Florida Senate - 2006

CS for SB 588

By the Committee on Criminal Justice; and Senator Constantine

591-2323-06

1	A bill to be entitled
2	An act relating to liens; amending s. 713.135,
3	F.S.; revising certain requirements for notice
4	of commencement and applicability of liens
5	which pertain to certain authorities issuing
6	building permits; prohibiting private providers
7	performing inspection services from performing
8	or approving certain inspections under certain
9	circumstances; increasing a threshold amount
10	for certain nonapplication; prohibiting issuing
11	authorities or building officials from
12	requiring recordation of a notice of
13	commencement for certain purposes; authorizing
14	authorities issuing building permits to accept
15	permit applications electronically; requiring
16	an electronic application to include an
17	electronic submission statement; requiring the
18	provision of Internet access to electronically
19	submitted building permit applications;
20	amending s. 713.18, F.S.; providing for
21	electronic verification of service of notices
22	and other documents; amending s. 713.35, F.S.;
23	revising the list of legal documents in which
24	it is a crime to knowingly and intentionally
25	include certain false information; providing
26	penalties; amending s. 679.705, F.S.; delaying
27	the time at which certain financing statements
28	cease to be effective; providing effective
29	dates.
30	
31	Be It Enacted by the Legislature of the State of Florida:
	1

1 Section 1. Paragraphs (b) and (d) of subsection (1) 2 and subsections (4) and (6) of section 713.135, Florida Statutes, are amended, and paragraph (e) is added to 3 subsection (1) of that section, to read: 4 713.135 Notice of commencement and applicability of 5 б lien.--7 (1) When any person applies for a building permit, the 8 authority issuing such permit shall: 9 (b) Provide the applicant and the owner of the real 10 property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest 11 12 of the person who has contracted for the improvement may be 13 subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall 14 furnish, for distribution, the statement described in this 15 paragraph, and the statement must be a summary of the 16 17 Construction Lien Law and must include an explanation of the 18 provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of 19 commencement and a statement encouraging the owner to record a 20 21 notice of commencement and post a copy of the notice of 22 commencement in accordance with s. 713.13. The statement must 23 also contain an explanation of the owner's rights if a lienor fails to furnish the owner with a notice as provided in s. 2.4 713.06(2) and an explanation of the owner's rights as provided 25 26 in s. 713.22. The authority that issues the building permit 27 must obtain from the Department of Business and Professional 2.8 Regulation the statement required by this paragraph and must mail, deliver by electronic mail or other electronic format or 29 facsimile, or personally deliver that statement to the owner 30 or, if the owner is required to personally appear to obtain 31

2

1 the permit, provide that statement to any owner making 2 improvements to real property consisting of a single or multiple family dwelling up to and including four units. 3 However, the failure by the authorities to provide the summary 4 does not subject the issuing authority to liability. 5 б (d) Furnish to the applicant two or more copies of a 7 form of notice of commencement conforming with s. 713.13. Τf 8 the direct contract is greater than \$2,500, the applicant shall file with the issuing authority prior to the first 9 inspection either a certified copy of the recorded notice of 10 commencement or a notarized statement that the notice of 11 12 commencement has been filed for recording, along with a copy 13 thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority or 14 a private provider performing inspection services may shall 15 not perform or approve subsequent inspections until the 16 17 applicant files by mail, facsimile, hand delivery, or any 18 other means such certified copy with the issuing authority. The certified copy of the notice of commencement must contain 19 the name and address of the owner, the name and address of the 20 21 contractor, and the location or address of the property being 22 improved. The issuing authority shall verify that the name and 23 address of the owner, the name of the contractor, and the location or address of the property being improved which is 2.4 contained in the certified copy of the notice of commencement 25 is consistent with the information in the building permit 26 27 application. The issuing authority shall provide the recording 2.8 information on the certified copy of the recorded notice of 29 commencement to any person upon request. This subsection does not require the recording of a notice of commencement prior to 30 the issuance of a building permit. If a local government 31

1 requires a separate permit or inspection for installation of 2 temporary electrical service or other temporary utility service, land clearing, or other preliminary site work, such 3 permits may be issued and such inspections may be conducted 4 without providing the issuing authority with a certified copy 5 6 of a recorded notice of commencement or a notarized statement 7 regarding a recorded notice of commencement. This subsection 8 does not apply to a direct contract to repair or replace an 9 existing heating or air-conditioning system in an amount less 10 than<u>\$7,500</u>\$5,000. (e) An issuing authority or a building official may 11 12 not require that a notice of commencement be recorded as a 13 condition of the application, processing, or issuance of a building permit. However, this paragraph does not modify or 14 waive the inspection requirements set forth in this 15 16 subsection. 17 (4) The several boards of county commissioners, 18 municipal councils, or other similar bodies may by ordinance or resolution establish reasonable fees for furnishing copies 19 of the forms and the printed statement provided in paragraphs 20 (1)(b) and (d) paragraph (1)(d) in an amount not to exceed \$5 21 22 to be paid by the applicant for each permit in addition to all 23 other costs of the permit; however, the no forms or statement need not be furnished, mailed, or otherwise provided to, and 2.4 nor may such additional fee may not be obtained from, 25 26 applicants for permits in those cases in which the owner of a 27 legal or equitable interest (including that of ownership of 2.8 stock of a corporate landowner) of the real property to be 29 improved is engaged in the business of construction of 30 buildings for sale to others and intends to make the 31

