

## ENROLLED

HB 1443, Engrossed 1

2006 Legislature

1 A bill to be entitled

2 An act relating to liens; amending s. 679.705, F.S.;

3 extending the effective date of a financing statement

4 filed under previous law; amending s. 713.135, F.S.;

5 revising certain notice of commencement and applicability

6 of lien requirements for certain authorities issuing

7 building permits; prohibiting private providers performing

8 inspection services from performing or approving certain

9 inspections under certain circumstances; increasing a

10 threshold amount for certain application requirement

11 exemptions; prohibiting issuing authorities from requiring

12 recordation of a notice of commencement for certain

13 purposes; authorizing fees for furnishing copies of

14 certain statements; authorizing authorities issuing

15 building permits to accept permit applications

16 electronically; requiring an electronic submission

17 statement on building permit applications; requiring

18 provision of Internet access; amending s. 713.18, F.S.;

19 providing for electronic evidence of delivery of notices

20 required by the Construction Lien Law; amending s. 713.35,

21 F.S.; revising provisions relating to the making or

22 furnishing of false statements on certain construction

23 documents; providing penalties; providing effective dates.

24

25 Be It Enacted by the Legislature of the State of Florida:

26

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

30 679.705 Effectiveness of action taken before effective  
 31 date.--

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

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

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

43 Section 2. Paragraphs (b) and (d) of subsection (1) and  
 44 subsections (4) and (6) of section 713.135, Florida Statutes,  
 45 are amended, and paragraph (e) is added to subsection (1) of  
 46 that section, to read:

47 713.135 Notice of commencement and applicability of  
 48 lien.--

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

51 (b) Provide the applicant and the owner of the real  
 52 property upon which improvements are to be constructed with a  
 53 printed statement stating that the right, title, and interest of

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54 | the person who has contracted for the improvement may be subject  
55 | to attachment under the Construction Lien Law. The Department of  
56 | Business and Professional Regulation shall furnish, for  
57 | distribution, the statement described in this paragraph, and the  
58 | statement must be a summary of the Construction Lien Law and  
59 | must include an explanation of the provisions of the  
60 | Construction Lien Law relating to the recording, and the posting  
61 | of copies, of notices of commencement and a statement  
62 | encouraging the owner to record a notice of commencement and  
63 | post a copy of the notice of commencement in accordance with s.  
64 | 713.13. The statement must also contain an explanation of the  
65 | owner's rights if a lienor fails to furnish the owner with a  
66 | notice as provided in s. 713.06(2) and an explanation of the  
67 | owner's rights as provided in s. 713.22. The authority that  
68 | issues the building permit must obtain from the Department of  
69 | Business and Professional Regulation the statement required by  
70 | this paragraph and must mail, deliver by electronic mail or  
71 | other electronic format or facsimile, or personally deliver that  
72 | statement to the owner or, in a case in which the owner is  
73 | required to personally appear to obtain the permit, provide that  
74 | statement to any owner making improvements to real property  
75 | consisting of a single or multiple family dwelling up to and  
76 | including four units. However, the failure by the authorities to  
77 | provide the summary does not subject the issuing authority to  
78 | liability.

79 | (d) Furnish to the applicant two or more copies of a form  
80 | of notice of commencement conforming with s. 713.13. If the

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81 | direct contract is greater than \$2,500, the applicant shall file  
82 | with the issuing authority prior to the first inspection either  
83 | a certified copy of the recorded notice of commencement or a  
84 | notarized statement that the notice of commencement has been  
85 | filed for recording, along with a copy thereof. In the absence  
86 | of the filing of a certified copy of the recorded notice of  
87 | commencement, the issuing authority or a private provider  
88 | performing inspection services may ~~shall~~ not perform or approve  
89 | subsequent inspections until the applicant files by mail,  
90 | facsimile, hand delivery, or any other means such certified copy  
91 | with the issuing authority. The certified copy of the notice of  
92 | commencement must contain the name and address of the owner, the  
93 | name and address of the contractor, and the location or address  
94 | of the property being improved. The issuing authority shall  
95 | verify that the name and address of the owner, the name of the  
96 | contractor, and the location or address of the property being  
97 | improved which is contained in the certified copy of the notice  
98 | of commencement is consistent with the information in the  
99 | building permit application. The issuing authority shall provide  
100 | the recording information on the certified copy of the recorded  
101 | notice of commencement to any person upon request. This  
102 | subsection does not require the recording of a notice of  
103 | commencement prior to the issuance of a building permit. If a  
104 | local government requires a separate permit or inspection for  
105 | installation of temporary electrical service or other temporary  
106 | utility service, land clearing, or other preliminary site work,  
107 | such permits may be issued and such inspections may be conducted

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108 | without providing the issuing authority with a certified copy of  
 109 | a recorded notice of commencement or a notarized statement  
 110 | regarding a recorded notice of commencement. This subsection  
 111 | does not apply to a direct contract to repair or replace an  
 112 | existing heating or air-conditioning system in an amount less  
 113 | than \$7,500 ~~\$5,000~~.

114 | (e) Not require that a notice of commencement be recorded  
 115 | as a condition of the application for or processing or issuance  
 116 | of a building permit. However, this paragraph does not modify or  
 117 | waive the inspection requirements set forth in this subsection.

