

Bill No. SB 826

Amendment No. 1 Barcode 634102

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judiciary recommended the following amendment
:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. 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 shall be commenced as follows:

(2) WITHIN FIVE YEARS.--

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

(5) WITHIN ONE YEAR.--

(e) An action to enforce any claim against a payment

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1 bond on which the principal is a contractor, subcontractor, or
2 sub-subcontractor as defined in s. 713.01, for private work as
3 well as public work, from the last furnishing of labor,
4 services, or materials or from the last furnishing of labor,
5 services, or materials by the ~~general~~ contractor if the
6 ~~general~~ contractor is the principal on a bond on the same
7 construction project, whichever is later.

8 Section 2. Paragraph (a) of subsection (1) and
9 paragraph (a) of subsection (2) of section 255.05, Florida
10 Statutes, are amended to read:

11 255.05 Bond of contractor constructing public
12 buildings; form; action by materialmen.--

13 (1)(a) Any person entering into a formal contract with
14 the state or any county, city, or political subdivision
15 thereof, or other public authority, for the construction of a
16 public building, for the prosecution and completion of a
17 public work, or for repairs upon a public building or public
18 work shall be required, before commencing the work or before
19 recommencing the work after a default or abandonment, to
20 execute, deliver to the public owner, and record in the public
21 records of the county where the improvement is located, a
22 payment and performance bond with a surety insurer authorized
23 to do business in this state as surety. The bond must state on
24 its front page: the name, principal business address, and
25 phone number of the contractor, the surety, the owner of the
26 property being improved, and, if different from the owner, the
27 contracting public entity; the contract number assigned by the
28 contracting public entity; and a description of the project
29 sufficient to identify it, such as ~~including, if applicable,~~ a
30 legal description or ~~and~~ the street address of the property
31 being improved, and a general description of the improvement.

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1 Such bond shall be conditioned upon the contractor's
2 performance of the construction work ~~that the contractor~~
3 ~~perform the contract~~ in the time and manner prescribed in the
4 contract and promptly make payments to all persons defined in
5 s. 713.01 who furnish labor, services, or materials for whose
6 ~~claims derive directly or indirectly from~~ the prosecution of
7 the work provided for in the contract. Any claimant may apply
8 to the governmental entity having charge of the work for
9 copies of the contract and bond and shall thereupon be
10 furnished with a certified copy of the contract and bond. The
11 claimant shall have a right of action against the contractor
12 and surety for the amount due him or her, including unpaid
13 finance charges due under the claimant's contract. Such action
14 shall not involve the public authority in any expense. When
15 such work is done for the state and the contract is for
16 \$100,000 or less, no payment and performance bond shall be
17 required. At the discretion of the official or board awarding
18 such contract when such work is done for any county, city,
19 political subdivision, or public authority, any person
20 entering into such a contract which is for \$200,000 or less
21 may be exempted from executing the payment and performance
22 bond. When such work is done for the state, the Secretary of
23 the Department of Management Services may delegate to state
24 agencies the authority to exempt any person entering into such
25 a contract amounting to more than \$100,000 but less than
26 \$200,000 from executing the payment and performance bond. In
27 the event such exemption is granted, the officer or officials
28 shall not be personally liable to persons suffering loss
29 because of granting such exemption. The Department of
30 Management Services shall maintain information on the number
31 of requests by state agencies for delegation of authority to

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1 waive the bond requirements by agency and project number and
2 whether any request for delegation was denied and the
3 justification for the denial.

4
5 The state shall not be held liable to any laborer,
6 materialman, or subcontractor for any amounts greater than the
7 pro rata share as determined under this section.

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

15
16 NOTICE OF CONTEST OF CLAIM
17 AGAINST PAYMENT BOND
18

19
20 To: ...(Name and address of claimant)...

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

26
27 DATED on,

28
29
30 Signed:...(Contractor or Attorney)...

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

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

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1 in accordance with s. 713.18. An action, except for an action
2 exclusively for recovery of retainage, must be instituted
3 against the contractor or the surety on the payment bond or
4 the payment provisions of a combined payment and performance
5 bond within 1 year after the performance of the labor or
6 completion of delivery of the materials or supplies. An action
7 exclusively for recovery of retainage must be instituted
8 against the contractor or the surety within 1 year after the
9 performance of the labor or completion of delivery of the
10 materials or supplies, or within 90 days after ~~the~~
11 ~~contractor's~~ receipt of final payment (or the payment estimate
12 containing the owner's final reconciliation of quantities if
13 no further payment is earned and due as a result of deductive
14 adjustments) by the contractor or surety, whichever comes
15 last. A claimant may not waive in advance his or her right to
16 bring an action under the bond against the surety. In any
17 action brought to enforce a claim against a payment bond under
18 this section, the prevailing party is entitled to recover a
19 reasonable fee for the services of his or her attorney for
20 trial and appeal or for arbitration, in an amount to be
21 determined by the court, which fee must be taxed as part of
22 the prevailing party's costs, as allowed in equitable actions.
23 The time periods for service of a notice of nonpayment or for
24 bringing an action against a contractor or a surety shall be
25 measured from the last day of furnishing labor, services, or
26 materials by the claimant and shall not be measured by other
27 standards, such as the issuance of a certificate of occupancy
28 or the issuance of a certificate of substantial completion.

