

1 A bill to be entitled
2 An act relating to construction; creating s.
3 47.025, F.S.; providing that certain venue
4 provisions in a contract for improvement of
5 real property are void; specifying appropriate
6 venue for actions against resident contractors,
7 subcontractors, sub-subcontractors, and
8 materialmen; amending s. 468.621, F.S.;
9 amending certain grounds for disciplinary
10 action against building code administrators and
11 building officials; amending s. 255.05, F.S.,
12 relating to payment bonds of contractors
13 constructing public buildings; providing that
14 the time periods required for providing certain
15 notices or bringing certain actions are not
16 determined by the issuance of a certificate of
17 occupancy or a certificate of substantial
18 completion; amending s. 713.06, F.S.;
19 clarifying certain notice requirements with
20 respect to perfecting a lien for labor,
21 services, or materials furnished under
22 contract; amending s. 713.08, F.S.; providing
23 that the time period required for recording a
24 claim of lien is not determined by the issuance
25 of a certificate of occupancy or a certificate
26 of substantial completion; amending s. 713.135,
27 F.S.; clarifying circumstances under which an
28 entity issuing a building permit is subject to
29 disciplinary procedures; providing an
30 exception; amending s. 713.16, F.S.; providing
31 a definition; providing legislative intent;

1 amending s. 713.18, F.S., relating to service
2 of notices and other instruments; amending s.
3 713.23, F.S.; providing that the time periods
4 required for serving a notice of nonpayment or
5 bringing certain actions are not determined by
6 the issuance of a certificate of occupancy or a
7 certificate of substantial completion;
8 providing for the effect of a waiver and
9 release of lien; providing effective dates.

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

12
13 Section 1. Section 47.025, Florida Statutes, is
14 created to read:

15 47.025 Actions against contractors.--Any venue
16 provision in a contract for improvement to real property which
17 requires legal action involving a resident contractor,
18 subcontractor, sub-subcontractor, or materialman, as defined
19 in s. 713.01, to be brought outside this state is void as a
20 matter of public policy. To the extent that the venue
21 provision in the contract is void under this section, any
22 legal action arising out of that contract shall be brought
23 only in this state in the county where the defendant resides,
24 where the cause of action accrued, or where the property in
25 litigation is located, unless, after the dispute arises, the
26 parties stipulate to another venue.

27 Section 2. Paragraph (a) of subsection (2) of section
28 255.05, Florida Statutes, 1998 Supplement, is amended to read:

29 255.05 Bond of contractor constructing public
30 buildings; form; action by materialmen.--

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

8
9 NOTICE OF CONTEST OF CLAIM
10 AGAINST PAYMENT BOND
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12
13 To: ...(Name and address of claimant)...

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

19
20 DATED on,

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

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

1 amendment thereto and shall certify to such service on the
2 face of such notice and record the notice. Service is complete
3 upon mailing.

4 2. A claimant, except a laborer, who is not in privity
5 with the contractor shall, before commencing or not later than
6 45 days after commencing to furnish labor, materials, or
7 supplies for the prosecution of the work, furnish the
8 contractor with a notice that he or she intends to look to the
9 bond for protection. A claimant who is not in privity with the
10 contractor and who has not received payment for his or her
11 labor, materials, or supplies shall deliver to the contractor
12 and to the surety written notice of the performance of the
13 labor or delivery of the materials or supplies and of the
14 nonpayment. The notice of nonpayment may be served at any time
15 during the progress of the work or thereafter but not before
16 45 days after the first furnishing of labor, services, or
17 materials, and not later than 90 days after the final
18 furnishing of the labor, services, or materials by the
19 claimant or, with respect to rental equipment, not later than
20 90 days after the date that the rental equipment was last on
21 the job site available for use. No action for the labor,
22 materials, or supplies may be instituted against the
23 contractor or the surety unless both notices have been given.
24 Notices required or permitted under this section may be served
25 in accordance with s. 713.18. An action, except for an action
26 exclusively for recovery of retainage, must be instituted
27 against the contractor or the surety on the payment bond or
28 the payment provisions of a combined payment and performance
29 bond within 1 year after the performance of the labor or
30 completion of delivery of the materials or supplies. An action
31 exclusively for recovery of retainage must be instituted

