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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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03/09/2012 05:50 PM

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Senator Bogdanoff moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (b) of subsection (2) and paragraph  
(e) of subsection (5) of section 95.11, Florida Statutes, are  
amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation,  
or liability founded on a written instrument, except for an



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14 action to enforce a claim against a payment bond, which shall be  
15 governed by the applicable provisions of paragraph (5) (e), s.  
16 ~~ss.~~ 255.05(10), s. 337.18(1), or s. and 713.23(1) (e).

17 (5) WITHIN ONE YEAR.—

18 (e) Except for actions governed by s. 255.05(10), s.  
19 337.18(1), or s. 713.23(1) (e), an action to enforce any claim  
20 against a payment bond on which the principal is a contractor,  
21 subcontractor, or sub-subcontractor as defined in s. 713.01, for  
22 private work as well as public work, from the last furnishing of  
23 labor, services, or materials or from the last furnishing of  
24 labor, services, or materials by the contractor if the  
25 contractor is the principal on a bond on the same construction  
26 project, whichever is later.

27 Section 2. Subsection (1), paragraph (a) of subsection (2),  
28 and subsection (6) of section 255.05, Florida Statutes, are  
29 amended, and subsection (11) is added to that section, to read:

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

32 (1) ~~(a)~~ A ~~Any~~ person entering into a formal contract with  
33 the state or any county, city, or political subdivision thereof,  
34 or other public authority or private entity, for the  
35 construction of a public building, for the prosecution and  
36 completion of a public work, or for repairs upon a public  
37 building or public work shall be required, before commencing the  
38 work or before recommencing the work after a default or  
39 abandonment, to execute, ~~deliver to the public owner,~~ and record  
40 in the public records of the county where the improvement is  
41 located, a payment and performance bond with a surety insurer  
42 authorized to do business in this state as surety. A public



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43 entity may not require a contractor to secure a surety bond  
44 under this section from a specific agent or bonding company.

45 (a) The bond must state on its front page:

46 1. The name, principal business address, and phone number  
47 of the contractor, the surety, the owner of the property being  
48 improved, and, if different from the owner, the contracting  
49 public entity.~~†~~

50 2. The contract number assigned by the contracting public  
51 entity.~~†~~

52 3. The bond number assigned by the surety. ~~and~~

53 4. A description of the project sufficient to identify it,  
54 such as a legal description or the street address of the  
55 property being improved, and a general description of the  
56 improvement.

57 (b) Before commencing the work or before recommencing the  
58 work after a default or abandonment, the contractor shall  
59 provide to the public entity a certified copy of the recorded  
60 bond. Notwithstanding the terms of the contract or any other law  
61 governing prompt payment for construction services, the public  
62 entity may not make a payment to the contractor until the  
63 contractor has complied with this paragraph. This paragraph  
64 applies to contracts entered into on or after October 1, 2012.

65 (c) The ~~Such~~ bond shall be conditioned upon the  
66 contractor's performance of the construction work in the time  
67 and manner prescribed in the contract and promptly making  
68 payments to all persons defined in s. 713.01 who furnish labor,  
69 services, or materials for the prosecution of the work provided  
70 for in the contract. A ~~Any~~ claimant may apply to the  
71 governmental entity having charge of the work for copies of the



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72 contract and bond and shall thereupon be furnished with a  
73 ~~certified~~ copy of the contract and the recorded bond. The  
74 claimant shall have a cause ~~right~~ of action against the  
75 contractor and surety for the amount due him or her, including  
76 unpaid finance charges due under the claimant's contract. Such  
77 action may ~~shall~~ not involve the public authority in any  
78 expense.

79 (d) When the ~~such~~ work is done for the state and the  
80 contract is for \$100,000 or less, no payment and performance  
81 bond shall be required. At the discretion of the official or  
82 board awarding such contract when such work is done for any  
83 county, city, political subdivision, or public authority, a ~~any~~  
84 person entering into such a contract that ~~which~~ is for \$200,000  
85 or less may be exempted from executing the payment and  
86 performance bond. When such work is done for the state, the  
87 Secretary of Management Services may delegate to state agencies  
88 the authority to exempt any person entering into such a contract  
89 amounting to more than \$100,000 but less than \$200,000 from  
90 executing the payment and performance bond. If an ~~In the event~~  
91 ~~such~~ exemption is granted, the officer or official is ~~officials~~  
92 ~~shall~~ not be personally liable to persons suffering loss because  
93 of granting such exemption. The Department of Management  
94 Services shall maintain information on the number of requests by  
95 state agencies for delegation of authority to waive the bond  
96 requirements by agency and project number and whether any  
97 request for delegation was denied and the justification for the  
98 denial.

99 (e) Any provision in a payment bond issued on or after  
100 October 1, 2012, furnished for public work contracts as provided



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101 by this subsection which further restricts the classes of  
102 persons ~~as defined in s. 713.01~~ protected by the bond, which  
103 restricts ~~or~~ the venue of any proceeding relating to such bond,  
104 which limits or expands the effective duration of the bond, or  
105 which adds conditions precedent to the enforcement of a claim  
106 against the bond beyond those provided in this section is  
107 unenforceable.

108 (f) ~~(b)~~ The Department of Management Services shall adopt  
109 rules with respect to all contracts for \$200,000 or less, to  
110 provide:

111 1. Procedures for retaining up to 10 percent of each  
112 request for payment submitted by a contractor and procedures for  
113 determining disbursements from the amount retained on a pro rata  
114 basis to laborers, materialmen, and subcontractors, as defined  
115 in s. 713.01.

116 2. Procedures for requiring certification from laborers,  
117 materialmen, and subcontractors, as defined in s. 713.01, before  
118 ~~prior to~~ final payment to the contractor that such laborers,  
119 materialmen, and subcontractors have no claims against the  
120 contractor resulting from the completion of the work provided  
121 for in the contract.

