

Bill No. SB 428

Amendment No. Barcode 495298

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Dyer moved the following amendment:

Senate Amendment (with title amendment)

On page 3, line 27, delete that line

and insert:

Section 2. Subsection (7) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.--There is created a Department of Business and Professional Regulation.

(7) No board, with the exception of joint coordinatorships and the board established in subparagraph (4)(a)5., shall be transferred from its present location unless authorized by the Legislature in the General Appropriations Act.

Section 3. Paragraph (b) of subsection (2) and paragraph (e) of subsection (5) of section 95.11, Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real property.--Actions other than for recovery of real property

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 shall be commenced as follows:

2 (2) WITHIN FIVE YEARS.--

3 (b) A legal or equitable action on a contract,
4 obligation, or liability founded on a written instrument,
5 except for an action to enforce a claim against a payment
6 bond, which shall be governed by the applicable provisions of
7 ss. 255.05(2)(a)2. and 713.23(1)(e).

8 (5) WITHIN ONE YEAR.--

9 (e) An action to enforce any claim against a payment
10 bond on which the principal is a contractor, subcontractor, or
11 sub-subcontractor as defined in s. 713.01, for private work as
12 well as public work, from the last furnishing of labor,
13 services, or materials or from the last furnishing of labor,
14 services, or materials by the ~~general~~ contractor if the
15 ~~general~~ contractor is the principal on a bond on the same
16 construction project, whichever is later.

17 Section 4. Paragraph (a) of subsection (1) and
18 paragraph (a) of subsection (2) of section 255.05, Florida
19 Statutes, are amended to read:

20 255.05 Bond of contractor constructing public
21 buildings; form; action by materialmen.--

22 (1)(a) Any person entering into a formal contract with
23 the state or any county, city, or political subdivision
24 thereof, or other public authority, for the construction of a
25 public building, for the prosecution and completion of a
26 public work, or for repairs upon a public building or public
27 work shall be required, before commencing the work or before
28 recommencing the work after a default or abandonment, to
29 execute, deliver to the public owner, and record in the public
30 records of the county where the improvement is located, a
31 payment and performance bond with a surety insurer authorized

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 to do business in this state as surety. The bond must state on
2 its front page: the name, principal business address, and
3 phone number of the contractor, the surety, the owner of the
4 property being improved, and, if different from the owner, the
5 contracting public entity; the contract number assigned by the
6 contracting public entity; and a description of the project
7 sufficient to identify it, such as ~~including, if applicable,~~ a
8 legal description or ~~and~~ the street address of the property
9 being improved, and a general description of the improvement.
10 Such bond shall be conditioned upon the contractor's
11 performance of the construction work ~~that the contractor~~
12 ~~perform the contract~~ in the time and manner prescribed in the
13 contract and promptly make payments to all persons defined in
14 s. 713.01 who furnish labor, services, or materials for whose
15 ~~claims derive directly or indirectly from~~ the prosecution of
16 the work provided for in the contract. Any claimant may apply
17 to the governmental entity having charge of the work for
18 copies of the contract and bond and shall thereupon be
19 furnished with a certified copy of the contract and bond. The
20 claimant shall have a right of action against the contractor
21 and surety for the amount due him or her, including unpaid
22 finance charges due under the claimant's contract. Such action
23 shall not involve the public authority in any expense. When
24 such work is done for the state and the contract is for
25 \$100,000 or less, no payment and performance bond shall be
26 required. At the discretion of the official or board awarding
27 such contract when such work is done for any county, city,
28 political subdivision, or public authority, any person
29 entering into such a contract which is for \$200,000 or less
30 may be exempted from executing the payment and performance
31 bond. When such work is done for the state, the Secretary of

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 the Department of Management Services may delegate to state
 2 agencies the authority to exempt any person entering into such
 3 a contract amounting to more than \$100,000 but less than
 4 \$200,000 from executing the payment and performance bond. In
 5 the event such exemption is granted, the officer or officials
 6 shall not be personally liable to persons suffering loss
 7 because of granting such exemption. The Department of
 8 Management Services shall maintain information on the number
 9 of requests by state agencies for delegation of authority to
 10 waive the bond requirements by agency and project number and
 11 whether any request for delegation was denied and the
 12 justification for the denial.

13
 14 The state shall not be held liable to any laborer,
 15 materialman, or subcontractor for any amounts greater than the
 16 pro rata share as determined under this section.

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

Bill No. SB 428

Amendment No. ____ Barcode 495298

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

Bill No. SB 428

Amendment No. ____ Barcode 495298

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.