29 Section 3. Subsections (26) and (27) of section
30 713.01, Florida Statutes, are amended to read:

31 713.01 Definitions.--As used in this part, the term:

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1 (26) "Subcontractor" means a person other than a
2 materialman or laborer who enters into a contract with a
3 contractor for the performance of any part of such
4 contractor's contract, including the removal of solid waste
5 from the real property. The term includes a temporary help
6 firm as defined in s. 443.101.

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

13 Section 4. Subsection (7) of section 713.02, Florida
14 Statutes, is amended to read:

15 713.02 Types of lienors and exemptions.--

16 (7) Notwithstanding any other provision of this part,
17 no lien shall exist in favor of any contractor, subcontractor,
18 or sub-subcontractor unless such contractor, subcontractor, or
19 sub-subcontractor is licensed, if required to be licensed, as
20 a contractor pursuant to the laws of the jurisdiction within
21 which she or he is doing business.

22 Section 5. Effective July 1, 2002, paragraph (d) of
23 subsection (1) of section 713.13, Florida Statutes, is amended
24 to read:

25 713.13 Notice of commencement.--

26 (1)

27 (d) A notice of commencement must be in substantially
28 the following form:

29

30 Permit No.....

Tax Folio No.....

31

NOTICE OF COMMENCEMENT

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1 State of....

2 County of....

3

4 The undersigned hereby gives notice that improvement will be
5 made to certain real property, and in accordance with Chapter
6 713, Florida Statutes, the following information is provided
7 in this Notice of Commencement.

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

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

11 3. Owner information:.....

12 a. Name and address:.....

13 b. Interest in property:.....

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

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

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

18 **~~b.~~** ~~Fax number:.....(optional, if service by fax is~~
19 ~~acceptable).~~

20 5. Surety

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

22 b. Phone number:.....

23 **~~c.~~** ~~Fax number:.....(optional, if service by fax is~~
24 ~~acceptable).~~

25 c.d. Amount of bond: \$.....

26 6.a. Lender: ...(name and address)....

27 b.a. Lender's phone number:.....

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

30 7.a. Persons within the State of Florida designated by
31 Owner upon whom notices or other documents may be served as

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1 provided by Section 713.13(1)(a)7., Florida Statutes:

2 ...(name and address)....

3 ~~b.a. Phone numbers of designated persons number:.....~~

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

6 8.a. In addition to himself or herself, Owner
7 designates of to receive a copy of
8 the Lienor's Notice as provided in Section 713.13(1)(b),
9 Florida Statutes.

10 ~~b.a. Phone number of person or entity designated by~~
11 ~~owner:.....~~

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

14 9. Expiration date of notice of commencement (the
15 expiration date is 1 year from the date of recording unless a
16 different date is specified).....

17
18(Signature of Owner)...

19
20 Sworn to (or affirmed) and subscribed before me this
21 day of, ...(year)...., by ...(name of person making
22 statement)....

23
24(Signature of Notary Public - State of Florida)...

25(Print, Type, or Stamp Commissioned Name of Notary
26 Public)...

27
28 Personally Known OR Produced Identification

29
30 Type of Identification Produced.....

31

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1 Section 6. Subsections (1) and (2) of section 713.18,
2 Florida Statutes, are amended to read:

3 713.18 Manner of serving notices and other
4 instruments.--

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

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

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

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

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

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

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

19 Section 7. Paragraph (d) of subsection (1) of section
20 713.23, Florida Statutes, is amended to read:

21 713.23 Payment bond.--

22 (1)

23 (d) In addition, a lienor is required, as a condition
24 precedent to recovery under the bond, to serve a written
25 notice of nonpayment to the contractor and the surety not
26 later than 90 days after the final furnishing of labor,
27 services, or materials by the lienor. A written notice
28 satisfies this condition precedent with respect to the payment
29 described in the notice of nonpayment, including unpaid
30 finance charges due under the lienor's contract, and with
31 respect to any other payments which become due to the lienor

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1 after the date of the notice of nonpayment. The time period
2 for serving a written notice of nonpayment shall be measured
3 from the last day of furnishing labor, services, or materials
4 by the lienor and shall not be measured by other standards,
5 such as the issuance of a certificate of occupancy or the
6 issuance of a certificate of substantial completion. The
7 failure of a lienor to receive retainage sums not in excess of
8 10 percent of the value of labor, services, or materials
9 furnished by the lienor is not considered a nonpayment
10 requiring the service of the notice provided under this
11 paragraph. The notice under this paragraph may be in
12 substantially the following form:

13
14 NOTICE OF NONPAYMENT

15
16 To ...(name of contractor and address)...