122  
123 The state is ~~shall~~ not ~~be held~~ liable to any laborer,  
124 materialman, or subcontractor for any amounts greater than the  
125 pro rata share as determined under this section.

126 (g) ~~(e)~~ 1. The amount of the bond shall equal the contract  
127 price, except that for a contract in excess of \$250 million, if  
128 the state, county, municipality, political subdivision, or other  
129 public entity finds that a bond in the amount of the contract



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130 price is not reasonably available, the public owner shall set  
131 the amount of the bond at the largest amount reasonably  
132 available, but not less than \$250 million.

133 2. For construction-management or design-build contracts,  
134 if the public owner does not include in the bond amount the cost  
135 of design or other nonconstruction services, the bond may not be  
136 conditioned on performance of such services or payment to  
137 persons furnishing such services. Notwithstanding paragraphs (c)  
138 and (e) ~~paragraph (a)~~, such a bond may exclude persons  
139 furnishing such services from the classes of persons protected  
140 by the bond.

141 (2) (a) 1. If a claimant is no longer furnishing labor,  
142 services, or materials on a project, a contractor or the  
143 contractor's agent or attorney may elect to shorten the  
144 ~~prescribed time in this paragraph~~ within which an action to  
145 enforce any claim against a payment bond must ~~provided pursuant~~  
146 ~~to this section may~~ be commenced by recording in the clerk's  
147 office a notice in substantially the following form:

148  
149 NOTICE OF CONTEST OF CLAIM  
150 AGAINST PAYMENT BOND  
151

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

153  
154 You are notified that the undersigned contests your notice  
155 of nonpayment, dated ....., ....., and served on the  
156 undersigned on ....., ....., and that the time within  
157 which you may file suit to enforce your claim is limited to 60  
158 days after the date of service of this notice.



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159  
160 DATED on ....., .....

161  
162 Signed: ...(Contractor or Attorney)...

163  
164 The claim of a ~~any~~ claimant upon whom such notice is served  
165 and who fails to institute a suit to enforce his or her claim  
166 against the payment bond within 60 days after service of such  
167 notice shall be extinguished automatically. The contractor or  
168 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the  
169 notice of contest to the claimant at the address shown in the  
170 notice of nonpayment or most recent amendment thereto and shall  
171 certify to such service on the face of the ~~such~~ notice and  
172 record the notice. ~~Service is complete upon mailing.~~

173 2. A claimant, except a laborer, who is not in privity with  
174 the contractor shall, before commencing or not later than 45  
175 days after commencing to furnish labor, services, or materials  
176 for the prosecution of the work, furnish the contractor with a  
177 written notice that he or she intends to look to the bond for  
178 protection. A claimant who is not in privity with the contractor  
179 and who has not received payment for his or her labor, services,  
180 or materials shall deliver to the contractor and to the surety  
181 written notice of the performance of the labor or delivery of  
182 the materials or supplies and of the nonpayment. The notice of  
183 nonpayment shall ~~may~~ be served ~~at any time~~ during the progress  
184 of the work or thereafter but may not be served earlier than  
185 ~~before~~ 45 days after the first furnishing of labor, services, or  
186 materials or, ~~and not~~ later than 90 days after the final  
187 furnishing of the labor, services, or materials by the claimant



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188 or, with respect to rental equipment, not later than 90 days  
189 after the date that the rental equipment was last on the job  
190 site available for use. Any notice of nonpayment served by a  
191 claimant who is not in privity with the contractor which  
192 includes sums for retainage must specify the portion of the  
193 amount claimed for retainage. An ~~No~~ action for the labor,  
194 materials, or supplies may not be instituted against the  
195 contractor or the surety unless the notice to the contractor and  
196 notice of nonpayment have been served, if required by this  
197 section both notices have been given. Notices required or  
198 permitted under this section shall ~~may~~ be served in accordance  
199 with s. 713.18. A claimant may not waive in advance his or her  
200 right to bring an action under the bond against the surety. In  
201 any action brought to enforce a claim against a payment bond  
202 under this section, the prevailing party is entitled to recover  
203 a reasonable fee for the services of his or her attorney for  
204 trial and appeal or for arbitration, in an amount to be  
205 determined by the court, which fee must be taxed as part of the  
206 prevailing party's costs, as allowed in equitable actions. The  
207 time periods for service of a notice of nonpayment or for  
208 bringing an action against a contractor or a surety shall be  
209 measured from the last day of furnishing labor, services, or  
210 materials by the claimant and may ~~shall~~ not be measured by other  
211 standards, such as the issuance of a certificate of occupancy or  
212 the issuance of a certificate of substantial completion.

213 (6) All payment bond forms used by a public owner and all  
214 payment bonds executed pursuant to this section by a surety  
215 shall make reference to this section by number, and ~~and~~ shall  
216 contain reference to the notice and time limitation provisions





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217 in subsections ~~subsection~~ (2) and (10), and shall comply with  
218 the requirements of paragraph (1) (a).

219 (11) When a contractor furnishes and records a payment and  
220 performance bond for a public works project in accordance with  
221 this section and provides the public authority with a written  
222 consent from the surety regarding the project or payment in  
223 question, the public authority may not condition its payment to  
224 the contractor on the production of a release, waiver, or like  
225 documentation from a claimant demonstrating that the claimant  
226 does not have an outstanding claim against the contractor, the  
227 surety, the payment bond, or the public authority for payments  
228 due on labor, services, or materials furnished on the public  
229 works project. The surety may, in a writing served on the public  
230 authority, revoke its consent or direct that the public  
231 authority withhold a specified amount from a payment, which  
232 shall be effective upon receipt. This subsection applies to  
233 contracts entered into on or after October 1, 2012.