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

22 Section 3. Effective upon becoming a law, subsection
23 (2) of section 713.06, Florida Statutes, 1998 Supplement, is
24 amended to read:

25 713.06 Liens of persons not in privity; proper
26 payments.--

27 (2)(a) All lienors under this section, except
28 laborers, as a prerequisite to perfecting a lien under this
29 chapter and recording a claim of lien, must serve a notice on
30 the owner setting forth the lienor's name and address, a
31 description sufficient for identification of the real

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

26 (b) If the owner, in his or her notice of
27 commencement, has designated a person in addition to himself
28 or herself to receive a copy of such lienor's notice, as
29 provided in s. 713.13(1)(b), the lienor shall serve a copy of
30 his or her notice on the person so designated. The failure by
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1 the lienor to serve such copy, however, does not invalidate an
2 otherwise valid lien.

3 (c) The notice may ~~must~~ be in substantially the
4 following form and must include the information and the
5 warning contained in the following form:

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

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

13
14 NOTICE TO OWNER

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

17
18 The undersigned hereby informs you that he or she has
19 furnished or is furnishing services or materials as follows:
20 ...(General description of services or materials)... for the
21 improvement of the real property identified as ...(property
22 description)... under an order given by.....

23
24 Florida law prescribes the serving of this notice and
25 restricts your right to make payments under your contract in
26 accordance with Section 713.06, Florida Statutes.

27
28 IMPORTANT INFORMATION FOR
29 YOUR PROTECTION

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

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

10
11 PROTECT YOURSELF:

12 --RECOGNIZE that this Notice to Owner may result in a
13 lien against your property unless all those supplying a Notice
14 to Owner have been paid.

15 --LEARN more about the Construction Lien Law, Chapter
16 713, Part I, Florida Statutes, and the meaning of this notice
17 by contacting an attorney or the Florida Department of
18 Business and Professional Regulation.

19 ... (Lienor's Signature)...

20 ... (Lienor's Name)...

21 ... (Lienor's Address)...

22
23 Copies to: ... (Those persons listed in Section 713.06(2)(a)
24 and (b), Florida Statutes)...

25
26 The form may be combined with a notice to contractor given
27 under s. 713.23 or s. 255.05 and, if so, may be entitled
28 "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

29
30 (d) A notice to an owner served on a lender must be in
31 writing, must be served in accordance with s. 713.18, and

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

17 (e) A lienor, in the absence of a recorded notice of
 18 commencement, may rely on the information contained in the
 19 building permit application to serve the notice prescribed in
 20 paragraphs (a), (b), and (c).

21 (f) If a lienor has substantially complied with the
 22 provisions of paragraphs (a), (b), and (c), errors or
 23 omissions do not prevent the enforcement of a claim against a
 24 person who has not been adversely affected by such omission or
 25 error. However, a lienor must strictly comply with the time
 26 requirements of paragraph (a).

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

29 713.08 Claim of lien.--

30 (5) The claim of lien may be recorded at any time
 31 during the progress of the work or thereafter but not later

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

24 Section 5. Subsection (1) of section 713.135, Florida
25 Statutes, 1998 Supplement, is amended to read:

26 713.135 Notice of commencement and applicability of
27 lien.--

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

30 (a) Print on the face of each permit card in no less
31 than 18-point, capitalized, boldfaced type: "WARNING TO

1 OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY
2 RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.
3 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR
4 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

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

21 (c) Inform each applicant who is not the person whose
22 right, title, and interest is subject to attachment that, as a
23 condition to the issuance of a building permit, the applicant
24 must promise in good faith that the statement will be
25 delivered to the person whose property is subject to
26 attachment.