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

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133           (6) (a) In addition to any other information required by  
 134 the authority issuing the permit, the building permit  
 135 application must be in substantially the following form:  
 136

137 Tax Folio No. \_\_\_\_\_

138 BUILDING PERMIT APPLICATION

139

140 Owner's Name

141 Owner's Address

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

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

144 City

145 State \_\_\_\_\_ Zip \_\_\_\_\_

146 Contractor's Name

147 Contractor's Address

148 City

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

150 Job Name

151 Job Address

152 City \_\_\_\_\_ County \_\_\_\_\_

153 Legal Description

154 Bonding Company

155 Bonding Company Address

156 City \_\_\_\_\_ State \_\_\_\_\_

157 Architect/Engineer's Name

158 Architect/Engineer's Address

159 Mortgage Lender's Name

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160 Mortgage Lender's Address

161  
 162 Application is hereby made to obtain a permit to do the  
 163 work and installations as indicated. I certify that no work or  
 164 installation has commenced prior to the issuance of a permit and  
 165 that all work will be performed to meet the standards of all  
 166 laws regulating construction in this jurisdiction. I understand  
 167 that a separate permit must be secured for ELECTRICAL WORK,  
 168 PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS,  
 169 TANKS, and AIR CONDITIONERS, etc.

170  
 171 OWNER'S AFFIDAVIT: I certify that all the foregoing information  
 172 is accurate and that all work will be done in compliance with  
 173 all applicable laws regulating construction and zoning.

174  
 175  
 176 WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF  
 177 COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO  
 178 YOUR PROPERTY.

179  
 180  
 181 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR  
 182 AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

183  
 184 (Signature of Owner or Agent)  
 185 (including contractor)

186 STATE OF FLORIDA

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187 COUNTY OF \_\_\_\_\_

188

189

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

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

192 .

193

194 (Signature of Notary Public - State of Florida)

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

196

197 Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

198

199 Type of Identification Produced \_\_\_\_\_

200 (Signature of Contractor)

201

202

203 STATE OF FLORIDA

204 COUNTY OF \_\_\_\_\_

205

206

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

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

209

210

211 (Signature of Notary Public - State of Florida)

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

213



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214 Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

215

216 Type of Identification Produced \_\_\_\_\_

217

218 (Certificate of Competency Holder)

219

220 Contractor's State Certification or Registration No. \_\_\_\_\_

221

222 Contractor's Certificate of Competency No. \_\_\_\_\_

223

224 APPLICATION APPROVED BY

225 \_\_\_\_\_ Permit Officer

226

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

236

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

240

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241           (c) An authority responsible for issuing building permit  
 242 applications which accepts building permit applications in an  
 243 electronic format shall provide public Internet access to the  
 244 electronic building permit applications in a searchable format.

245           Section 3. Paragraph (b) of subsection (1) of section  
 246 713.18, Florida Statutes, is amended to read:

247           713.18 Manner of serving notices and other instruments.--

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

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

256           1. If a notice to owner, a notice to contractor under s.  
 257 713.23, or a preliminary notice under s. 255.05 is mailed by  
 258 registered or certified mail with postage prepaid to the person  
 259 to be served at any of the addresses set forth in subparagraph  
 260 2. within 40 days after the date the lienor first furnishes  
 261 labor, services, or materials, service of that notice is  
 262 effective as of the date of mailing if the person who served the  
 263 notice maintains a registered or certified mail log that shows  
 264 the registered or certified mail number issued by the United  
 265 States Postal Service, the name and address of the person  
 266 served, and the date stamp of the United States Postal Service  
 267 confirming the date of mailing or if the person who served the

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268 notice maintains electronic tracking records generated through  
 269 use of the United States Postal Service Confirm service or a  
 270 similar service containing the postal tracking number, the name  
 271 and address of the person served, and verification of the date  
 272 of receipt by the United States Postal Service.

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

283 Section 4. Section 713.35, Florida Statutes, is amended to  
 284 read:

285 713.35 Making or furnishing false statement.--Any person,  
 286 firm, or corporation who knowingly and intentionally makes or  
 287 furnishes to another person, firm, or corporation, ~~a written~~  
 288 ~~statement in the form of~~ an affidavit, a waiver or release of  
 289 lien, or other document, whether or not under oath, containing  
 290 false information about the payment status of subcontractors,  
 291 sub-subcontractors, or suppliers in connection with the  
 292 improvement of real property in this state, knowing that the one  
 293 to whom it was furnished might rely on it, and the one to whom  
 294 it was furnished will part with draw payments or final payment

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295 | relying on the truth of such statement as an inducement to do so  
296 | commits ~~is guilty of~~ a felony of the third degree, punishable as  
297 | provided in s. 775.082 or s. 775.083. A state attorney or the  
298 | statewide prosecutor, upon the filing of an indictment or  
299 | information against a contractor, subcontractor, or sub-  
300 | subcontractor which charges such person with a violation of this  
301 | section, shall forward a copy of the indictment or information  
302 | to the Department of Business and Professional Regulation. The  
303 | Department of Business and Professional Regulation shall  
304 | promptly open an investigation into the matter and, if probable  
305 | cause is found, shall furnish a copy of any investigative report  
306 | to the state attorney or statewide prosecutor who furnished a  
307 | copy of the indictment or information and to the owner of the  
308 | property which is the subject of the investigation.

309 |       Section 5. Except as otherwise expressly provided in this  
310 | act, this act shall take effect October 1, 2006.