234 Section 3. Effective upon this act becoming a law, section  
235 255.0518, Florida Statutes, is created

236 to read:

237 255.0518 Public bids; bid opening.—Notwithstanding s.  
238 119.071(1) (b), the state or any county or municipality thereof  
239 or any department or agency of the state, county, or  
240 municipality or any other public body or institution shall:

241 (1) When opening sealed bids or the portion of any sealed  
242 bids that include the prices submitted that are received  
243 pursuant to a competitive solicitation for construction or  
244 repairs on a public building or public work, open the sealed  
245 bids at a public meeting conducted in compliance with s.



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246 286.011.

247 (2) Announce at that meeting the name of each bidder and  
248 the price submitted.

249 (3) Make available upon request the name of each bidder and  
250 the price submitted.

251 Section 4. Paragraph (b) of subsection (2) of section  
252 713.10, Florida Statutes, is amended to read:

253 713.10 Extent of liens.—

254 (2)

255 (b) The interest of the lessor is shall not ~~be~~ subject to  
256 liens for improvements made by the lessee when:

257 1. The lease, or a short form or a memorandum of the lease  
258 that contains the specific language in the lease prohibiting  
259 such liability, is recorded in the official records of the  
260 county where the premises are located before the recording of a  
261 notice of commencement for improvements to the premises and the  
262 terms of the lease expressly prohibit such liability; or

263 2. The terms of the lease expressly prohibit such  
264 liability, and a notice advising that leases for the rental of  
265 premises on a parcel of land prohibit such liability has been  
266 recorded in the official records of the county in which the  
267 parcel of land is located before the recording of a notice of  
268 commencement for improvements to the premises, and the notice  
269 includes the following:

270 a. The name of the lessor.

271 b. The legal description of the parcel of land to which the  
272 notice applies.

273 c. The specific language contained in the various leases  
274 prohibiting such liability.



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275 d. A statement that all or a majority of the leases entered  
276 into for premises on the parcel of land expressly prohibit such  
277 liability.

278 3. The lessee is a mobile home owner who is leasing a  
279 mobile home lot in a mobile home park from the lessor.

280  
281 A notice that is consistent with subparagraph 2. effectively  
282 prohibits liens for improvements made by a lessee even if other  
283 leases for premises on the parcel do not expressly prohibit  
284 liens or if provisions of each lease restricting the application  
285 of liens are not identical.

286 Section 5. Paragraphs (d) and (e) of subsection (1) of  
287 section 713.13, Florida Statutes, are amended to read:

288 713.13 Notice of commencement.—

289 (1)

290 (d) A notice of commencement must be in substantially the  
291 following form:

292  
293 Permit No..... Tax Folio No.....

294 NOTICE OF COMMENCEMENT

295 State of....

296 County of....

297  
298 The undersigned hereby gives notice that improvement will be  
299 made to certain real property, and in accordance with Chapter  
300 713, Florida Statutes, the following information is provided in  
301 this Notice of Commencement.

302 1. Description of property: ...(legal description of the  
303 property, and street address if available)....



304           2. General description of improvement:.....  
305           3. Owner information or Lessee information if the Lessee  
306 contracted for the improvement:  
307           a. Name and address:.....  
308           b. Interest in property:.....  
309           c. Name and address of fee simple titleholder (if different  
310 from Owner listed above):.....  
311           4.a. Contractor: ...(name and address)....  
312           b. Contractor's phone number:.....  
313           5. Surety (if applicable, a copy of the payment bond is  
314 attached):  
315           a. Name and address:.....  
316           b. Phone number:.....  
317           c. Amount of bond: \$.....  
318           6.a. Lender: ...(name and address)....  
319           b. Lender's phone number:.....  
320           7. Persons within the State of Florida designated by Owner  
321 upon whom notices or other documents may be served as provided  
322 by Section 713.13(1)(a)7., Florida Statutes:  
323           a. Name and address:.....  
324           b. Phone numbers of designated persons:.....  
325           8.a. In addition to himself or herself, Owner designates  
326 ..... of ..... to receive a copy of the Lienor's  
327 Notice as provided in Section 713.13(1)(b), Florida Statutes.  
328           b. Phone number of person or entity designated by  
329 owner:.....  
330           9. Expiration date of notice of commencement (the  
331 expiration date ~~may not be before the completion of construction~~  
332 ~~and final payment to the contractor, but~~ will be 1 year from the



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333 date of recording unless a different date is specified).....

334  
335 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
336 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
337 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
338 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
339 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
340 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
341 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
342 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
343 COMMENCEMENT.

344  
345 ~~Under penalty of perjury, I declare that I have read the~~  
346 ~~foregoing notice of commencement and that the facts stated~~  
347 ~~therein are true to the best of my knowledge and belief.~~

348  
349 ... (Signature of Owner or Lessee, or Owner's or Lessee's  
350 Authorized Officer/Director/Partner/Manager)...

351  
352 ... (Signatory's Title/Office)...

353  
354 The foregoing instrument was acknowledged before me this ....  
355 day of ....., ... (year) ..., by ... (name of person) ... as ... (type  
356 of authority, . . . e.g. officer, trustee, attorney in fact) ...  
357 for ... (name of party on behalf of whom instrument was  
358 executed) .....

359  
360 ... (Signature of Notary Public - State of Florida) ...

361



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362           ...(Print, Type, or Stamp Commissioned Name of Notary  
363 Public)...

364  
365           Personally Known .... OR Produced Identification ....

366  
367           Type of Identification Produced.....

