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1 A bill to be entitled  
2 An act relating to notices of nonpayment; amending s.  
3 255.05, F.S.; revising requirements for a notice of  
4 nonpayment for labor, services, or materials served by a  
5 claimant under a contractor's bond; depriving a claimant  
6 of rights under the bond for furnishing a false or  
7 fraudulent notice of nonpayment; revising a prohibition  
8 against claimant actions against a contractor or surety  
9 under certain circumstances; amending s. 337.18, F.S.;  
10 revising requirements for a notice of nonpayment for  
11 labor, services, or materials served by a claimant under a  
12 surety bond for construction or maintenance contracts;  
13 depriving a claimant of rights under the bond for  
14 furnishing a false or fraudulent notice of nonpayment;  
15 revising a prohibition against claimant actions against a  
16 contractor or surety under certain circumstances; amending  
17 s. 713.23, F.S.; revising requirements for a notice of  
18 nonpayment for labor, services, or materials served by a  
19 lienor under a payment bond; depriving a lienor of rights  
20 under the bond for furnishing a false or fraudulent notice  
21 of nonpayment; prohibiting lienor actions against a  
22 contractor or surety unless notice of nonpayment is given;  
23 deleting a notice of nonpayment form; providing an  
24 effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

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28 Section 1. Paragraph (a) of subsection (2) of section  
 29 255.05, Florida Statutes, is amended to read:

30 255.05 Bond of contractor constructing public buildings;  
 31 form; action by materialmen.—

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

39 NOTICE OF CONTEST OF CLAIM  
 40 AGAINST PAYMENT BOND

41 To: ...(Name and address of claimant)...

42 You are notified that the undersigned contests your notice  
 43 of nonpayment, dated \_\_\_\_\_, \_\_\_\_\_, and served on  
 44 the undersigned on \_\_\_\_\_, \_\_\_\_\_, and that the  
 45 time within which you may file suit to enforce your claim is  
 46 limited to 60 days after the date of service of this notice.

47 DATED on \_\_\_\_\_, \_\_\_\_\_.

48 Signed: ...(Contractor or Attorney)...

49 The claim of any claimant upon whom such notice is served and  
 50 who fails to institute a suit to enforce his or her claim  
 51 against the payment bond within 60 days after service of such  
 52 notice shall be extinguished automatically. The clerk shall mail  
 53 a copy of the notice of contest to the claimant at the address  
 54 shown in the notice of nonpayment or most recent amendment  
 55 thereto and shall certify to such service on the face of such

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56 notice and record the notice. Service is complete upon mailing.  
57 2. A claimant, except a laborer, who is not in privity  
58 with the contractor shall, before commencing or not later than  
59 45 days after commencing to furnish labor, services, or  
60 materials for the prosecution of the work, furnish the  
61 contractor with a written notice that he or she intends to look  
62 to the bond for protection. A claimant who is not in privity  
63 with the contractor and who has not received payment for his or  
64 her labor, services, or materials shall deliver to the  
65 contractor and to the surety written notice of the performance  
66 of the labor or services or delivery of the materials ~~or~~  
67 ~~supplies~~ and of the nonpayment. The notice of nonpayment shall  
68 be verified and may be served at any time during the progress of  
69 the work or thereafter but not before 45 days after the ~~first~~  
70 ~~furnishing of~~ labor, services, or materials are first furnished,  
71 and not later than 90 days after the ~~final furnishing of the~~  
72 labor, services, or materials are finally furnished by the  
73 claimant or, with respect to rental equipment, not later than 90  
74 days after the date that the rental equipment was last on the  
75 job site and available for use. The notice of nonpayment shall  
76 state, as of the date of the notice, the nature of the labor or  
77 services performed and to be performed, if any; the materials  
78 furnished; the materials to be furnished, if known; the amount  
79 paid on the account to date; the amount due; and the amount to  
80 become due, if known. In order to substantiate the amount  
81 claimed as unpaid in the notice of nonpayment, the notice shall  
82 also include as attachments copies of the claimant's contract or  
83 purchase order and any amendments or change orders directed to