4

1	improvements authorized by the permit on the property and upon
2	completion will offer the improved real property for sale.
3	(6) <u>(a)</u> In addition to any other information required
4	by the authority issuing the permit, the building permit
5	application must be in substantially the following form:
6	
7	Tax Folio No
8	BUILDING PERMIT APPLICATION
9	
10	Owner's Name
11	Owner's Address
12	Fee Simple Titleholder's Name (If other than owner)
13	Fee Simple Titleholder's Address (If other than owner)
14	City
15	State Zip
16	Contractor's Name
17	Contractor's Address
18	City
19	State Zip
20	Job Name
21	Job Address
22	City County
23	Legal Description
24	Bonding Company
25	Bonding Company Address
26	City State
27	Architect/Engineer's Name
28	Architect/Engineer's Address
29	Mortgage Lender's Name
30	Mortgage Lender's Address
31	

5

1	Application is hereby made to obtain a permit to do the			
2	work and installations as indicated. I certify that no work			
3	or installation has commenced prior to the issuance of a			
4	permit and that all work will be performed to meet the			
5	standards of all laws regulating construction in this			
6	jurisdiction. I understand that a separate permit must be			
7	secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS,			
8	FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.			
9				
10	OWNER'S AFFIDAVIT: I certify that all the foregoing			
11	information is accurate and that all work will be done in			
12	compliance with all applicable laws regulating construction			
13	and zoning.			
14				
15	WARNING TO OWNER: YOUR FAILURE TO RECORD A			
16	NOTICE OF COMMENCEMENT MAY RESULT IN YOUR			
17	PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY.			
18				
19	IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH			
20	YOUR LENDER OR AN ATTORNEY BEFORE RECORDING			
21	YOUR NOTICE OF COMMENCEMENT.			
22				
23	(Signature of Owner or Agent)			
24	(including contractor)			
25	STATE OF FLORIDA			
26	COUNTY OF			
27				
28				
29	Sworn to (or affirmed) and subscribed before me this			
30	day of,(year), by(name of person making			
31 statement)				

```
Florida Senate - 2006 591-2323-06
```

1 2 ... (Signature of Notary Public - State of Florida)... 3 ... (Print, Type, or Stamp Commissioned Name of Notary 4 Public)... 5 6 Personally Known OR Produced Identification 7 Type of Identification Produced..... 8 9 ... (Signature of Contractor)... 10 11 12 STATE OF FLORIDA COUNTY OF 13 14 15 Sworn to (or affirmed) and subscribed before me this 16 17 day of, ...(year)..., by ...(name of person making 18 statement).... 19 ... (Signature of Notary Public - State of Florida)... 20 21 ... (Print, Type, or Stamp Commissioned Name of Notary 22 Public)... 23 Personally Known OR Produced Identification 2.4 25 26 Type of Identification Produced..... 27 28 (Certificate of Competency Holder) 29 Contractor's State Certification or Registration No..... 30 31

Florida Senate - 2006 591-2323-06

```
CS for SB 588
```

```
1
   Contractor's Certificate of Competency No.....
 2
   APPLICATION APPROVED BY
 3
    .....Permit Officer
 4
 5
 6
          (b) Consistent with the requirements of paragraph (a),
 7
    an authority responsible for issuing building permits under
 8
    this section may accept a building permit application in an
    electronic format, as prescribed by the authority. A building
 9
10
    permit application that is submitted electronically to the
    authority must contain the following additional statement in
11
12
    lieu of the requirement that a signed, sworn, and notarized
13
    signature of the owner or agent and the contractor be part of
    the owner's affidavit:
14
15
    OWNER'S ELECTRONIC SUBMISSION STATEMENT: Under penalty of
16
17
   perjury, I declare that all the information contained in this
18
   building permit application is true and correct.
19
20
          (c) An authority responsible for issuing building
21
   permit applications which accepts building permit applications
22
    in an electronic format must provide public Internet access to
23
   the electronic building permit applications in a searchable
2.4
    format.
          Section 2. Paragraph (b) of subsection (1) of section
25
26
    713.18, Florida Statutes, is amended to read:
27
           713.18 Manner of serving notices and other
2.8
    instruments.--
           (1) Service of notices, claims of lien, affidavits,
29
    assignments, and other instruments permitted or required under
30
   this part, or copies thereof when so permitted or required,
31
                                  8
```