368  
369           (e) A copy of any payment bond must be attached at the time  
370 of recordation of the notice of commencement. The failure to  
371 attach a copy of the bond to the notice of commencement when the  
372 notice is recorded negates the exemption provided in s.  
373 713.02(6). However, if a payment bond under s. 713.23 exists but  
374 was not attached at the time of recordation of the notice of  
375 commencement, the bond may be used to transfer any recorded lien  
376 of a lienor except that of the contractor by the recordation and  
377 service of a notice of bond pursuant to s. 713.23(2). The notice  
378 requirements of s. 713.23 apply to any claim against the bond;  
379 however, the time limits for serving any required notices shall,  
380 at the option of the lienor, be calculated from the dates begin  
381 running from the later of the time specified in s. 713.23 or the  
382 date the notice of bond is served on the lienor.

383           Section 6. Section 489.118, Florida Statutes, is reenacted  
384 and amended to read:

385           489.118 Certification of registered contractors;  
386 grandfathering provisions.—The board shall, upon receipt of a  
387 completed application and appropriate fee, issue a certificate  
388 in the appropriate category to any contractor registered under  
389 this part who makes application to the board and can show that  
390 he or she meets each of the following requirements:



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391 (1) Currently holds a valid registered local license in one  
392 of the contractor categories defined in s. 489.105(3)(a)-(q)  
393 ~~489.105(3)(a)-(p)~~.

394 (2) Has, for that category, passed a written examination  
395 that the board finds to be substantially similar to the  
396 examination required to be licensed as a certified contractor  
397 under this part. For purposes of this subsection, a written,  
398 proctored examination such as that produced by the National  
399 Assessment Institute, Block and Associates, NAI/Block, Experior  
400 Assessments, Professional Testing, Inc., or Assessment Systems,  
401 Inc., shall be considered to be substantially similar to the  
402 examination required to be licensed as a certified contractor.  
403 The board may not impose or make any requirements regarding the  
404 nature or content of these cited examinations.

405 (3) Has at least 5 years of experience as a contractor in  
406 that contracting category, or as an inspector or building  
407 administrator with oversight over that category, at the time of  
408 application. For contractors, only time periods in which the  
409 contractor license is active and the contractor is not on  
410 probation shall count toward the 5 years required by this  
411 subsection.

412 (4) Has not had his or her contractor's license revoked at  
413 any time, had his or her contractor's license suspended within  
414 the last 5 years, or been assessed a fine in excess of \$500  
415 within the last 5 years.

416 (5) Is in compliance with the insurance and financial  
417 responsibility requirements in s. 489.115(5).

418  
419 Applicants wishing to obtain a certificate pursuant to this



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420 section must make application by November 1, 2015 ~~2005~~.

421 Section 7. Paragraph (f) of subsection (1) and subsection  
422 (4) of section 713.132, Florida Statutes, are amended to read:

423 713.132 Notice of termination.—

424 (1) An owner may terminate the period of effectiveness of a  
425 notice of commencement by executing, swearing to, and recording  
426 a notice of termination that contains:

427 (f) A statement that the owner has, before recording the  
428 notice of termination, served a copy of the notice of  
429 termination on the contractor and on each lienor who has a  
430 direct contract with the owner or who has served a notice to  
431 owner ~~given notice~~. The owner is not required to serve a copy of  
432 the notice of termination on any lienor who has executed a  
433 waiver and release of lien upon final payment in accordance with  
434 s. 713.20.

435 (4) A notice of termination is effective to terminate the  
436 notice of commencement at the later of 30 days after recording  
437 of the notice of termination or the date stated in the notice of  
438 termination as the date on which the notice of commencement is  
439 terminated, if ~~provided that~~ the notice of termination has been  
440 served pursuant to paragraph (1)(f) on the contractor and on  
441 each lienor who has a direct contract with the owner or who has  
442 served a notice to owner ~~given notice~~.

443 Section 8. Section 713.16, Florida Statutes, is amended to  
444 read:

445 713.16 Demand for copy of contract and statements of  
446 account; form.—

447 (1) A copy of the contract of a lienor or owner and a  
448 statement of the amount due or to become due if fixed or





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449 ascertainable thereon must be furnished by any party thereto,  
450 upon written demand of an owner or a lienor contracting with or  
451 employed by the other party to such contract. If the owner or  
452 lienor refuses or neglects to furnish such copy of the contract  
453 or such statement, or willfully and falsely states the amount  
454 due or to become due if fixed or ascertainable under such  
455 contract, any person who suffers any detriment thereby has a  
456 cause of action against the person refusing or neglecting to  
457 furnish the same or willfully and falsely stating the amount due  
458 or to become due for his or her damages sustained thereby. The  
459 information contained in such copy or statement furnished  
460 pursuant to such written demand is binding upon the owner or  
461 lienor furnishing it unless actual notice of any modification is  
462 given to the person demanding the copy or statement before such  
463 person acts in good faith in reliance on it. The person  
464 demanding such documents must pay for the reproduction thereof;  
465 and, if such person fails or refuses to do so, he or she is  
466 entitled only to inspect such documents at reasonable times and  
467 places.

468 (2) The owner may serve in writing a demand of any lienor  
469 for a written statement under oath of his or her account showing  
470 the nature of the labor or services performed and to be  
471 performed, if any, the materials furnished, the materials to be  
472 furnished, if known, the amount paid on account to date, the  
473 amount due, and the amount to become due, if known, as of the  
474 date of the statement by the lienor. Any such demand to a lienor  
475 must be served on the lienor at the address and to the attention  
476 of any person who is designated to receive the demand in the  
477 notice to owner served by such lienor and must include a



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478 description of the property and the names of the owner, the  
479 contractor, and the lienor's customer, as set forth in the  
480 lienor's notice to owner. The failure or refusal to furnish the  
481 statement does not deprive the lienor of his or her lien if the  
482 demand is not served at the address of the lienor or directed to  
483 the attention of the person designated to receive the demand in  
484 the notice to owner. The failure or refusal to furnish the  
485 statement under oath within 30 days after the demand, or the  
486 furnishing of a false or fraudulent statement, deprives the  
487 person so failing or refusing to furnish such statement of his  
488 or her lien. If the owner serves more than one demand for  
489 statement of account on a lienor and none of the information  
490 regarding the account has changed since the lienor's last  
491 response to a demand, the failure or refusal to furnish such  
492 statement does not deprive the lienor of his or her lien. The  
493 negligent inclusion or omission of any information deprives the  
494 person of his or her lien to the extent the owner can  
495 demonstrate prejudice from such act or omission by the lienor.  
496 The failure to furnish a response to a demand for statement of  
497 account does not affect the validity of any claim of lien being  
498 enforced through a foreclosure case filed before ~~prior to~~ the  
499 date the demand for statement is received by the lienor.

