

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Construction Lien Law; amending s.
7 713.135, F.S.; revising certain notice of commencement and
8 applicability of lien requirements for certain authorities
9 issuing building permits; prohibiting private providers
10 performing inspection services from performing or
11 approving certain inspections under certain circumstances;
12 increasing a threshold amount for certain application
13 requirement exemptions; prohibiting issuing authorities
14 from requiring recordation of a notice of commencement for
15 certain purposes; authorizing fees for furnishing copies
16 of certain statements; authorizing authorities issuing
17 building permits to accept permit applications
18 electronically; requiring an electronic submission
19 statement on building permit applications; requiring
20 provision of Internet access; amending s. 713.18, F.S.;
21 providing for electronic evidence of delivery of notices
22 required by the Construction Lien Law; amending s. 713.35,
23 F.S.; revising provisions relating to the making or

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24 | furnishing of false statements on certain construction
25 | documents; providing penalties; providing an effective
26 | date.

27 |

28 | Be It Enacted by the Legislature of the State of Florida:

29 |

30 | Section 1. Paragraphs (b) and (d) of subsection (1) and
31 | subsections (4) and (6) of section 713.135, Florida Statutes,
32 | are amended, and paragraph (e) is added to subsection (1) of
33 | that section, to read:

34 | 713.135 Notice of commencement and applicability of
35 | lien.--

36 | (1) When any person applies for a building permit, the
37 | authority issuing such permit shall:

38 | (b) Provide the applicant and the owner of the real
39 | property upon which improvements are to be constructed with a
40 | printed statement stating that the right, title, and interest of
41 | the person who has contracted for the improvement may be subject
42 | to attachment under the Construction Lien Law. The Department of
43 | Business and Professional Regulation shall furnish, for
44 | distribution, the statement described in this paragraph, and the
45 | statement must be a summary of the Construction Lien Law and
46 | must include an explanation of the provisions of the
47 | Construction Lien Law relating to the recording, and the posting
48 | of copies, of notices of commencement and a statement
49 | encouraging the owner to record a notice of commencement and
50 | post a copy of the notice of commencement in accordance with s.
51 | 713.13. The statement must also contain an explanation of the

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52 | owner's rights if a lienor fails to furnish the owner with a
53 | notice as provided in s. 713.06(2) and an explanation of the
54 | owner's rights as provided in s. 713.22. The authority that
55 | issues the building permit must obtain from the Department of
56 | Business and Professional Regulation the statement required by
57 | this paragraph and must mail, deliver by electronic mail or
58 | other electronic format or facsimile, or personally deliver that
59 | statement to the owner or, in a case in which the owner is
60 | required to personally appear to obtain the permit, provide that
61 | statement to any owner making improvements to real property
62 | consisting of a single or multiple family dwelling up to and
63 | including four units. However, the failure by the authorities to
64 | provide the summary does not subject the issuing authority to
65 | liability.

66 | (d) Furnish to the applicant two or more copies of a form
67 | of notice of commencement conforming with s. 713.13. If the
68 | direct contract is greater than \$2,500, the applicant shall file
69 | with the issuing authority prior to the first inspection either
70 | a certified copy of the recorded notice of commencement or a
71 | notarized statement that the notice of commencement has been
72 | filed for recording, along with a copy thereof. In the absence
73 | of the filing of a certified copy of the recorded notice of
74 | commencement, the issuing authority or a private provider
75 | performing inspection services may ~~shall~~ not perform or approve
76 | subsequent inspections until the applicant files by mail,
77 | facsimile, hand delivery, or any other means such certified copy
78 | with the issuing authority. The certified copy of the notice of
79 | commencement must contain the name and address of the owner, the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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80 name and address of the contractor, and the location or address
81 of the property being improved. The issuing authority shall
82 verify that the name and address of the owner, the name of the
83 contractor, and the location or address of the property being
84 improved which is contained in the certified copy of the notice
85 of commencement is consistent with the information in the
86 building permit application. The issuing authority shall provide
87 the recording information on the certified copy of the recorded
88 notice of commencement to any person upon request. This
89 subsection does not require the recording of a notice of
90 commencement prior to the issuance of a building permit. If a
91 local government requires a separate permit or inspection for
92 installation of temporary electrical service or other temporary
93 utility service, land clearing, or other preliminary site work,
94 such permits may be issued and such inspections may be conducted
95 without providing the issuing authority with a certified copy of
96 a recorded notice of commencement or a notarized statement
97 regarding a recorded notice of commencement. This subsection
98 does not apply to a direct contract to repair or replace an
99 existing heating or air-conditioning system in an amount less
100 than \$7,500 ~~\$5,000~~.

