

CHAMBER ACTION

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1 The Justice Council recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to liens; amending s. 679.705, F.S.;  
7 extending the effective date of a financing statement  
8 filed under previous law; amending s. 713.135, F.S.;  
9 revising certain notice of commencement and applicability  
10 of lien requirements for certain authorities issuing  
11 building permits; prohibiting private providers performing  
12 inspection services from performing or approving certain  
13 inspections under certain circumstances; increasing a  
14 threshold amount for certain application requirement  
15 exemptions; prohibiting issuing authorities from requiring  
16 recordation of a notice of commencement for certain  
17 purposes; authorizing fees for furnishing copies of  
18 certain statements; authorizing authorities issuing  
19 building permits to accept permit applications  
20 electronically; requiring an electronic submission  
21 statement on building permit applications; requiring  
22 provision of Internet access; amending s. 713.18, F.S.;  
23 providing for electronic evidence of delivery of notices

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24 required by the Construction Lien Law; amending s. 713.35,  
25 F.S.; revising provisions relating to the making or  
26 furnishing of false statements on certain construction  
27 documents; providing penalties; providing effective dates.  
28

29 Be It Enacted by the Legislature of the State of Florida:  
30

31 Section 1. Effective upon this act becoming a law,  
32 subsection (3) of section 679.705, Florida Statutes, is amended  
33 to read:

34 679.705 Effectiveness of action taken before effective  
35 date.--

36 (3) This act does not render ineffective an effective  
37 financing statement that, before this act takes effect, is filed  
38 and satisfies the applicable requirements for perfection under  
39 the law of the jurisdiction governing perfection as provided in  
40 s. 679.103, Florida Statutes 2000. However, except as otherwise  
41 provided in subsections (4) and (5) and s. 679.706, the  
42 financing statement ceases to be effective at the earlier of:

43 (a) The time the financing statement would have ceased to  
44 be effective under the law of the jurisdiction in which it is  
45 filed; or

46 (b) December 31 ~~June 30~~, 2006.

47 Section 2. Paragraphs (b) and (d) of subsection (1) and  
48 subsections (4) and (6) of section 713.135, Florida Statutes,  
49 are amended, and paragraph (e) is added to subsection (1) of  
50 that section, to read:

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51           713.135 Notice of commencement and applicability of  
52 lien.--

53           (1) When any person applies for a building permit, the  
54 authority issuing such permit shall:

55           (b) Provide the applicant and the owner of the real  
56 property upon which improvements are to be constructed with a  
57 printed statement stating that the right, title, and interest of  
58 the person who has contracted for the improvement may be subject  
59 to attachment under the Construction Lien Law. The Department of  
60 Business and Professional Regulation shall furnish, for  
61 distribution, the statement described in this paragraph, and the  
62 statement must be a summary of the Construction Lien Law and  
63 must include an explanation of the provisions of the  
64 Construction Lien Law relating to the recording, and the posting  
65 of copies, of notices of commencement and a statement  
66 encouraging the owner to record a notice of commencement and  
67 post a copy of the notice of commencement in accordance with s.  
68 713.13. The statement must also contain an explanation of the  
69 owner's rights if a lienor fails to furnish the owner with a  
70 notice as provided in s. 713.06(2) and an explanation of the  
71 owner's rights as provided in s. 713.22. The authority that  
72 issues the building permit must obtain from the Department of  
73 Business and Professional Regulation the statement required by  
74 this paragraph and must mail, deliver by electronic mail or  
75 other electronic format or facsimile, or personally deliver that  
76 statement to the owner or, in a case in which the owner is  
77 required to personally appear to obtain the permit, provide that  
78 statement to any owner making improvements to real property

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79 | consisting of a single or multiple family dwelling up to and  
80 | including four units. However, the failure by the authorities to  
81 | provide the summary does not subject the issuing authority to  
82 | liability.