500 (3) A request for sworn statement of account must be in  
501 substantially the following form:

502  
503 REQUEST FOR SWORN STATEMENT OF ACCOUNT  
504

505 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT,  
506 SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE



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507 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

508

509 To: ...(Lienor's name and address)...

510

511 The undersigned hereby demands a written statement under  
512 oath of his or her account showing the nature of the labor or  
513 services performed and to be performed, if any, the materials  
514 furnished, the materials to be furnished, if known, the amount  
515 paid on account to date, the amount due, and the amount to  
516 become due, if known, as of the date of the statement for the  
517 improvement of real property identified as ...(property  
518 description)....

519

520 ...(name of contractor)...

521

522 ...(name of the lienor's customer, as set forth in the  
523 lienor's Notice to Owner, if such notice has been served)...

524

525 ...(signature and address of owner)...

526 ...(date of request for sworn statement of account)...

527

528 (4) When a contractor has furnished a payment bond pursuant  
529 to s. 713.23, he or she may, when an owner makes any payment to  
530 the contractor or directly to a lienor, serve a written demand  
531 on any other lienor for a written statement under oath of his or  
532 her account showing the nature of the labor or services  
533 performed and to be performed, if any, the materials furnished,  
534 the materials to be furnished, if known, the amount paid on  
535 account to date, the amount due, and the amount to become due,



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536 if known, as of the date of the statement by the lienor. Any  
537 such demand to a lienor must be served on the lienor at the  
538 address and to the attention of any person who is designated to  
539 receive the demand in the notice to contractor served by such  
540 lienor. The demand must include a description of the property  
541 and the names of the owner, the contractor, and the lienor's  
542 customer, as set forth in the lienor's notice to contractor. The  
543 failure or refusal to furnish the statement does not deprive the  
544 lienor of his or her rights under the bond if the demand is not  
545 served at the address of the lienor or directed to the attention  
546 of the person designated to receive the demand in the notice to  
547 contractor. The failure to furnish the statement within 30 days  
548 after the demand, or the furnishing of a false or fraudulent  
549 statement, deprives the person who fails to furnish the  
550 statement, or who furnishes the false or fraudulent statement,  
551 of his or her rights under the bond. If the contractor serves  
552 more than one demand for statement of account on a lienor and  
553 none of the information regarding the account has changed since  
554 the lienor's last response to a demand, the failure or refusal  
555 to furnish such statement does not deprive the lienor of his or  
556 her rights under the bond. The negligent inclusion or omission  
557 of any information deprives the person of his or her rights  
558 under the bond to the extent the contractor can demonstrate  
559 prejudice from such act or omission by the lienor. The failure  
560 to furnish a response to a demand for statement of account does  
561 not affect the validity of any claim on the bond being enforced  
562 in a lawsuit filed prior to the date the demand for statement of  
563 account is received by the lienor.

564 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~



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565 ~~recorded a claim of lien~~ may serve with the claim of lien or  
566 thereafter a make written demand on the owner for a written  
567 statement under oath showing:

568 1. The amount of the direct contract under which the lien  
569 was recorded;

570 2. The dates and amounts paid or to be paid by or on behalf  
571 of the owner for all improvements described in the direct  
572 contract;

573 3. The reasonable estimated costs of completing the direct  
574 contract under which the lien was claimed pursuant to the scope  
575 of the direct contract; and

576 4. If known, the actual cost of completion.

577 (b) Any owner who does not provide the statement within 30  
578 days after demand, or who provides a false or fraudulent  
579 statement, is not a prevailing party for purposes of an award of  
580 attorney ~~attorney's~~ fees under s. 713.29. The written demand  
581 must include the following warning in conspicuous type in  
582 substantially the following form:

583  
584 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT  
585 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL  
586 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY  
587 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING  
588 THIS STATEMENT.

589 (6) Any written demand served on the owner must include a  
590 description of the property and the names of the contractor and  
591 the lienor's customer, as set forth in the lienor's notice to  
592 owner.

593 (7) ~~(6)~~ For purposes of this section, the term "information"



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594 means the nature and quantity of the labor, services, and  
595 materials furnished or to be furnished by a lienor and the  
596 amount paid, the amount due, and the amount to become due on the  
597 lienor's account.

598 Section 9. Section 713.18, Florida Statutes, is amended to  
599 read:

600 713.18 Manner of serving notices and other instruments.—

601 (1) Service of notices, claims of lien, affidavits,  
602 assignments, and other instruments permitted or required under  
603 this part, or copies thereof when so permitted or required,  
604 unless otherwise specifically provided in this part, must be  
605 made by one of the following methods:

606 (a) By actual delivery to the person to be served; if a  
607 partnership, to one of the partners; if a corporation, to an  
608 officer, director, managing agent, or business agent; or, if a  
609 limited liability company, to a member or manager.

610 (b) By common carrier delivery service or sending the same  
611 by registered, Global Express Guaranteed, or certified mail,  
612 with postage or shipping paid by the sender and prepaid, or by  
613 overnight or second-day delivery with evidence of delivery,  
614 which may be in an electronic format.