1 unless otherwise specifically provided in this part, must be made by one of the following methods: 2 (b) By sending the same by registered or certified 3 mail, with postage prepaid, or by overnight or second-day 4 delivery with evidence of delivery, which may be in an 5 6 electronic format. 7 1. If a notice to owner, a notice to contractor under 8 s. 713.23, or a preliminary notice under s. 255.05 is mailed by registered or certified mail with postage prepaid to the 9 person to be served at any of the addresses set forth in 10 subparagraph 2. within 40 days after the date the lienor first 11 12 furnishes labor, services, or materials, service of that 13 notice is effective as of the date of mailing if the person who served the notice maintains a registered or certified mail 14 log that shows the registered or certified mail number issued 15 16 by the United States Postal Service, the name and address of 17 the person served, and the date stamp of the United States 18 Postal Service confirming the date of mailing, or if the person who served the notice maintains electronic tracking 19 records generated through use of the United States Postal 20 21 Service "confirm" or similar service containing the postal 22 tracking number, the name and address of the person served, 23 and verification of the date of receipt by the United States 2.4 Postal Service. 2. If an instrument served pursuant to this section to 25 the last address shown in the notice of commencement or any 26 27 amendment thereto or, in the absence of a notice of 2.8 commencement, to the last address shown in the building permit 29 application, or to the last known address of the person to be served, is not received, but is returned as being "refused," 30 "moved, not forwardable," or "unclaimed," or is otherwise not 31

9

1 delivered or deliverable through no fault of the person 2 serving the item, then service is effective on the date the 3 notice was sent. 4 Section 3. Section 713.35, Florida Statutes, is amended to read: 5 б 713.35 Making or furnishing false statement. -- Any 7 person, firm, or corporation who knowingly and intentionally 8 makes or furnishes to another person, firm, or corporation, a 9 written statement in the form of an affidavit, waiver or release of lien, or other document, whether or not under oath, 10 containing false information about the payment status of 11 12 subcontractors, sub-subcontractors, or suppliers in connection 13 with the improvement of real property in this state, knowing that the one to whom it was furnished might rely on it, and 14 the one to whom it was furnished will part with draw payments 15 or final payment relying on the truth of such statement as an 16 17 inducement to do so commits is guilty of a felony of the third 18 degree, punishable as provided in s. 775.082 or s. 775.083. A state attorney or the statewide prosecutor, upon the filing of 19 an indictment or information against a contractor, 20 21 subcontractor, or sub-subcontractor which charges such person 22 with a violation of this section, shall forward a copy of the 23 indictment or information to the Department of Business and Professional Regulation. The Department of Business and 2.4 Professional Regulation shall promptly open an investigation 25 26 into the matter and, if probable cause is found, shall furnish 27 a copy of any investigative report to the state attorney or 2.8 statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the 29 30 subject of the investigation. 31

10

1 Section 4. Effective upon this act becoming a law, 2 subsection (3) of section 679.705, Florida Statutes, is amended to read: 3 679.705 Effectiveness of action taken before effective 4 5 date.-б (3) This act does not render ineffective an effective 7 financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection 8 under the law of the jurisdiction governing perfection as 9 10 provided in s. 679.103, Florida Statutes 2000. However, except as otherwise provided in subsections (4) and (5) and s. 11 12 679.706, the financing statement ceases to be effective at the earlier of: 13 (a) The time the financing statement would have ceased 14 to be effective under the law of the jurisdiction in which it 15 is filed; or 16 17 (b) <u>December 31</u> June 30, 2006. Section 5. Except as otherwise expressly provided in 18 this act and except for this section, which shall take effect 19 upon this act becoming a law, this act shall take effect 20 21 October 1, 2006. 22 23 24 25 26 27 28 29 30 31

Florida Senate - 2006 591-2323-06

CS for SB 588

1		STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
2		<u>Senate Bill 588</u>
3		
4	-	Section 1 of the bill is deleted by the committee substitute. This has the effect of reinstating current
5	aw, s. 713.13(1)(c), F.S.	
6 7	-	Requirements for the electronic submission of a building permit application are clarified.
8	- A new section is added to the original bill, amending 713.18(1)(b), F.S., to provide for electronic evidenc delivery of notices, claims of liens, affidavits and other instruments permitted or required under the	A new section is added to the original bill, amending s. 713.18(1)(b), F.S., to provide for electronic evidence of
9		delivery of notices, claims of liens, affidavits and other instruments permitted or required under the construction lien law.
10		
11	- The title is amended to broaden the bill to become an a relating to liens, and a section is added which correct a glitch in the 2001 re write of Article 0 of the Unife	The title is amended to broaden the bill to become an act relating to liens, and a section is added which corrects a glitch in the 2001 re-write of Article 9 of the Uniform
12		Commercial Code regarding the expiration date of financing statements.
13		
14		
15		
16		
17		
18 19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
29		
30		
31		