

1 A bill to be entitled
2 An act relating to building construction;
3 amending s. 95.11, F.S.; providing alternative
4 applications to a statute of limitations for
5 certain legal or equitable actions for actions
6 to enforce claims against payment bonds;
7 revising a statute of limitations for actions
8 to enforce claims against certain payment
9 bonds; amending s. 255.05, F.S.; clarifying
10 criteria for performance of bonds; revising a
11 provision relating to notice of nonpayment for
12 certain labor, materials, or supplies; amending
13 s. 713.01, F.S.; revising certain definitions;
14 amending s. 713.02, F.S.; clarifying a
15 criterion for a proscription against certain
16 liens; amending s. 713.13, F.S.; deleting
17 authorization for certain fax numbers in
18 notices of commencement; amending s. 713.18,
19 F.S.; revising provisions relating to manner of
20 serving notices and certain instruments;
21 amending s. 713.23, F.S.; including certain
22 unpaid finance charges under a written notice
23 of nonpayment of a payment bond; amending s.
24 713.245, F.S.; providing additional bond
25 criteria for coextension of a surety's duty to
26 pay lienors with a contractor's duty to pay;
27 amending s. 725.06, F.S.; revising
28 indemnification and hold harmless restrictions
29 for certain construction agreements, contracts,
30 or guarantees; providing application; amending
31 s. 725.08, F.S.; revising indemnification and

1 hold harmless restrictions for certain
2 professional services contracts; repealing s.
3 713.18(3), F.S., relating to service of certain
4 notices by facsimile transmission; amending s.
5 489.13, F.S.; providing for issuance of a
6 notice of noncompliance, imposition of an
7 administrative fine, and assessment of
8 reasonable investigative and legal costs of
9 prosecution for unlicensed contracting;
10 specifying that such remedies are not
11 exclusive; providing for uses of fine proceeds;
12 requiring the Department of Business and
13 Professional Regulation to create a web page on
14 its Internet website dedicated to listing known
15 information concerning unlicensed contractors;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 489.13, Florida Statutes, is
21 amended to read:

22 489.13 Unlicensed contracting; notice of
23 noncompliance; fine; authority to issue or receive a building
24 permit; web page.--

25 (1) Any person performing an activity requiring
26 licensure under this part as a construction contractor is
27 guilty of unlicensed contracting if he or she does not hold a
28 valid active certificate or registration authorizing him or
29 her to perform such activity, regardless of whether he or she
30 holds a local construction contractor license or local
31 certificate of competency. Persons working outside the

1 geographical scope of their registration are guilty of
2 unlicensed activity for purposes of this part.

3 (2) For a first offense, any person who holds a state
4 or local construction license and is found guilty of
5 unlicensed contracting under this section shall be issued a
6 notice of noncompliance pursuant to s. 489.131(7).

7 (3) Notwithstanding s. 455.228, the department may
8 impose an administrative fine of up to \$10,000 on any
9 unlicensed person guilty of unlicensed contracting. In
10 addition, the department may assess reasonable investigative
11 and legal costs for prosecution of the violation against the
12 unlicensed contractor. The department may waive up to one-half
13 of any fine imposed if the unlicensed contractor complies with
14 certification or registration within 1 year after imposition
15 of the fine under this subsection.

16 (4)(a) Any fines collected under this section shall be
17 first used to cover the investigative and legal costs of
18 prosecution.

19 (b) Any local governing body that forwards information
20 relating to any person who is an unlicensed contractor shall
21 collect 30 percent of the fine collected, after deduction of
22 the investigative and legal costs of prosecution.

23 (c) The balance of any fines collected under this
24 section shall be used to maintain the department's unlicensed
25 contractor website page, as specified in subsection (6), and
26 to fund the Construction Industries Recovery Fund. Nothing in
27 this paragraph shall be construed to permit recovery from the
28 Construction Industries Recovery Fund if the contractor is
29 unlicensed.

30 (5)(2) A local building department shall not issue a
31 building permit to any contractor, or to any person

1 representing himself or herself as a contractor, who does not
2 hold a valid active certificate or registration in the
3 appropriate category. Possession of a local certificate of
4 competency or local construction license is not sufficient to
5 lawfully obtain a building permit as a construction contractor
6 if the activity in question requires licensure under this
7 part. Nothing in this section shall be construed as
8 prohibiting a local building department from issuing a
9 building permit to a locally licensed or certified contractor
10 for an activity that does not require licensure under this
11 part.