615 (c) ~~If the method specified in paragraph (a) or paragraph~~  
616 ~~(b) cannot be accomplished,~~ By posting on the site of the  
617 improvement if service as provided by paragraph (a) or paragraph  
618 (b) cannot be accomplished premises.

619 (2) Notwithstanding subsection (1), service of ~~if~~ a notice  
620 to owner or, a preliminary notice to contractor under s. 255.05,  
621 s. 337.18, or s. 713.23, ~~or a preliminary notice under s. 255.05~~  
622 ~~is mailed by registered or certified mail with postage prepaid~~



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623 ~~to the person to be served at any of the addresses set forth in~~  
624 ~~subsection (3) within 40 days after the date the lienor first~~  
625 ~~furnishes labor, services, or materials, service of that notice~~  
626 ~~is effective as of the date of mailing if:~~

627 (a) The notice is mailed by registered, Global Express  
628 Guaranteed, or certified mail, with postage prepaid, to the  
629 person to be served at any of the addresses set forth in  
630 subsection (3);

631 (b) The notice is mailed within 40 days after the date the  
632 lienor first furnishes labor, services, or materials; and

633 (c)1. The person who served the notice maintains a  
634 registered or certified mail log that shows the registered or  
635 certified mail number issued by the United States Postal  
636 Service, the name and address of the person served, and the date  
637 stamp of the United States Postal Service confirming the date of  
638 mailing; or ~~if~~

639 2. The person who served the notice maintains electronic  
640 tracking records generated by ~~through use of~~ the United States  
641 Postal Service ~~Confirm service or a similar service~~ containing  
642 the postal tracking number, the name and address of the person  
643 served, and verification of the date of receipt by the United  
644 States Postal Service.

645 (3) (a) Service of ~~If~~ an instrument ~~served~~ pursuant to this  
646 section is effective on the date of mailing the instrument if  
647 it:

648 1. Is sent to the last address shown in the notice of  
649 commencement or any amendment thereto or, in the absence of a  
650 notice of commencement, to the last address shown in the  
651 building permit application, or to the last known address of the



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652 person to be served; ~~and, is not received, but~~

653 2. Is returned as being "refused," "moved, not  
654 forwardable," or "unclaimed," or is otherwise not delivered or  
655 deliverable through no fault of the person serving the item,  
656 ~~then service is effective on the date the instrument was sent.~~

657 (b) If the address shown in the notice of commencement or  
658 any amendment to the notice of commencement, or, in the absence  
659 of a notice of commencement, in the building permit application,  
660 is incomplete for purposes of mailing or delivery, the person  
661 serving the item may complete the address and properly format it  
662 according to United States Postal Service addressing standards  
663 using information obtained from the property appraiser or  
664 another public record without affecting the validity of service  
665 under this section.

666 (4) A notice served by a lienor on one owner or one partner  
667 of a partnership owning the real property ~~If the real property~~  
668 ~~is owned by more than one person or a partnership, a lienor may~~  
669 ~~serve any notices or other papers under this part on any one of~~  
670 ~~such owners or partners, and such notice is deemed notice to all~~  
671 owners and partners.

672 Section 10. Section 713.22, Florida Statutes, is amended to  
673 read:

674 713.22 Duration of lien.—

675 (1) ~~A~~ No lien provided by this part does not shall continue  
676 for a longer period than 1 year after the claim of lien has been  
677 recorded or 1 year after the recording of an amended claim of  
678 lien that shows a later date of final furnishing of labor,  
679 services, or materials, unless within that time an action to  
680 enforce the lien is commenced in a court of competent





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681 jurisdiction. A lien that has been continued beyond the 1-year  
682 period ~~The continuation of the lien effected~~ by the commencement  
683 of an ~~the~~ action is ~~shall~~ not enforceable ~~be good~~ against  
684 creditors or subsequent purchasers for a valuable consideration  
685 and without notice, unless a notice of lis pendens is recorded.

686 (2) An owner or the owner's ~~agent or~~ attorney may elect to  
687 shorten the time prescribed in subsection (1) within which to  
688 commence an action to enforce any claim of lien or claim against  
689 a bond or other security under s. 713.23 or s. 713.24 by  
690 recording in the clerk's office a notice in substantially the  
691 following form:

692  
693 NOTICE OF CONTEST OF LIEN

694  
695 To: ...(Name and address of lienor)...

696  
697 You are notified that the undersigned contests the claim of lien  
698 filed by you on ....., ...(year)...., and recorded in .... Book  
699 ....., Page ....., of the public records of .... County, Florida,  
700 and that the time within which you may file suit to enforce your  
701 lien is limited to 60 days from the date of service of this  
702 notice. This .... day of ....., ...(year)....

703  
704 Signed: ...(Owner or Attorney)...

705  
706 The lien of any lienor upon whom such notice is served and who  
707 fails to institute a suit to enforce his or her lien within 60  
708 days after service of such notice shall be extinguished  
709 automatically. The clerk shall serve, in accordance with s.



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710 713.18, mail a copy of the notice of contest to the lien  
711 claimant at the address shown in the claim of lien or most  
712 recent amendment thereto and shall certify to such service and  
713 the date of service on the face of the such notice and record  
714 the notice. ~~Service shall be deemed complete upon mailing.~~

715 Section 11. Paragraphs (c), (d), (e), and (f) of subsection  
716 (1) and subsections (2) and (4) of section 713.23, Florida  
717 Statutes, are amended to read:

718 713.23 Payment bond.—

719 (1)