101 (e) Not require that a notice of commencement be recorded
102 as a condition of the application for or processing or issuance
103 of a building permit. However, this paragraph does not modify or
104 wave the inspection requirements set forth in this subsection.

105 (4) The several boards of county commissioners, municipal
106 councils, or other similar bodies may by ordinance or resolution
107 establish reasonable fees for furnishing copies of the forms and

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108 | the printed statement provided in paragraphs ~~paragraph~~ (1) (b)
 109 | and (d) in an amount not to exceed \$5 to be paid by the
 110 | applicant for each permit in addition to all other costs of the
 111 | permit; however, no forms or statement need be furnished,
 112 | mailed, or otherwise provided to, nor may such additional fee be
 113 | obtained from, applicants for permits in those cases in which
 114 | the owner of a legal or equitable interest (including that of
 115 | ownership of stock of a corporate landowner) of the real
 116 | property to be improved is engaged in the business of
 117 | construction of buildings for sale to others and intends to make
 118 | the improvements authorized by the permit on the property and
 119 | upon completion will offer the improved real property for sale.

120 | (6) (a) In addition to any other information required by
 121 | the authority issuing the permit, the building permit
 122 | application must be in substantially the following form:

123 |
 124 | Tax Folio No. _____

125 | BUILDING PERMIT APPLICATION

126 |

127 | Owner's Name

128 | Owner's Address

129 | Fee Simple Titleholder's Name (If other than owner)

130 | Fee Simple Titleholder's Address (If other than owner)

131 | City

132 | State _____ Zip _____

133 | Contractor's Name

134 | Contractor's Address

135 | City

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136 State _____ Zip _____
 137 Job Name
 138 Job Address
 139 City _____ County _____
 140 Legal Description
 141 Bonding Company
 142 Bonding Company Address
 143 City _____ State _____
 144 Architect/Engineer's Name
 145 Architect/Engineer's Address
 146 Mortgage Lender's Name
 147 Mortgage Lender's Address

148
 149 Application is hereby made to obtain a permit to do the
 150 work and installations as indicated. I certify that no work or
 151 installation has commenced prior to the issuance of a permit and
 152 that all work will be performed to meet the standards of all
 153 laws regulating construction in this jurisdiction. I understand
 154 that a separate permit must be secured for ELECTRICAL WORK,
 155 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,
 156 TANKS, and AIR CONDITIONERS, etc.

157
 158 OWNER'S AFFIDAVIT: I certify that all the foregoing information
 159 is accurate and that all work will be done in compliance with
 160 all applicable laws regulating construction and zoning.

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163 | WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF
164 | COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO
165 | YOUR PROPERTY.

166
167

168 | IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR
169 | AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

170

171 | (Signature of Owner or Agent)
172 | (including contractor)

173 | STATE OF FLORIDA

174 | COUNTY OF _____

175

176

177 | Sworn to (or affirmed) and subscribed before me this _____
178 | day of _____, (year) , by (name of person making statement)

179 | .

180

181 | (Signature of Notary Public - State of Florida)

182 | (Print, Type, or Stamp Commissioned Name of Notary Public)

183

184 | Personally Known _____ OR Produced Identification _____

185

186 | Type of Identification Produced _____

187 | (Signature of Contractor)

188

189

190 | STATE OF FLORIDA

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191 COUNTY OF _____

192

193

194 Sworn to (or affirmed) and subscribed before me this _____

195 day of _____, (year) , by (name of person making statement)

196 .

