice

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1 to Owner have been paid.

2 --LEARN more about the Construction Lien Law, Chapter  
3 713, Part I, Florida Statutes, and the meaning of this notice  
4 by contacting an attorney or the Florida Department of  
5 Business and Professional Regulation.

6 ... (Lienor's Signature)...

7 ... (Lienor's Name)...

8 ... (Lienor's Address)...

9  
10 Copies to: ... (Those persons listed in Section 713.06(2)(a)  
11 and (b), Florida Statutes)...

12  
13 The form may be combined with a notice to contractor given  
14 under s. 713.23 or s. 255.05 and, if so, may be entitled  
15 "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

16  
17 (d) A notice to an owner served on a lender must be in  
18 writing, must be served in accordance with s. 713.18, and  
19 shall be addressed to the persons designated, if any, and to  
20 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 (e) A lienor, in the absence of a recorded notice of  
5 commencement, may rely on the information contained in the  
6 building permit application to serve the notice prescribed in  
7 paragraphs (a), (b), and (c).

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

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

16 713.08 Claim of lien.--

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



1 certificate of occupancy or the issuance of a certificate of  
 2 substantial completion.The claim of lien shall be recorded in  
 3 the clerk's office. If such real property is situated in two  
 4 or more counties, the claim of lien shall be recorded in the  
 5 clerk's office in each of such counties. The recording of the  
 6 claim of lien shall be constructive notice to all persons of  
 7 the contents and effect of such claim. The validity of the  
 8 lien and the right to record a claim therefor shall not be  
 9 affected by the insolvency, bankruptcy, or death of the owner  
 10 before the claim of lien is recorded.

11 Section 4. Subsection (1) of section 713.135, Florida  
 12 Statutes, 1998 Supplement, is amended to read:

13 713.135 Notice of commencement and applicability of  
 14 lien.--

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

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

23 (b) Provide the applicant and the owner of the real  
 24 property upon which improvements are to be constructed with a  
 25 printed statement stating that the right, title, and interest  
 26 of the person who has contracted for the improvement may be  
 27 subject to attachment under the Construction Lien Law. The  
 28 Department of Business and Professional Regulation shall  
 29 furnish, for distribution, the statement described in this  
 30 paragraph, and the statement must be a summary of the  
 31 Construction Lien Law and must include an explanation of the

1 provisions of the Construction Lien Law relating to the  
2 recording, and the posting of copies, of notices of  
3 commencement and a statement encouraging the owner to record a  
4 notice of commencement and post a copy of the notice of  
5 commencement thereof in accordance with s. 713.13. However,  
6 the failure by the authorities to provide the summary does not  
7 subject the issuing authority to liability.

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

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

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

19 Section 5. (1) Upon this act becoming a law,  
 20 subsection (6) is added to section 713.16, Florida Statutes,  
 21 to read:

22 713.16 Demand for copy of contract and statements of  
 23 account; form.--

24 (6) For purposes of this section, the term  
 25 "information" means the nature and quantity of the labor,  
 26 services, and materials furnished or to be furnished by a  
 27 lienor and the amount paid, the amount due, and the amount to  
 28 become due on the lienor's account. The failure to furnish the  
 29 statement under oath does not constitute an omission of  
 30 information and shall deprive the lienor of his or her lien.

31 (2) The amendment to this section is remedial in

1 nature. The amendment is consistent with the plain meaning and  
2 the original intent of s. 319 of chapter 94-119, Laws of  
3 Florida. Accordingly, it is the intent of the Legislature that  
4 the amendment to this section shall become effective  
5 immediately upon becoming law, and shall apply retroactively  
6 to May 4, 1994.

7 Section 6. Section 713.18, Florida Statutes, 1998  
8 Supplement, is amended to read:

9 713.18 Manner of serving notices and other  
10 instruments.--

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

16 (a) By actual delivery to the person to be served; or,  
17 if a partnership, to one of the partners; or, if a  
18 corporation, to an officer, director, managing agent, or  
19 business agent thereof.

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

1 confirming the date of mailing. If an instrument served  
2 pursuant to this paragraph to the last address shown in the  
3 notice of commencement or any amendment thereto or, in the  
4 absence of a notice of commencement, to the last address shown  
5 in the building permit application is not received, but is  
6 returned by the United States Postal Service as being  
7 "refused," "moved, not forwardable," or "unclaimed," or is  
8 otherwise not delivered or deliverable through no fault of the  
9 person serving the item, then service is effective as of the  
10 date of mailing.

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

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

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

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

27 713.23 Payment bond.--

28 (1)

29 (d) In addition, a lienor is required, as a condition  
30 precedent to recovery under the bond, to serve a written  
31 notice of nonpayment to the contractor and the surety not

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

17  
18 NOTICE OF NONPAYMENT

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

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

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

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

30  
31 (e) No action for the labor or materials or supplies

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

17  
 18 NOTICE OF CONTEST OF CLAIM  
 19 AGAINST PAYMENT BOND  
 20

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

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

27  
 28 DATED on ....., .....

29  
 30 Signed: ...(Contractor or Attorney)...

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

11 Section 8. Paragraph (g) of subsection (1) of section  
12 468.621, Florida Statutes, 1998 Supplement, is amended to  
13 read:

14 468.621 Disciplinary proceedings.--

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

17 (g) Failing to properly enforce applicable building  
18 codes by committing willful misconduct, gross negligence,  
19 gross misconduct, repeated negligence, or negligence resulting  
20 in a significant danger to life or property ~~by failure to~~  
21 ~~properly enforce applicable building codes.~~

22 Section 9. Except as otherwise provided herein, this  
23 act shall take effect October 1, 1999.

24  
25

26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 remove from the title of the bill: the entire title

29

30 and insert in lieu thereof:

31 A bill to be entitled



1 An act relating to construction; amending s.  
2 468.621, F.S.; amending certain grounds for  
3 disciplinary action against building code  
4 administrators and building officials; amending  
5 s. 255.05, F.S., relating to payment bonds of  
6 contractors constructing public buildings;  
7 providing that the time periods required for  
8 providing certain notices or bringing certain  
9 actions are not determined by the issuance of a  
10 certificate of occupancy or a certificate of  
11 substantial completion; amending s. 713.06,  
12 F.S.; clarifying certain notice requirements  
13 with respect to perfecting a lien for labor,  
14 services, or materials furnished under  
15 contract; amending s. 713.08, F.S.; providing  
16 that the time period required for recording a  
17 claim of lien is not determined by the issuance  
18 of a certificate of occupancy or a certificate  
19 of substantial completion; amending s. 713.135,  
20 F.S.; clarifying circumstances under which an  
21 entity issuing a building permit is subject to  
22 disciplinary procedures; providing an  
23 exception; amending s. 713.16, F.S.; providing  
24 a definition; providing legislative intent;  
25 amending s. 713.18, F.S., relating to service  
26 of notices and other instruments; amending s.  
27 713.23, F.S.; providing that the time periods  
28 required for serving a notice of nonpayment or  
29 bringing certain actions are not determined by  
30 the issuance of a certificate of occupancy or a  
31 certificate of substantial completion;

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providing effective dates.