720 (c) ~~Either~~ Before beginning or within 45 days after  
721 beginning to furnish labor, materials, or supplies, a lienor who  
722 is not in privity with the contractor, except a laborer, shall  
723 serve the contractor with notice in writing that the lienor will  
724 look to the contractor's bond for protection on the work. If a  
725 notice of commencement with the attached bond is not recorded  
726 before commencement of construction, ~~or a reference to the bond~~  
727 ~~is not given in the notice of commencement, and in either case~~  
728 ~~if the lienor not in privity with the contractor is not~~  
729 ~~otherwise notified in writing of the existence of the bond, the~~  
730 lienor not in privity with the contractor may, in the  
731 alternative, elect to serve the notice to the contractor up to  
732 ~~shall have~~ 45 days after ~~from~~ the date the lienor is served with  
733 a copy notified of the existence of the bond ~~within which to~~  
734 ~~serve the notice.~~ A notice to owner pursuant to s. 713.06 that  
735 has been timely served on the contractor satisfies the  
736 requirements of this paragraph. However, the limitation period  
737 for commencement of an action on the payment bond as established  
738 in paragraph (e) may not be expanded. The notice may be in



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739 substantially the following form and may be combined with a  
740 notice to owner given under s. 713.06 and, if so, may be  
741 entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR:"

742  
743 NOTICE TO CONTRACTOR

744  
745 To ... (name and address of contractor) ...

746  
747 The undersigned hereby informs you that he or she has  
748 furnished or is furnishing services or materials as follows:

749  
750 ...(general description of services or materials)... for  
751 the improvement of the real property identified as ...(property  
752 description)... under an order given by ...(lienor's  
753 customer)....

754  
755 This notice is to inform you that the undersigned intends  
756 to look to the contractor's bond to secure payment for the  
757 furnishing of materials or services for the improvement of the  
758 real property.

759  
760 ...(name of lienor)...

761 ...(signature of lienor or lienor's representative)...

762 ...(date)...

763 ...(lienor's address)...

764  
765 ~~The undersigned notifies you that he or she has furnished~~  
766 ~~or is furnishing ...(services or materials)... for the~~  
767 ~~improvement of the real property identified as ...(property~~



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768 ~~description)... owned by ... (owner's name and address)... under~~  
769 ~~an order given by .... and that the undersigned will look to the~~  
770 ~~contractor's bond for protection on the work.~~

771  
772 ~~...(Lienor's signature and address)...~~

773  
774 (d) In addition, a lienor is required, as a condition  
775 precedent to recovery under the bond, to serve a written notice  
776 of nonpayment to the contractor and the surety not later than 90  
777 days after the final furnishing of labor, services, or materials  
778 by the lienor. A written notice satisfies this condition  
779 precedent with respect to the payment described in the notice of  
780 nonpayment, including unpaid finance charges due under the  
781 lienor's contract, and with respect to any other payments which  
782 become due to the lienor after the date of the notice of  
783 nonpayment. The time period for serving a written notice of  
784 nonpayment shall be measured from the last day of furnishing  
785 labor, services, or materials by the lienor and shall not be  
786 measured by other standards, such as the issuance of a  
787 certificate of occupancy or the issuance of a certificate of  
788 substantial completion. The failure of a lienor to receive  
789 retainage sums not in excess of 10 percent of the value of  
790 labor, services, or materials furnished by the lienor is not  
791 considered a nonpayment requiring the service of the notice  
792 provided under this paragraph. If the payment bond is not  
793 recorded before commencement of construction, the time period  
794 for the lienor to serve a notice of nonpayment may at the option  
795 of the lienor be calculated from the date specified in this  
796 section or the date the lienor is served a copy of the bond.



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797 However, the limitation period for commencement of an action on  
798 the payment bond as established in paragraph (e) may not be  
799 expanded. The notice under this paragraph may be in  
800 substantially the following form:

801  
802 NOTICE OF NONPAYMENT

803  
804 To ...(name of contractor and address)...

805  
806 ...(name of surety and address)...

807  
808 The undersigned notifies you that he or she has furnished  
809 ...(describe labor, services, or materials)... for the  
810 improvement of the real property identified as ...(property  
811 description).... The amount now due and unpaid is \$.....

812  
813 ...(signature and address of lienor)...

814  
815 (e) An ~~No~~ action for the labor or materials or supplies may  
816 not be instituted or prosecuted against the contractor or surety  
817 unless both notices have been given, if required by this  
818 section. An ~~No~~ action may not ~~shall~~ be instituted or prosecuted  
819 against the contractor or against the surety on the bond under  
820 this section after 1 year from the performance of the labor or  
821 completion of delivery of the materials and supplies. The time  
822 period for bringing an action against the contractor or surety  
823 on the bond shall be measured from the last day of furnishing  
824 labor, services, or materials by the lienor. The time period ~~and~~  
825 may ~~shall~~ not be measured by other standards, such as the



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826 issuance of a certificate of occupancy or the issuance of a  
827 certificate of substantial completion. A contractor or the  
828 contractor's ~~agent or~~ attorney may elect to shorten the  
829 ~~prescribed~~ time within which an action to enforce any claim  
830 against a payment bond provided under this section or s. 713.245  
831 must ~~may~~ be commenced at any time after a notice of nonpayment,  
832 if required, has been served for the claim by recording in the  
833 clerk's office a notice in substantially the following form:

834  
835 NOTICE OF CONTEST OF CLAIM  
836 AGAINST PAYMENT BOND

837  
838 To: ...(Name and address of lienor)...

839  
840 You are notified that the undersigned contests your notice  
841 of nonpayment, dated ....., ....., and served on the undersigned  
842 on ....., ....., and that the time within which you may file suit  
843 to enforce your claim is limited to 60 days from the date of  
844 service of this notice.

845  
846 DATED on ....., .....

847  
848 Signed: ...(Contractor or Attorney)...