12 (6) The department shall create a web page, accessible
13 through its Internet website, dedicated solely to listing any
14 known information concerning unlicensed contractors. The
15 information shall be provided in such a way that any person
16 with computer on-line capabilities can access information
17 concerning unlicensed contractors by name or by county. The
18 department shall recognize that persons found guilty of
19 unlicensed contracting do not have the same rights and
20 privileges as licensees, and the department shall not restrict
21 the quality or quantity of information on the web page
22 required by this subsection, unless otherwise required by law.

23 (7) The remedies set forth in this section are not
24 exclusive and may be imposed in addition to the remedies set
25 forth in s. 489.127(2). In addition, nothing in this section
26 is intended to prohibit the department or any local governing
27 body from filing a civil action or seeking criminal penalties
28 against an unlicensed contractor.

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

1 95.11 Limitations other than for the recovery of real
2 property.--Actions other than for recovery of real property
3 shall be commenced as follows:

4 (2) WITHIN FIVE YEARS.--

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

10 (5) WITHIN ONE YEAR.--

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

19 Section 3. Paragraph (a) of subsection (1) and
20 paragraph (a) of subsection (2) of section 255.05, Florida
21 Statutes, are amended to read:

22 255.05 Bond of contractor constructing public
23 buildings; form; action by materialmen.--

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

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

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

15

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

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

26

27 NOTICE OF CONTEST OF CLAIM
28 AGAINST PAYMENT BOND

29

30

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

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

6
 7 DATED on,

8
 9
 10 Signed:...(Contractor or Attorney)...

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

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

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

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

9 Section 4. Subsections (26) and (27) of section
10 713.01, Florida Statutes, are amended to read:

11 713.01 Definitions.--As used in this part, the term:

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

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

24 Section 5. Subsection (7) of section 713.02, Florida
25 Statutes, is amended to read:

26 713.02 Types of lienors and exemptions.--

27 (7) Notwithstanding any other provision of this part,
28 no lien shall exist in favor of any contractor, subcontractor,
29 or sub-subcontractor unless such contractor, subcontractor, or
30 sub-subcontractor is licensed, if required to be licensed,as
31

1 a contractor pursuant to the laws of the jurisdiction within
2 which she or he is doing business.

3 Section 6. Effective July 1, 2002, paragraph (d) of
4 subsection (1) of section 713.13, Florida Statutes, is amended
5 to read:

6 713.13 Notice of commencement.--

7 (1)

8 (d) A notice of commencement must be in substantially
9 the following form:

10

11 Permit No.....

Tax Folio No.....

12

NOTICE OF COMMENCEMENT

13

State of....

14

County of....

15

16 The undersigned hereby gives notice that improvement will be
17 made to certain real property, and in accordance with Chapter
18 713, Florida Statutes, the following information is provided
19 in this Notice of Commencement.

20

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

22

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

23

3. Owner information:.....

24

a. Name and address:.....

25

b. Interest in property:.....

26

c. Name and address of fee simple titleholder (if

27

other than Owner):.....

28

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

29

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

30

~~b. Fax number:....(optional, if service by fax is~~

31

~~acceptable).~~

1 Sworn to (or affirmed) and subscribed before me this
 2 day of, ...(year)..., by ...(name of person making
 3 statement)....

4
 5 ...(Signature of Notary Public - State of Florida)...
 6 ...(Print, Type, or Stamp Commissioned Name of Notary
 7 Public)...

8
 9 Personally Known OR Produced Identification
 10
 11 Type of Identification Produced.....

12
 13 Section 7. Subsections (1) and (2) of section 713.18,
 14 Florida Statutes, are amended to read:

15 713.18 Manner of serving notices and other
 16 instruments.--

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

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

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

31

1 1. If a notice to owner, ~~or~~ a notice to contractor
2 under s. 713.23, or a preliminary notice under s. 255.05 is
3 mailed by registered or certified mail with postage prepaid to
4 the person to be served at any of the addresses set forth in
5 subparagraph 2. ~~pursuant to this paragraph~~ within 40 days
6 after the date the lienor first furnishes labor, services, or
7 materials, service of that notice is effective as of the date
8 of mailing if the person who served the notice maintains a
9 registered or certified mail log that shows ~~the date the~~
10 ~~notice was served,~~ the registered or certified mail number
11 issued by the United States Postal Service, the name and
12 address of the person served, and the date stamp of the United
13 States Postal Service confirming the date of mailing.

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

25 (c) If none ~~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 or a partnership, a lienor may serve any notices or
29 other papers under this part on any one of such owners or
30 partners, and such notice is deemed notice to all owners and
31 partners.

1 Section 8. Paragraph (d) of subsection (1) of section
2 713.23, Florida Statutes, is amended to read:

3 713.23 Payment bond.--

4 (1)

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

26
27 NOTICE OF NONPAYMENT

28
29 To ...(name of contractor and address)...

