

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Committee on State Administration offered the following:

Amendment (with title amendment)

On page 4, line 31 through page 15, line 17,
remove from the bill: all of said lines

and insert in lieu thereof: bond for protection. If the claimant serves the notice before, or not later than 45 days after, commencing to furnish labor, services, or materials, a claim against the bond may include amounts unpaid to the claimant for all labor, services, or materials furnished on the project and any unpaid finance charges due under the claimant's contract. If the claimant serves the notice later than 45 days after commencing to furnish labor, services, or materials, the claimant's claim against the bond may only include amounts unpaid for labor, services or materials furnished on the project on or after the date the notice is mailed or otherwise served in accordance with s. 713.18 and any unpaid finance charges due under the claimant's contract for such labor, services, or materials. A notice served on a contractor later than 45 days after commencing to furnish

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

1 labor, services, or materials, must be accompanied by a sworn
2 statement of account as defined in s. 713.16(3). A claimant
3 who is not in privity with the contractor and who has not
4 received payment for his or her labor, materials, or supplies
5 shall deliver to the contractor and to the surety written
6 notice of the performance of the labor or delivery of the
7 materials or supplies and of the nonpayment. The notice of
8 nonpayment may be served at any time during the progress of
9 the work or thereafter but ~~not before 45 days after the first~~
10 ~~furnishing of labor, services, or materials,~~ and not later
11 than 90 days after the final furnishing of the labor,
12 services, or materials by the claimant or, with respect to
13 rental equipment, not later than 90 days after the date that
14 the rental equipment was last on the job site available for
15 use. No action for the labor, materials, or supplies may be
16 instituted against the contractor or the surety unless both
17 notices have been given. Notices required or permitted under
18 this section may be served in accordance with s. 713.18. An
19 action, except for an action exclusively for recovery of
20 retainage, must be instituted against the contractor or the
21 surety on the payment bond or the payment provisions of a
22 combined payment and performance bond within 1 year after the
23 performance of the labor or completion of delivery of the
24 materials or supplies. An action exclusively for recovery of
25 retainage must be instituted against the contractor or the
26 surety within 1 year after the performance of the labor or
27 completion of delivery of the materials or supplies, or within
28 90 days after ~~the contractor's~~ receipt of final payment (or
29 the payment estimate containing the owner's final
30 reconciliation of quantities if no further payment is earned
31 and due as a result of deductive adjustments) by the

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

1 contractor or surety, whichever comes last. A claimant may not
 2 waive in advance his or her right to bring an action under the
 3 bond against the surety. In any action brought to enforce a
 4 claim against a payment bond under this section, the
 5 prevailing party is entitled to recover a reasonable fee for
 6 the services of his or her attorney for trial and appeal or
 7 for arbitration, in an amount to be determined by the court,
 8 which fee must be taxed as part of the prevailing party's
 9 costs, as allowed in equitable actions. The time periods for
 10 service of a notice of nonpayment or for bringing an action
 11 against a contractor or a surety shall be measured from the
 12 last day of furnishing labor, services, or materials by the
 13 claimant and shall not be measured by other standards, such as
 14 the issuance of a certificate of occupancy or the issuance of
 15 a certificate of substantial completion.

16 (3) The bond required in subsection (1) shall ~~may~~ be
 17 in substantially the following form:

18
 19 PUBLIC CONSTRUCTION BOND

20
 21 BY THIS BOND, We, as Principal and, a
 22 corporation, as Surety, are bound to, herein called
 23 Owner, in the sum of \$....., for payment of which we bind
 24 ourselves, our heirs, personal representatives, successors,
 25 and assigns, jointly and severally.

26 THE CONDITION OF THIS BOND is that if Principal:

27 1. Performs the contract dated,, between
 28 Principal and Owner for construction of, the contract
 29 being made a part of this bond by reference, at the times and
 30 in the manner prescribed in the contract; and

31 2. Promptly makes payments to all claimants, as

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

1 defined in Section 255.05(1), Florida Statutes, supplying
2 Principal with labor, materials, or supplies, used directly or
3 indirectly by Principal in the prosecution of the work
4 provided for in the contract; and

5 3. Pays Owner all losses, damages, expenses, costs,
6 and attorney's fees, including appellate proceedings, that
7 Owner sustains because of a default by Principal under the
8 contract; and

9 4. Performs the guarantee of all work and materials
10 furnished under the contract for the time specified in the
11 contract, then this bond is void; otherwise it remains in full
12 force.

13 Any changes in or under the contract documents and
14 compliance or noncompliance with any formalities connected
15 with the contract or the changes does not affect Surety's
16 obligation under this bond.

17
18 DATED ON,

19(Name of Principal)..
20 By(As Attorney in Fact)..
21(Name of Surety)..
22

23 Section 2. Paragraph (a) of subsection (2) and
24 paragraph (h) of subsection (3) of section 713.06, Florida
25 Statutes, are amended to read:

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

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

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

1 description sufficient for identification of the real
2 property, and the nature of the services or materials
3 furnished or to be furnished. A sub-subcontractor or a
4 materialman to a subcontractor must serve a copy of the notice
5 on the contractor as a prerequisite to perfecting a lien under
6 this chapter and recording a claim of lien. A materialman to a
7 sub-subcontractor must serve a copy of the notice to owner on
8 the contractor as a prerequisite to perfecting a lien under
9 this chapter and recording a claim of lien. A materialman to a
10 sub-subcontractor shall serve the notice to owner on the
11 subcontractor if the materialman knows the name and address of
12 the subcontractor. If the lienor serves the notice before, or
13 not later than 45 days after, commencing to furnish labor,
14 services, or materials, the lienor's claim of lien may include
15 amounts unpaid to the lienor for all labor, services, or
16 materials furnished on the project and any unpaid finance
17 charges due under the lienor's contract. If the lienor serves
18 the notice later than 45 days after commencing to furnish
19 labor, services, or materials, the lienor's claim of lien may
20 only include amounts unpaid for labor, services or materials
21 furnished on the project on or after the date the notice is
22 mailed or otherwise served in accordance with s. 713.18 and
23 any unpaid finance charges due under the lienor's contract for
24 such labor, services, or materials. A notice served on an
25 owner or contractor later than 45 days after commencing to
26 furnish labor, services, or materials, must be accompanied by
27 a sworn statement of account as defined in s. 713.16(3).~~The~~
28 ~~notice must be served before commencing, or not later than 45~~
29 ~~days after commencing, to furnish his or her labor, services,~~
30 ~~or materials, but,~~In any event, the notice shall be served
31 before the date of the owner's disbursement of the final

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

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

12 (3) The owner may make proper payments on the direct
13 contract as to lienors under this section, in the following
14 manner:

15 (h) When the owner has properly retained all sums
16 required in this section to be retained but has otherwise made
17 improper payments, the owner's real property shall be liable
18 to all laborers, subcontractors, sub-subcontractors, and
19 materialmen complying with this chapter only to the extent of
20 the retentions and the improper payments, notwithstanding the
21 other provisions of this subsection. Any money paid by the
22 owner on a direct contract, the payment of which is proved to
23 have caused no detriment to any certain lienor, shall be held
24 properly paid as to the lienor, and if any of the money shall
25 be held not properly paid as to any other lienors, the entire
26 benefit of its being held not properly paid as to them shall
27 go to the lienors. An owner is not entitled to a proper
28 payment defense to the extent of improper payments made by the
29 owner at any time during the project.

30 Section 3. Section 713.18, Florida Statutes, is
31 amended to read:

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

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

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

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

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

17 1. If a notice to owner, ~~or~~ a notice to contractor
18 under s. 713.23, or a preliminary notice under s. 255.05 is
19 mailed by registered or certified mail with postage prepaid to
20 the person to be served at any of the addresses set forth in
21 subparagraph 2. pursuant to this paragraph within 40 days
22 after the date the lienor first furnishes labor, services, or
23 materials, service of that notice is effective as of the date
24 of mailing if the person who served the notice maintains a
25 registered or certified mail log that shows ~~the date the~~
26 ~~notice was served~~, the registered or certified mail number
27 issued by the United States Postal Service, the name and
28 address of the person served, and the date stamp of the United
29 States Postal Service confirming the date of mailing.

30 2. If an instrument served pursuant to this section
31 ~~paragraph~~ to the last address shown in the notice of

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

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

10 (c) By facsimile transmission if the person being
11 served has listed that person's facsimile phone number in the
12 notice of commencement. The lienor's facsimile confirmation
13 sheet with the correct facsimile phone number shall be proof
14 of the date and time the notice was served; or

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

17 (2) If the real property is owned by more than one
18 person or a partnership, a lienor may serve any notices or
19 other papers under this part on any one of such owners or
20 partners, and such notice is deemed notice to all owners and
21 partners.

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

29 Section 4. Subsection (1) of section 713.245, Florida
30 Statutes, is amended to read:

31 713.245 Conditional payment bond.--

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

1 (1) Notwithstanding any provisions of ss. 713.23 and
2 713.24 to the contrary, if the contractor's written
3 contractual obligation to pay lienors is expressly conditioned
4 upon and limited to the payments made by the owner to the
5 contractor, the duty of the surety to pay lienors will be
6 coextensive with the duty of the contractor to pay, if the
7 following provisions are complied with:

8 (a) The bond is listed in the Notice of Commencement
9 for the project as a Conditional Payment Bond and is recorded
10 along with the Notice of Commencement for the project, prior
11 to commencement of the project.

12 (b) The words "Conditional Payment Bond" are contained
13 in the title of the bond at the top of the front page; and

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

21 Section 5. Subsection (2) and paragraph (e) of
22 subsection (5) of section 95.11, Florida Statutes, are amended
23 to read:

24 95.11 Limitations other than for the recovery of real
25 property.--Actions other than for recovery of real property
26 shall be commenced as follows:

27 (2) WITHIN FIVE YEARS.--

28 (a) An action on a judgment or decree of any court,
29 not of record, of this state or any court of the United
30 States, any other state or territory in the United States, or
31 a foreign country.

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

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

6 (c) An action to foreclose a mortgage.

7 (5) WITHIN ONE YEAR.--

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

16 Section 6. This act shall take effect July 1, 2001.

17
18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, lines 6 through 18,
22 remove from the title of the bill: all of said lines

23
24 and insert in lieu thereof:

25 requiring use of the statutory form; amending
26 s. 713.06, F.S.; clarifying provisions relating
27 to notice of claim against a lien; amending s.
28 713.18, F.S.; revising provisions relating to
29 manner of serving notices and certain
30 instruments; amending s. 713.23, F.S.;
31 including certain unpaid finance charges under

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

a written notice of nonpayment of a payment
bond; correcting a cross reference, to conform;
amending s. 713.245, F.S., relating to
conditional payment bonds; amending s. 95.11,
F.S., to add cross-references regarding
statutes of limitations for bond claims;
clarifiying statute regarding contractor's
bonds; providing an