Bill No. SB 428

Amendment No. ____ Barcode 495298

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 shall 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 5. Subsections (26) and (27) of section
8 713.01, Florida Statutes, are amended to read:

9 713.01 Definitions.--As used in this part, the term:

10 (26) "Subcontractor" means a person other than a
11 materialman or laborer who enters into a contract with a
12 contractor for the performance of any part of such
13 contractor's contract, including the removal of solid waste
14 from the real property. The term includes a temporary help
15 firm as defined in s. 443.101.

16 (27) "Sub-subcontractor" means a person other than a
17 materialman or laborer who enters into a contract with a
18 subcontractor for the performance of any part of such
19 subcontractor's contract, including the removal of solid waste
20 from the real property. The term includes a temporary help
21 firm as defined in s. 443.101.

22 Section 6. Subsection (7) of section 713.02, Florida
23 Statutes, is amended to read:

24 713.02 Types of lienors and exemptions.--

25 (7) Notwithstanding any other provision of this part,
26 no lien shall exist in favor of any contractor, subcontractor,
27 or sub-subcontractor unless such contractor, subcontractor, or
28 sub-subcontractor is licensed, if required to be licensed, as
29 a contractor pursuant to the laws of the jurisdiction within
30 which she or he is doing business.

31 Section 7. Effective July 1, 2002, paragraph (d) of

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 subsection (1) of section 713.13, Florida Statutes, is amended
2 to read:

3 713.13 Notice of commencement.--

4 (1)

5 (d) A notice of commencement must be in substantially
6 the following form:

7

8 Permit No.....

Tax Folio No.....

9

NOTICE OF COMMENCEMENT

10 State of....

11 County of....

12

13 The undersigned hereby gives notice that improvement will be
14 made to certain real property, and in accordance with Chapter
15 713, Florida Statutes, the following information is provided
16 in this Notice of Commencement.

17 1. Description of property: ...(legal description of
18 the property, and street address if available)....

19 2. General description of improvement:.....

20 3. Owner information:.....

21 a. Name and address:.....

22 b. Interest in property:.....

23 c. Name and address of fee simple titleholder (if
24 other than Owner):.....

25 4.a. Contractor: ...(name and address)....

26 ~~b.a. Contractor's~~ phone number:.....

27 ~~b. Fax number:....(optional, if service by fax is~~
28 ~~acceptable).~~

29 5. Surety

30 a. Name and address:.....

31 b. Phone number:.....

Bill No. SB 428

Amendment No. ____ Barcode 495298

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...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 8. Subsections (1) and (2) of section 713.18, Florida Statutes, are amended to read:

713.18 Manner of serving notices and other instruments.--

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

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

(b) By sending ~~mailing~~ the same, ~~postage prepaid~~, by registered or certified mail, with postage prepaid, or by overnight or second-day delivery with ~~to the person to be served at her or his last known address~~ and evidence of delivery.

1. If a notice to owner, or a notice to contractor under s. 713.23, or a preliminary notice under s. 255.05 is mailed by registered or certified mail with postage prepaid to the person to be served at any of the addresses set forth in

Bill No. SB 428

Amendment No. Barcode 495298

1 ~~subparagraph 2.~~ ~~pursuant to this paragraph~~ within 40 days
2 after the date the lienor first furnishes labor, services, or
3 materials, service of that notice is effective as of the date
4 of mailing if the person who served the notice maintains a
5 registered or certified mail log that shows ~~the date the~~
6 ~~notice was served,~~ the registered or certified mail number
7 issued by the United States Postal Service, the name and
8 address of the person served, and the date stamp of the United
9 States Postal Service confirming the date of mailing.

10 2. If an instrument served pursuant to this section
11 ~~paragraph~~ to the last address shown in the notice of
12 commencement or any amendment thereto or, in the absence of a
13 notice of commencement, to the last address shown in the
14 building permit application, or to the last known address of
15 the person to be served, is not received, but is returned ~~by~~
16 ~~the United States Postal Service~~ as being "refused," "moved,
17 not forwardable," or "unclaimed," or is otherwise not
18 delivered or deliverable through no fault of the person
19 serving the item, then service is effective on the date the
20 notice was sent ~~as of the date of mailing.~~

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

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

28 Section 9. Paragraph (d) of subsection (1) of section
29 713.23, Florida Statutes, is amended to read:

30 713.23 Payment bond.--

31 (1)

Bill No. SB 428

Amendment No. ____ Barcode 495298

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

22
23 NOTICE OF NONPAYMENT

24
25 To ...(name of contractor and address)...

26
27 ...(name of surety and address)...