17
18 ...(name of surety and address)...

19
20 The undersigned notifies you that he or she has furnished
21 ...(describe labor, services, or materials)... for the
22 improvement of the real property identified as ...(property
23 description).... The amount now due and unpaid is \$.....

24
25 ...(signature and address of lienor)...

26
27 Section 8. Subsection (1) of section 713.245, Florida
28 Statutes, is amended to read:

29 713.245 Conditional payment bond.--

30 (1) Notwithstanding any provisions of ss. 713.23 and
31 713.24 to the contrary, if the contractor's written

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1 contractual obligation to pay lienors is expressly conditioned
2 upon and limited to the payments made by the owner to the
3 contractor, the duty of the surety to pay lienors will be
4 coextensive with the duty of the contractor to pay, if the
5 following provisions are complied with:

6 (a) The bond is listed in the notice of commencement
7 for the project as a conditional payment bond and is recorded
8 together with the notice of commencement for the project prior
9 to commencement of the project.

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

12 (c) The bond contains on the front page, in at least
13 10-point type, the statement: THIS BOND ONLY COVERS CLAIMS OF
14 SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND LABORERS TO
15 THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR,
16 SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND
17 DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING
18 A CLAIM OF LIEN ON THIS PROJECT.

19 Section 9. Subsection (1) of section 725.06, Florida
20 Statutes, is amended to read:

21 725.06 Construction contracts; limitation on
22 indemnification.--

23 (1) A construction contract may require a party to
24 that contract to indemnify and hold harmless the other party
25 to the contract, their officers, directors, agents, and
26 employees, from liabilities, damages, losses and costs,
27 including, but not limited to, reasonable attorney's fees, to
28 the extent caused by the negligence, recklessness, or
29 intentional wrongful misconduct of the indemnifying party and
30 persons employed or utilized by the indemnifying party in the
31 performance of the construction contract.

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

3 725.08 Design professional contracts; limitation in
4 indemnification.--

5 (1) ~~Notwithstanding the provisions of s. 725.06,~~If a
6 design professional provides professional services to or for a
7 public agency, the agency may require in a professional
8 services contract with the design professional that the design
9 professional indemnify and hold harmless the agency, and its
10 officers and employees, from liabilities, damages, losses, and
11 costs, including, but not limited to, reasonable attorneys'
12 fees, to the extent caused by the negligence, recklessness, or
13 intentionally wrongful conduct of the design professional and
14 other persons employed or utilized by the design professional
15 in the performance of the contract.

16 Section 11. Effective July 1, 2002, subsection (3) of
17 section 713.18, Florida Statutes, is repealed.

18 Section 12. Except as otherwise provided in this act,
19 this act shall take effect July 1, 2001.

20
21

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25
26 and insert:

27 A bill to be entitled
28 An act relating to building construction;
29 amending s. 95.11, F.S.; providing alternative
30 applications to a statute of limitations for
31 certain legal or equitable actions for actions

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1 to enforce claims against payment bonds;
2 revising a statute of limitations for actions
3 to enforce claims against certain payment
4 bonds; amending s. 255.05, F.S.; clarifying
5 criteria for performance of bonds; revising a
6 provision relating to notice of nonpayment for
7 certain labor, materials, or supplies; amending
8 s. 713.01, F.S.; revising certain definitions;
9 amending s. 713.02, F.S.; clarifying a
10 criterion for a proscription against certain
11 liens; amending s. 713.13, F.S.; deleting
12 authorization for certain fax numbers in
13 notices of commencement; amending s. 713.18,
14 F.S.; revising provisions relating to manner of
15 serving notices and certain instruments;
16 amending s. 713.23, F.S.; including certain
17 unpaid finance charges under a written notice
18 of nonpayment of a payment bond; amending s.
19 713.245, F.S.; providing additional bond
20 criteria for coextension of a surety's duty to
21 pay lienors with a contractor's duty to pay;
22 amending ss. 725.06, 725.08, F.S.; revising
23 indemnification and hold harmless requirements
24 for construction contracts and design
25 professional contracts; repealing s. 713.18(3),
26 F.S., relating to service of certain notices by
27 facsimile transmission; providing effective
28 dates.

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