84 the contract or purchase order; invoices, pay requests, bills of  
 85 lading, delivery receipts, or similar documents, as applicable;  
 86 and a statement of account reflecting all payments requested and  
 87 received for the labor, services, or materials. Any notice of  
 88 nonpayment served by a claimant who is not in privity with the  
 89 contractor that ~~which~~ includes sums for retainage must specify  
 90 the portion of the amount claimed for retainage. Furnishing a  
 91 false or fraudulent notice of nonpayment deprives the claimant  
 92 of his or her rights under the bond. A claimant may not  
 93 institute an ~~No action for the labor, materials, or supplies may~~  
 94 ~~be instituted~~ against the contractor or the surety for the  
 95 labor, services, or materials unless both notices have been  
 96 given in full compliance with this subparagraph. Notices  
 97 required or permitted under this section shall ~~may~~ be served in  
 98 accordance with s. 713.18. A claimant may not waive in advance  
 99 his or her right to bring an action under the bond against the  
 100 surety. In any action brought to enforce a claim against a  
 101 payment bond under this section, the prevailing party is  
 102 entitled to recover a reasonable fee for the services of his or  
 103 her attorney for trial and appeal or for arbitration, in an  
 104 amount to be determined by the court, which fee must be taxed as  
 105 part of the prevailing party's costs, as allowed in equitable  
 106 actions. The time periods for service of a notice of nonpayment  
 107 or for bringing an action against a contractor or a surety shall  
 108 be measured from the last day of furnishing labor, services, or  
 109 materials by the claimant and shall not be measured by other  
 110 standards, such as the issuance of a certificate of occupancy or  
 111 the issuance of a certificate of substantial completion.

112 Section 2. Paragraph (c) of subsection (1) of section  
 113 337.18, Florida Statutes, is amended to read:

114 337.18 Surety bonds for construction or maintenance  
 115 contracts; requirement with respect to contract award; bond  
 116 requirements; defaults; damage assessments.-

117 (1)

118 (c) A claimant, except a laborer, who is not in privity  
 119 with the contractor shall, before commencing or not later than  
 120 90 days after commencing to furnish labor, services, or  
 121 ~~materials, or supplies~~ for the prosecution of the work, furnish  
 122 the contractor with a notice that he or she intends to look to  
 123 the bond for protection. A claimant who is not in privity with  
 124 the contractor and who has not received payment for his or her  
 125 labor, services, or ~~materials, or supplies~~ shall deliver to the  
 126 contractor and to the surety written notice of the performance  
 127 of the labor or services or delivery of the materials ~~or~~  
 128 ~~supplies~~ and of the nonpayment. The notice of nonpayment shall  
 129 be verified and may be served at any time during the progress of  
 130 the work or thereafter but not before 45 days after the ~~first~~  
 131 ~~furnishing of~~ labor, services, or materials are first furnished,  
 132 and not later than 90 days after the ~~final furnishing of the~~  
 133 labor, services, or materials are finally furnished by the  
 134 claimant or, with respect to rental equipment, not later than 90  
 135 days after the date that the rental equipment was last on the  
 136 job site and available for use. The notice of nonpayment shall  
 137 state, as of the date of the notice, the nature of the labor or  
 138 services performed and to be performed, if any; the materials or  
 139 supplies furnished; the materials or supplies to be furnished,

140 if known; the amount paid on the account to date; the amount  
 141 due; and the amount to become due, if known. In order to  
 142 substantiate the amount claimed as unpaid in the notice of  
 143 nonpayment, the notice shall also include as attachments copies  
 144 of the claimant's contract or purchase order and any amendments  
 145 or change orders directed to the contract or purchase order;  
 146 invoices, pay requests, bills of lading, delivery receipts, or  
 147 similar documents, as applicable; and a statement of account  
 148 reflecting all payments requested and received for the labor,  
 149 materials, or supplies. Any notice of nonpayment served by a  
 150 claimant who is not in privity with the contractor that includes  
 151 sums for retainage must specify the portion of the amount  
 152 claimed for retainage. Furnishing a false or fraudulent notice  
 153 of nonpayment deprives the claimant of his or her rights under  
 154 the bond. An action by A claimant, except a laborer, who is not  
 155 in privity with the contractor for the labor, materials, or  
 156 supplies may not institute an action be instituted against the  
 157 contractor or the surety for the labor, services, or materials  
 158 unless both notices have been given in full compliance with this  
 159 paragraph. Notices required or permitted under this section  
 160 shall may be served in any manner provided in s. 713.18.