83 | (d) Furnish to the applicant two or more copies of a form  
84 | of notice of commencement conforming with s. 713.13. If the  
85 | direct contract is greater than \$2,500, the applicant shall file  
86 | with the issuing authority prior to the first inspection either  
87 | a certified copy of the recorded notice of commencement or a  
88 | notarized statement that the notice of commencement has been  
89 | filed for recording, along with a copy thereof. In the absence  
90 | of the filing of a certified copy of the recorded notice of  
91 | commencement, the issuing authority or a private provider  
92 | performing inspection services may ~~shall~~ not perform or approve  
93 | subsequent inspections until the applicant files by mail,  
94 | facsimile, hand delivery, or any other means such certified copy  
95 | with the issuing authority. The certified copy of the notice of  
96 | commencement must contain the name and address of the owner, the  
97 | name and address of the contractor, and the location or address  
98 | of the property being improved. The issuing authority shall  
99 | verify that the name and address of the owner, the name of the  
100 | contractor, and the location or address of the property being  
101 | improved which is contained in the certified copy of the notice  
102 | of commencement is consistent with the information in the  
103 | building permit application. The issuing authority shall provide  
104 | the recording information on the certified copy of the recorded  
105 | notice of commencement to any person upon request. This  
106 | subsection does not require the recording of a notice of

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107 commencement prior to the issuance of a building permit. If a  
 108 local government requires a separate permit or inspection for  
 109 installation of temporary electrical service or other temporary  
 110 utility service, land clearing, or other preliminary site work,  
 111 such permits may be issued and such inspections may be conducted  
 112 without providing the issuing authority with a certified copy of  
 113 a recorded notice of commencement or a notarized statement  
 114 regarding a recorded notice of commencement. This subsection  
 115 does not apply to a direct contract to repair or replace an  
 116 existing heating or air-conditioning system in an amount less  
 117 than \$7,500 ~~\$5,000~~.

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

122 (4) The several boards of county commissioners, municipal  
 123 councils, or other similar bodies may by ordinance or resolution  
 124 establish reasonable fees for furnishing copies of the forms and  
 125 the printed statement provided in paragraphs ~~paragraph~~ (1) (b)  
 126 and (d) in an amount not to exceed \$5 to be paid by the  
 127 applicant for each permit in addition to all other costs of the  
 128 permit; however, no forms or statement need be furnished,  
 129 mailed, or otherwise provided to, nor may such additional fee be  
 130 obtained from, applicants for permits in those cases in which  
 131 the owner of a legal or equitable interest (including that of  
 132 ownership of stock of a corporate landowner) of the real  
 133 property to be improved is engaged in the business of  
 134 construction of buildings for sale to others and intends to make

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135 | the improvements authorized by the permit on the property and  
136 | upon completion will offer the improved real property for sale.

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

140 |

141 | Tax Folio No. \_\_\_\_\_

142 | BUILDING PERMIT APPLICATION

143 |

144 | Owner's Name

145 | Owner's Address

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

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

148 | City

149 | State \_\_\_\_\_ Zip \_\_\_\_\_

150 | Contractor's Name

151 | Contractor's Address

152 | City

153 | State \_\_\_\_\_ Zip \_\_\_\_\_

154 | Job Name

155 | Job Address

156 | City \_\_\_\_\_ County \_\_\_\_\_

157 | Legal Description

158 | Bonding Company

159 | Bonding Company Address

160 | City \_\_\_\_\_ State \_\_\_\_\_

161 | Architect/Engineer's Name

162 | Architect/Engineer's Address

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163 Mortgage Lender's Name  
164 Mortgage Lender's Address  
165

166 Application is hereby made to obtain a permit to do the  
167 work and installations as indicated. I certify that no work or  
168 installation has commenced prior to the issuance of a permit and  
169 that all work will be performed to meet the standards of all  
170 laws regulating construction in this jurisdiction. I understand  
171 that a separate permit must be secured for ELECTRICAL WORK,  
172 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,  
173 TANKS, and AIR CONDITIONERS, etc.  
174

175 OWNER'S AFFIDAVIT: I certify that all the foregoing information  
176 is accurate and that all work will be done in compliance with  
177 all applicable laws regulating construction and zoning.  
178  
179

180 WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF  
181 COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO  
182 YOUR PROPERTY.  
183  
184

185 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR  
186 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.  
187

188 (Signature of Owner or Agent)  
189 (including contractor)

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 (Signature of Contractor)

205

206

207 STATE OF FLORIDA

208 COUNTY OF \_\_\_\_\_

209

210

211 Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_

212 day of \_\_\_\_\_, (year) , by (name of person making statement)