849  
850 The claim of any lienor upon whom the notice is served and who  
851 fails to institute a suit to enforce his or her claim against  
852 the payment bond within 60 days after service of the notice  
853 shall be extinguished automatically. The contractor or the  
854 contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the



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855 notice of contest to the lienor at the address shown in the  
856 notice of nonpayment or most recent amendment thereto and shall  
857 certify to such service on the face of the notice and record the  
858 notice. ~~Service is complete upon mailing.~~

859 (f) A Any lienor has a direct right of action on the bond  
860 against the surety. Any provision in a payment bond issued on or  
861 after October 1, 2012, which further restricts A bond must not  
862 contain any provisions restricting the classes of persons who  
863 are protected by the payment bond, which restricts thereby or  
864 the venue of any proceeding relating to such payment bond, which  
865 limits or expands the effective duration of the payment bond, or  
866 which adds conditions precedent to the enforcement of a claim  
867 against a payment bond beyond those provided in this part is  
868 unenforceable. The surety is not entitled to the defense of pro  
869 tanto discharge as against any lienor because of changes or  
870 modifications in the contract to which the surety is not a  
871 party; but the liability of the surety may not be increased  
872 beyond the penal sum of the bond. A lienor may not waive in  
873 advance his or her right to bring an action under the bond  
874 against the surety.

875 (2) The bond shall secure every lien under the direct  
876 contract accruing subsequent to its execution and delivery,  
877 except that of the contractor. Every claim of lien, except that  
878 of the contractor, filed subsequent to execution and delivery of  
879 the bond shall be transferred to it with the same effect as  
880 liens transferred under s. 713.24. Record notice of the transfer  
881 shall be effected by the contractor, or any person having an  
882 interest in the property against which the claim of lien has  
883 been asserted, by recording in the clerk's office a notice, with



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884 the bond attached, in substantially the following form:

885

886 NOTICE OF BOND

887

888 To ... (Name and Address of Lienor)...

889

890 You are notified that the claim of lien filed by you on  
891 ....., ....., and recorded in Official Records Book .... at page  
892 .... of the public records of .... County, Florida, is secured  
893 by a bond, a copy being attached.

894

895 Signed: ... (Name of person recording notice)...

896

897 The notice shall be verified. The person recording the notice of  
898 bond clerk shall serve mail a copy of the notice with a copy of  
899 the bond to the lienor at the address shown in the claim of  
900 lien, or the most recent amendment to it; shall certify to the  
901 service on the face of the notice; and shall record the notice.  
902 ~~The clerk shall receive the same fee as prescribed in s.~~  
903 ~~713.24(1) for certifying to a transfer of lien.~~

904 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds  
905 under this section except when those provisions conflict with  
906 this section.

907 Section 12. Except as otherwise expressly provided in this  
908 act, this act shall take effect October 1, 2012.

909

910

911 ===== T I T L E A M E N D M E N T =====

912 And the title is amended as follows:





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913 Delete everything before the enacting clause  
914 and insert:

915 A bill to be entitled  
916 An act relating to construction contracting; amending  
917 s. 95.11, F.S.; adding a cross-reference; amending s.  
918 255.05, F.S.; requiring that the bond number be stated  
919 on the first page of the bond; providing that a public  
920 entity may not make payment to the contractor unless  
921 the public entity has received a certified copy of the  
922 bond; providing that a provision in a payment bond  
923 furnished for a public works contract that limits or  
924 expands the effective duration of the bond or adds  
925 conditions precedent is unenforceable; requiring a  
926 contractor, or the contractor's attorney, to serve  
927 rather than mail a notice of contest of claim against  
928 the payment bond; providing prerequisites for  
929 commencement of an action against a payment bond;  
930 requiring payment bond forms to reference specified  
931 notice and time limitation provisions; providing that  
932 payment to a contractor who has furnished a payment  
933 bond on a public works project may not be conditioned  
934 upon production of certain documents if the surety has  
935 given written consent; providing for the surety to  
936 withhold or revoke consent; creating s. 255.0518,  
937 F.S.; requiring that the state, a county, a  
938 municipality, or any other public body or institution  
939 open sealed bids received in response to a competitive  
940 solicitation at a public meeting, announce the name of  
941 each bidder and the price submitted, and make



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942 available upon request the names of bidders and  
943 submitted prices; amending s. 713.10, F.S.; providing  
944 that a specified notice concerning a lessor's  
945 liability for liens for improvements made by the  
946 lessee prohibits liens even if other leases do not  
947 expressly prohibit liens or if certain other  
948 provisions are not identical; amending s. 713.13,  
949 F.S.; revising a notice form to clarify that the  
950 notice of commencement expires 1 year after the date  
951 of recording; removing a clause relating to perjury;  
952 providing additional time for service when a notice of  
953 commencement is not recorded with a copy of the bond  
954 attached; reenacting and amending s. 489.118, F.S.;  
955 reviving certain grandfathering provisions and setting  
956 a new deadline by which certain registered contractors  
957 may apply for certification; amending s. 713.132,  
958 F.S.; requiring notice of termination to be served on  
959 lienors in privity with the owner; amending s. 713.16,  
960 F.S.; revising requirements for demands for a copy of  
961 a construction contract and a statement of account;  
962 authorizing a lienor to make certain written demands  
963 to an owner for certain written statements; providing  
964 requirements for such written demands; amending s.  
965 713.18, F.S.; providing additional methods by which  
966 certain items may be served; revising provisions  
967 relating to when service of specified items is  
968 effective; specifying requirements for certain written  
969 instruments under certain circumstances; amending s.  
970 713.22, F.S.; requiring that the clerk serve rather



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971 than mail a notice of contest of lien; amending s.  
972 713.23, F.S.; revising the contents of a notice to  
973 contractor; requiring that a contractor serve rather  
974 than mail a notice of contest of claim against the  
975 payment bond and a notice of bond; clarifying the  
976 attachment of the bond to the notice; providing that a  
977 provision in a payment bond that limits or expands the  
978 effective duration of the bond or adds conditions  
979 precedent is unenforceable; clarifying applicability  
980 of certain provisions; providing effective dates.