27 (d) Furnish to the applicant two or more copies of a
28 form of notice of commencement conforming with s. 713.13. If
29 the direct contract is greater than \$2,500, the applicant
30 shall file with the issuing authority prior to the first
31 inspection either a certified copy of the recorded notice of

1 commencement or a notarized statement that the notice of
2 commencement has been filed for recording, along with a copy
3 thereof. In the absence of the filing of a certified copy of
4 the recorded notice of commencement, the issuing authority
5 shall not perform or approve subsequent inspections until the
6 applicant files by mail, facsimile, hand delivery, or any
7 other means such certified copy with the issuing authority.
8 The certified copy of the notice of commencement must contain
9 the name and address of the owner, the name and address of the
10 contractor, and the location or address of the property being
11 improved. The issuing authority shall verify that the name and
12 address of the owner, the name of the contractor, and the
13 location or address of the property being improved which is
14 contained in the certified copy of the notice of commencement
15 is consistent with the information in the building permit
16 application. The issuing authority shall provide the recording
17 information on the certified copy of the recorded notice of
18 commencement to any person upon request. This subsection does
19 not require ~~Nothing herein shall be interpreted as requiring~~
20 ~~or encouraging~~ the recording of a notice of commencement prior
21 to the issuance of a building permit. If a local government
22 requires a separate permit or inspection for installation of
23 temporary electrical service or other temporary utility
24 service, land clearing, or other preliminary site work, such
25 permits may be issued and such inspections may be conducted
26 without providing the issuing authority with a certified copy
27 of a recorded notice of commencement or a notarized statement
28 regarding a recorded notice of commencement. This subsection
29 does not apply to a direct contract to repair or replace an
30 existing heating or air-conditioning system in an amount less
31 than \$5,000.

1 Section 6. (1) Upon this act becoming a law,
2 subsection (6) is added to section 713.16, Florida Statutes,
3 to read:

4 713.16 Demand for copy of contract and statements of
5 account; form.--

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

13 (2) The amendment to this section is remedial in
14 nature. The amendment is consistent with the plain meaning and
15 the original intent of s. 319 of chapter 94-119, Laws of
16 Florida. Accordingly, it is the intent of the Legislature that
17 the amendment to this section shall become effective
18 immediately upon becoming law, and shall apply retroactively
19 to May 4, 1994.

20 Section 7. Section 713.18, Florida Statutes, 1998
21 Supplement, is amended to read:

22 713.18 Manner of serving notices and other
23 instruments.--

24 (1) Service of notices, claims of lien, affidavits,
25 assignments, and other instruments permitted or required under
26 this part, or copies thereof when so permitted or required,
27 unless otherwise specifically provided in this part, must be
28 made by one of the following methods:

29 (a) By actual delivery to the person to be served; or,
30 if a partnership, to one of the partners; or, if a
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1 corporation, to an officer, director, managing agent, or
2 business agent thereof.

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

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

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

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

8 Section 8. Paragraphs (d) and (e) of subsection (1) of
9 section 713.23, Florida Statutes, 1998 Supplement, are
10 amended, and subsection (5) is added to said section, to read:

11 713.23 Payment bond.--

12 (1)

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

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NOTICE OF NONPAYMENT

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

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

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

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

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

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NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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 from the date of service of this notice.

DATED on,

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

The claim of any lienor 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 lienor 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.

(5) A waiver and release of lien pursuant to s. 713.20 given by a lienor shall constitute a waiver and release in a like amount of the lienor's right to make a claim against a payment bond under this section.

1 Section 9. Paragraph (g) of subsection (1) of section
2 468.621, Florida Statutes, 1998 Supplement, is amended to
3 read:

4 468.621 Disciplinary proceedings.--

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

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

12 Section 10. Except as otherwise provided herein, this
13 act shall take effect October 1, 1999.