213

214

215 (Signature of Notary Public - State of Florida)

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

217

218 Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_



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Type of Identification Produced \_\_\_\_\_  
  
(Certificate of Competency Holder)  
  
Contractor's State Certification or Registration No. \_\_\_\_\_  
  
Contractor's Certificate of Competency No. \_\_\_\_\_

APPLICATION APPROVED BY  
\_\_\_\_\_ Permit Officer

(b) Consistent with the requirements of paragraph (a), an authority responsible for issuing building permits under this section may accept a building permit application in an electronic format, as prescribed by the authority. Building permit applications submitted to the authority electronically must contain the following additional statement in lieu of the requirement in paragraph (a) that a signed, sworn, and notarized signature of the owner or agent and the contractor be part of the owner's affidavit:

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

(c) An authority responsible for issuing building permit applications which accepts building permit applications in an

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247 electronic format shall provide public Internet access to the  
248 electronic building permit applications in a searchable format.

249 Section 3. Paragraph (b) of subsection (1) of section  
250 713.18, Florida Statutes, is amended to read:

251 713.18 Manner of serving notices and other instruments.--

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

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

260 1. If a notice to owner, a notice to contractor under s.  
261 713.23, or a preliminary notice under s. 255.05 is mailed by  
262 registered or certified mail with postage prepaid to the person  
263 to be served at any of the addresses set forth in subparagraph  
264 2. within 40 days after the date the lienor first furnishes  
265 labor, services, or materials, service of that notice is  
266 effective as of the date of mailing if the person who served the  
267 notice maintains a registered or certified mail log that shows  
268 the registered or certified mail number issued by the United  
269 States Postal Service, the name and address of the person  
270 served, and the date stamp of the United States Postal Service  
271 confirming the date of mailing or if the person who served the  
272 notice maintains electronic tracking records generated through  
273 use of the United States Postal Service Confirm service or a  
274 similar service containing the postal tracking number, the name

275 | and address of the person served, and verification of the date  
 276 | of receipt by the United States Postal Service.

277 |         2. If an instrument served pursuant to this section to the  
 278 | last address shown in the notice of commencement or any  
 279 | amendment thereto or, in the absence of a notice of  
 280 | commencement, to the last address shown in the building permit  
 281 | application, or to the last known address of the person to be  
 282 | served, is not received, but is returned as being "refused,"  
 283 | "moved, not forwardable," or "unclaimed," or is otherwise not  
 284 | delivered or deliverable through no fault of the person serving  
 285 | the item, then service is effective on the date the notice was  
 286 | sent.

287 |         Section 4. Section 713.35, Florida Statutes, is amended to  
 288 | read:

289 |         713.35 Making or furnishing false statement.--Any person,  
 290 | firm, or corporation who knowingly and intentionally makes or  
 291 | furnishes to another person, firm, or corporation, ~~a written~~  
 292 | ~~statement in the form of~~ an affidavit, a waiver or release of  
 293 | lien, or other document, whether or not under oath, containing  
 294 | false information about the payment status of subcontractors,  
 295 | sub-subcontractors, or suppliers in connection with the  
 296 | improvement of real property in this state, knowing that the one  
 297 | to whom it was furnished might rely on it, and the one to whom  
 298 | it was furnished will part with draw payments or final payment  
 299 | relying on the truth of such statement as an inducement to do so  
 300 | commits ~~is guilty of~~ a felony of the third degree, punishable as  
 301 | provided in s. 775.082 or s. 775.083. A state attorney or the  
 302 | statewide prosecutor, upon the filing of an indictment or

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303 information against a contractor, subcontractor, or sub-  
304 subcontractor which charges such person with a violation of this  
305 section, shall forward a copy of the indictment or information  
306 to the Department of Business and Professional Regulation. The  
307 Department of Business and Professional Regulation shall  
308 promptly open an investigation into the matter and, if probable  
309 cause is found, shall furnish a copy of any investigative report  
310 to the state attorney or statewide prosecutor who furnished a  
311 copy of the indictment or information and to the owner of the  
312 property which is the subject of the investigation.

313 Section 5. Except as otherwise expressly provided in this  
314 act, this act shall take effect October 1, 2006.