28
29 The undersigned notifies you that he or she has furnished
30 ...(describe labor, services, or materials)... for the
31 improvement of the real property identified as ...(property

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 description).... The amount now due and unpaid is \$.....

2

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

4

5 Section 10. Subsection (1) of section 713.245, Florida
6 Statutes, is amended to read:

7 713.245 Conditional payment bond.--

8 (1) Notwithstanding any provisions of ss. 713.23 and
9 713.24 to the contrary, if the contractor's written
10 contractual obligation to pay lienors is expressly conditioned
11 upon and limited to the payments made by the owner to the
12 contractor, the duty of the surety to pay lienors will be
13 coextensive with the duty of the contractor to pay, if the
14 following provisions are complied with:

15 (a) The bond is listed in the notice of commencement
16 for the project as a conditional payment bond and is recorded
17 together with the notice of commencement for the project prior
18 to commencement of the project.

19 (b) The words "conditional payment bond" are contained
20 in the title of the bond at the top of the front page.

21 (c) The bond contains on the front page, in at least
22 10-point type, the statement: THIS BOND ONLY COVERS CLAIMS OF
23 SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND LABORERS TO
24 THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR,
25 SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND
26 DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING
27 A CLAIM OF LIEN ON THIS PROJECT.

28 Section 11. Subsection (1) of section 725.06, Florida
29 Statutes, is amended to read:

30 725.06 Construction contracts; limitation on
31 indemnification.--

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 (1) A construction contract may require a party to
2 that contract to indemnify and hold harmless the other party
3 to the contract, their officers, directors, agents,and
4 employees, from liabilities, damages, losses and costs,
5 including, but not limited to, reasonable attorney's fees, to
6 the extent caused by the negligence, recklessness, or
7 intentional wrongful misconduct of the indemnifying party and
8 persons employed or utilized by the indemnifying party in the
9 performance of the construction contract.

10 Section 12. Subsection (1) of section 725.08, Florida
11 Statutes, is amended to read:

12 725.08 Design professional contracts; limitation in
13 indemnification.--

14 (1) ~~Notwithstanding the provisions of s. 725.06,~~If a
15 design professional provides professional services to or for a
16 public agency, the agency may require in a professional
17 services contract with the design professional that the design
18 professional indemnify and hold harmless the agency, and its
19 officers and employees, from liabilities, damages, losses, and
20 costs, including, but not limited to, reasonable attorneys'
21 fees, to the extent caused by the negligence, recklessness, or
22 intentionally wrongful conduct of the design professional and
23 other persons employed or utilized by the design professional
24 in the performance of the contract.

25 Section 13. Effective July 1, 2002, subsection (3) of
26 section 713.18, Florida Statutes, is repealed.

27 Section 14. Except as otherwise expressly provided in
28 this act, this act shall take effect July 1, 2001.

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Bill No. SB 428

Amendment No. ____ Barcode 495298

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

2 And the title is amended as follows:

3 On page 1, line 2, delete that line

4

5 and insert:

6 An act relating to building construction;

7 amending s. 20.165, F.S.; revising a

8 proscription of certain transfers of certain

9 entities; amending s. 95.11, F.S.; providing

10 alternative applications to a statute of

11 limitations for certain legal or equitable

12 actions for actions to enforce claims against

13 payment bonds; revising a statute of

14 limitations for actions to enforce claims

15 against certain payment bonds; amending s.

16 255.05, F.S.; clarifying criteria for

17 performance of bonds; revising a provision

18 relating to notice of nonpayment for certain

19 labor, materials, or supplies; amending s.

20 713.01, F.S.; revising certain definitions;

21 amending s. 713.02, F.S.; clarifying a

22 criterion for a proscription against certain

23 liens; amending s. 713.13, F.S.; deleting

24 authorization for certain fax numbers in

25 notices of commencement; amending s. 713.18,

26 F.S.; revising provisions relating to manner of

27 serving notices and certain instruments;

28 amending s. 713.23, F.S.; including certain

29 unpaid finance charges under a written notice

30 of nonpayment of a payment bond; amending s.

31 713.245, F.S.; providing additional bond

Bill No. SB 428

Amendment No. ____ Barcode 495298

1 criteria for coextension of a surety's duty to
2 pay lienors with a contractor's duty to pay;
3 amending ss. 725.06, 725.08, F.S.; revising
4 indemnification and hold harmless requirements
5 for construction contracts and design
6 professional contracts; repealing s. 713.18(3),
7 F.S., relating to service of certain notices by
8 facsimile transmission; providing effective
9 dates.
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