30
31 ...(name of surety and address)...

1
2 The undersigned notifies you that he or she has furnished
3 ...(describe labor, services, or materials)... for the
4 improvement of the real property identified as ...(property
5 description).... The amount now due and unpaid is \$.....

6
7 ...(signature and address of lienor)...

8
9 Section 9. Subsection (1) of section 713.245, Florida
10 Statutes, is amended to read:

11 713.245 Conditional payment bond.--

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

19 (a) The bond is listed in the notice of commencement
20 for the project as a conditional payment bond and is recorded
21 together with the notice of commencement for the project prior
22 to commencement of the project.

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

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

1 Section 10. Section 725.06, Florida Statutes, is
2 amended to read:

3 725.06 Construction contracts; limitation on
4 indemnification.--

5 (1) Any portion of any agreement or contract for or in
6 connection with, or any guarantee of or in connection with,
7 any construction, alteration, repair, or demolition of a
8 building, structure, appurtenance, or appliance, including
9 moving and excavating associated therewith, between an owner
10 of real property and an architect, engineer, general
11 contractor, subcontractor, sub-subcontractor, or materialman
12 or any combination thereof wherein any party referred to
13 herein promises to indemnify or hold harmless the other party
14 to the agreement, contract, or guarantee for liability for
15 damages to persons or property caused in whole or in part by
16 any act, omission, or default of the indemnitee arising from
17 the contract or its performance, shall be void and
18 unenforceable unless the contract contains a monetary
19 limitation on the extent of the indemnification that bears a
20 reasonable commercial relationship to the contract and is part
21 of the project specifications or bid documents, if any.
22 Notwithstanding the foregoing, the monetary limitation on the
23 extent of the indemnification provided to the owner of real
24 property by any party in privity of contract with such owner
25 shall not be less than \$1 million per occurrence, unless
26 otherwise agreed by the parties. Indemnification provisions in
27 any such agreements, contracts, or guarantees may not require
28 that the indemnitor indemnify the indemnitee for damages to
29 persons or property caused in whole or in part by any act,
30 omission, or default of a party other than:

31 (a) The indemnitor;

1 (b) Any of the indemnitor's contractors,
2 subcontractors, sub-subcontractors, materialmen, or agents of
3 any tier or their respective employees; or

4 (c) The indemnitee or its officers, directors, agents,
5 or employees. However, such indemnification shall not include
6 claims of, or damages resulting from, gross negligence, or
7 willful, wanton or intentional misconduct of the indemnitee or
8 its officers, directors, agents or employees, or for statutory
9 violation or punitive damages except and to the extent the
10 statutory violation or punitive damages are caused by or
11 result from the acts or omissions of the indemnitor or any of
12 the indemnitor's contractors, subcontractors,
13 sub-subcontractors, materialmen, or agents of any tier or
14 their respective employees.

15 ~~(2)(1)~~ A construction contract for a public agency or
16 in connection with a public agency's project may require a
17 party to that contract to indemnify and hold harmless the
18 other party to the contract, their officers and employees,
19 from liabilities, damages, losses and costs, including, but
20 not limited to, reasonable attorney's fees, to the extent
21 caused by the negligence, recklessness, or intentional
22 wrongful misconduct of the indemnifying party and persons
23 employed or utilized by the indemnifying party in the
24 performance of the construction contract.

25 ~~(3)(2)~~ Except as specifically provided in subsection
26 ~~(2)(1)~~, a construction contract for a public agency or in
27 connection with a public agency's project may not require one
28 party to indemnify, defend, or hold harmless the other party,
29 its employees, officers, directors, or agents from any
30 liability, damage, loss, claim, action, or proceeding, and any
31

1 such contract provision is void as against public policy of
2 this state.

3 (4) This section does not affect any contracts,
4 agreements, or guarantees entered into before the effective
5 date of this section or any renewals thereof.

6 Section 11. Subsection (2) of section 725.08, Florida
7 Statutes, is amended to read:

8 725.08 Design professional contracts; limitation in
9 indemnification.--

10 (2) Except as specifically provided in subsection (1),
11 a professional services contract entered into with a public
12 agency may not require that the design professional defend,
13 indemnify, or hold harmless the agency, its employees,
14 officers, directors, or agents from any liability, damage,
15 loss, claim, action, or proceeding, and any such contract
16 provision shall ~~will~~ be void as against the public policy of
17 this state.

18 Section 12. Effective July 1, 2002, subsection (3) of
19 section 713.18, Florida Statutes, is repealed.

20 Section 13. Except as otherwise expressly provided in
21 this act, this act shall take effect July 1, 2001.

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