161 Section 3. Paragraph (d) of subsection (1) of section  
 162 713.23, Florida Statutes, is amended to read:

163 713.23 Payment bond.—

164 (1)

165 (d) In addition, a lienor is required, as a condition  
 166 precedent to recovery under the bond, to serve a written notice  
 167 of nonpayment to the contractor and the surety ~~not later than 90~~

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168 ~~days after the final furnishing of labor, services, or materials~~  
169 ~~by the lienor.~~ The notice of nonpayment shall be verified and  
170 may be served at any time during the progress of the work or  
171 thereafter but not before 45 days after the labor, services, or  
172 materials are first furnished and not later than 90 days after  
173 the labor, services, or materials are finally furnished by the  
174 lienor or, with respect to rental equipment, not later than 90  
175 days after the date that the rental equipment was last on the  
176 job site and available for use. The notice of nonpayment shall  
177 state, as of the date of the notice, the nature of the labor or  
178 services performed and to be performed, if any; the materials  
179 furnished; the materials to be furnished, if known; the amount  
180 paid on the account to date; the amount due; and the amount to  
181 become due, if known. For any lienor who is not in privity with  
182 the contractor, in order to substantiate the amount claimed as  
183 unpaid in the notice of nonpayment, the notice shall also  
184 include as attachments copies of the lienor's contract or  
185 purchase order and any amendments or change orders directed to  
186 the contract or purchase order; invoices, pay requests, bills of  
187 lading, delivery receipts, or similar documents, as applicable;  
188 and a statement of account reflecting all payments requested and  
189 received for the labor, services, or materials. Any notice of  
190 nonpayment served by a lienor who is not in privity with the  
191 contractor that includes sums for retainage must specify the  
192 portion of the amount claimed for retainage. Furnishing a false  
193 or fraudulent notice of nonpayment deprives the lienor of his or  
194 her rights under the bond. A lienor may not institute an action  
195 against the contractor or the surety for the labor, services, or

196 materials unless the notice of nonpayment has been given in full  
 197 compliance with this paragraph. A written notice satisfies this  
 198 condition precedent with respect to the payment described in the  
 199 notice of nonpayment, including unpaid finance charges due under  
 200 the lienor's contract, and with respect to any other payments  
 201 which become due to the lienor after the date of the notice of  
 202 nonpayment. The time period for serving a written notice of  
 203 nonpayment shall be measured from the last day of furnishing  
 204 labor, services, or materials by the lienor and shall not be  
 205 measured by other standards, such as the issuance of a  
 206 certificate of occupancy or the issuance of a certificate of  
 207 substantial completion. The failure of a lienor to receive  
 208 retainage sums not in excess of 10 percent of the value of  
 209 labor, services, or materials furnished by the lienor is not  
 210 considered a nonpayment requiring the service of the notice  
 211 provided under this paragraph. ~~The notice under this paragraph~~  
 212 ~~may be in substantially the following form:~~

213 ~~NOTICE OF NONPAYMENT~~

214 ~~To ... (name of contractor and address)...~~

215 ~~...(name of surety and address)...~~

216 ~~The undersigned notifies you that he or she has furnished~~

217 ~~...(describe labor, services, or materials)... for the~~

218 ~~improvement of the real property identified as ... (property~~

219 ~~description).... The amount now due and unpaid is \$\_\_\_\_\_.~~

220 ~~...(signature and address of lienor)...~~

221 Section 4. This act shall take effect July 1, 2010.