197

198 (Signature of Notary Public - State of Florida)

199 (Print, Type, or Stamp Commissioned Name of Notary Public)

200

201 Personally Known _____ OR Produced Identification _____

202

203 Type of Identification Produced _____

204

205 (Certificate of Competency Holder)

206

207 Contractor's State Certification or Registration No. _____

208

209 Contractor's Certificate of Competency No. _____

210

211 APPLICATION APPROVED BY

212 _____ Permit Officer

213

214 (b) Consistent with the requirements of paragraph (a), an
 215 authority responsible for issuing building permits under this
 216 section may accept a building permit application in an
 217 electronic format, as prescribed by the authority. Building

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218 permit applications submitted to the authority electronically
219 must contain the following additional statement:

220
221 OWNER'S ELECTRONIC SUBMISSION STATEMENT: Under penalty of
222 perjury, I declare that all the information contained in this
223 building permit application is true and correct.

224
225 (c) An authority responsible for issuing building permit
226 applications which accepts building permit applications in an
227 electronic format shall provide public Internet access to the
228 electronic building permit applications in a searchable format.

229 Section 2. Paragraph (b) of subsection (1) of section
230 713.18, Florida Statutes, is amended to read:

231 713.18 Manner of serving notices and other instruments.--

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

237 (b) By sending the same by registered or certified mail,
238 with postage prepaid, or by overnight or second-day delivery
239 with evidence of delivery, which may be in an electronic format.

240 1. If a notice to owner, a notice to contractor under s.
241 713.23, or a preliminary notice under s. 255.05 is mailed by
242 registered or certified mail with postage prepaid to the person
243 to be served at any of the addresses set forth in subparagraph
244 2. within 40 days after the date the lienor first furnishes
245 labor, services, or materials, service of that notice is

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246 effective as of the date of mailing if the person who served the
247 notice maintains a registered or certified mail log that shows
248 the registered or certified mail number issued by the United
249 States Postal Service, the name and address of the person
250 served, and the date stamp of the United States Postal Service
251 confirming the date of mailing or if the person who served the
252 notice maintains electronic tracking records generated through
253 use of the United States Postal Service Confirm service or a
254 similar service containing the postal tracking number, the name
255 and address of the person served, and verification of the date
256 of receipt by the United States Postal Service.

257 2. If an instrument served pursuant to this section to the
258 last address shown in the notice of commencement or any
259 amendment thereto or, in the absence of a notice of
260 commencement, to the last address shown in the building permit
261 application, or to the last known address of the person to be
262 served, is not received, but is returned as being "refused,"
263 "moved, not forwardable," or "unclaimed," or is otherwise not
264 delivered or deliverable through no fault of the person serving
265 the item, then service is effective on the date the notice was
266 sent.

267 Section 3. Section 713.35, Florida Statutes, is amended to
268 read:

269 713.35 Making or furnishing false statement.--Any person,
270 firm, or corporation who knowingly and intentionally makes or
271 furnishes to another person, firm, or corporation, ~~a written~~
272 ~~statement in the form of~~ an affidavit, a waiver or release of
273 lien, or other document, whether or not under oath, containing

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274 false information about the payment status of subcontractors,
275 sub-subcontractors, or suppliers in connection with the
276 improvement of real property in this state, knowing that the one
277 to whom it was furnished might rely on it, and the one to whom
278 it was furnished will part with draw payments or final payment
279 relying on the truth of such statement as an inducement to do so
280 commits ~~is guilty of~~ a felony of the third degree, punishable as
281 provided in s. 775.082 or s. 775.083. A state attorney or the
282 statewide prosecutor, upon the filing of an indictment or
283 information against a contractor, subcontractor, or sub-
284 subcontractor which charges such person with a violation of this
285 section, shall forward a copy of the indictment or information
286 to the Department of Business and Professional Regulation. The
287 Department of Business and Professional Regulation shall
288 promptly open an investigation into the matter and, if probable
289 cause is found, shall furnish a copy of any investigative report
290 to the state attorney or statewide prosecutor who furnished a
291 copy of the indictment or information and to the owner of the
292 property which is the subject of the investigation.

293 Section 4. This act shall take effect October 1, 2006.