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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) and (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.—

(a) An action on a judgment or decree of any court, not of
record, of this state or any court of the United States, any



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14 other state or territory in the United States, or a foreign
15 country.

16 (b) A legal or equitable action on a contract, obligation,
17 or liability founded on a written instrument, except for an
18 action to enforce a claim against a payment bond, ~~which shall be~~
19 governed by the applicable provisions of s. ss. 255.05(10), s.
20 337.18(1), or s. and 713.23(1) (e).

21 (c) An action to foreclose a mortgage.

22 (d) An action alleging a willful violation of s. 448.110.

23 (e) Notwithstanding paragraph (b), an action for breach of
24 a property insurance contract, with the period running from the
25 date of loss.

26 (5) WITHIN ONE YEAR.—

27 (a) An action for specific performance of a contract.

28 (b) An action to enforce an equitable lien arising from the
29 furnishing of labor, services, or material for the improvement
30 of real property.

31 (c) An action to enforce rights under the Uniform
32 Commercial Code—Letters of Credit, chapter 675.

33 (d) An action against any guaranty association and its
34 insured, with the period running from the date of the deadline
35 for filing claims in the order of liquidation.

36 ~~(e) An action to enforce any claim against a payment bond~~
37 ~~on which the principal is a contractor, subcontractor, or sub-~~
38 ~~subcontractor as defined in s. 713.01, for private work as well~~
39 ~~as public work, from the last furnishing of labor, services, or~~
40 ~~materials or from the last furnishing of labor, services, or~~
41 ~~materials by the contractor if the contractor is the principal~~
42 ~~on a bond on the same construction project, whichever is later.~~



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43 (e)~~(f)~~ Except for actions described in subsection (8), a
44 petition for extraordinary writ, other than a petition
45 challenging a criminal conviction, filed by or on behalf of a
46 prisoner as defined in s. 57.085.

47 (f)~~(g)~~ Except for actions described in subsection (8), an
48 action brought by or on behalf of a prisoner, as defined in s.
49 57.085, relating to the conditions of the prisoner's
50 confinement.

51 Section 2. Section 255.05, Florida Statutes, is amended to
52 read:

53 255.05 Bond of contractor constructing public buildings;
54 form; action by claimants ~~materialmen~~.

55 (1) (a) A ~~Any~~ person entering into a formal contract with
56 the state or any county, city, or political subdivision thereof,
57 or other public authority or private entity, for the
58 construction of a public building, for the prosecution and
59 completion of a public work, or for repairs upon a public
60 building or public work shall be required, before commencing the
61 work or before recommencing the work after a default or
62 abandonment, to execute, deliver to the public owner, and record
63 in the public records of the county where the improvement is
64 located, a payment and performance bond with a surety insurer
65 authorized to do business in this state as surety. A public
66 entity may not require a contractor to secure a surety bond
67 under this section from a specific agent or bonding company. The
68 bond must state on its front page: the name, principal business
69 address, and phone number of the contractor, the surety, the
70 owner of the property being improved, and, if different from the
71 owner, the contracting public entity; the contract number



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72 assigned by the contracting public entity; the bond number
73 assigned by the surety; and a description of the project
74 sufficient to identify it, such as a legal description or the
75 street address of the property being improved, and a general
76 description of the improvement. The ~~Such~~ bond shall be
77 conditioned upon the contractor's performance of the
78 construction work in the time and manner prescribed in the
79 contract and promptly making payments to all persons defined in
80 s. 713.01 who furnish labor, services, or materials for the
81 prosecution of the work provided for in the contract. A ~~Any~~
82 claimant may apply to the governmental entity having charge of
83 the work for copies of the contract and bond and shall thereupon
84 be furnished with a certified copy of the contract and bond. The
85 claimant has ~~shall have~~ a right of action against the contractor
86 and surety for the amount due him or her, including unpaid
87 finance charges due under the claimant's contract. Such action
88 may ~~shall~~ not involve the public authority in any expense. When
89 the ~~such~~ work is done for the state and the contract is for
90 \$100,000 or less, no payment and performance bond shall be
91 required. At the discretion of the official or board awarding
92 such contract when such work is done for any county, city,
93 political subdivision, or public authority, a ~~any~~ person
94 entering into such a contract that ~~which~~ is for \$200,000 or less
95 may be exempted from executing the payment and performance bond.
96 When such work is done for the state, the Secretary of
97 Management Services may delegate to state agencies the authority
98 to exempt any person entering into such a contract amounting to
99 more than \$100,000 but less than \$200,000 from executing the
100 payment and performance bond. If an ~~In the event such~~ exemption



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101 is granted, the officer or officials is ~~shall~~ not ~~be~~ personally
102 liable to persons suffering loss because of granting such
103 exemption. The Department of Management Services shall maintain
104 information on the number of requests by state agencies for
105 delegation of authority to waive the bond requirements by agency
106 and project number and whether any request for delegation was
107 denied and the justification for the denial. Any provision in a
108 payment bond furnished for public work contracts as provided by
109 this subsection which further restricts the classes of persons
110 ~~as defined in s. 713.01~~ protected by the bond, which restricts
111 ~~or~~ the venue of any proceeding relating to such bond, which
112 limits or expands the effective duration of the bond, or which
113 adds conditions precedent to the enforcement of a claim against
114 the bond beyond those provided in this section is unenforceable.

115 (b) The Department of Management Services shall adopt rules
116 with respect to all contracts for \$200,000 or less, to provide:

117 1. Procedures for retaining up to 10 percent of each
118 request for payment submitted by a contractor and procedures for
119 determining disbursements from the amount retained on a pro rata
120 basis to laborers, materialmen, and subcontractors, as defined
121 in s. 713.01.

122 2. Procedures for requiring certification from laborers,
123 materialmen, and subcontractors, as defined in s. 713.01, before
124 ~~prior to~~ final payment to the contractor that such laborers,
125 materialmen, and subcontractors have no claims against the
126 contractor resulting from the completion of the work provided
127 for in the contract.

128

129 The state is ~~shall~~ not ~~be held~~ liable to any laborer,



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130 materialman, or subcontractor for any amounts greater than the
131 pro rata share as determined under this section.

132 (c)1. The amount of the bond shall equal the contract
133 price, except that for a contract in excess of \$250 million, if
134 the state, county, municipality, political subdivision, or other
135 public entity finds that a bond in the amount of the contract
136 price is not reasonably available, the public owner shall set
137 the amount of the bond at the largest amount reasonably
138 available, but not less than \$250 million.

139 2. For construction-management or design-build contracts,
140 if the public owner does not include in the bond amount the cost
141 of design or other nonconstruction services, the bond may not be
142 conditioned on performance of such services or payment to
143 persons furnishing such services. Notwithstanding paragraph (a),
144 such a bond may exclude persons furnishing such services from
145 the classes of persons protected by the bond.

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

153
154 NOTICE OF CONTEST OF CLAIM
155 AGAINST PAYMENT BOND
156

157 To: ...(Name and address of claimant)...
158



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159 You are notified that the undersigned contests your notice
160 of nonpayment, dated,, and served on the
161 undersigned on,, and that the time within
162 which you may file suit to enforce your claim is limited to 60
163 days after the date of service of this notice.

164
165 DATED on,

166
167 Signed: ...(Contractor or Attorney)...

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

178 2. A claimant, except a laborer, who is not in privity with
179 the contractor shall, before commencing or not later than 45
180 days after commencing to furnish labor, services, or materials
181 for the prosecution of the work, furnish the contractor with a
182 written notice that he or she intends to look to the bond for
183 protection. A claimant who is not in privity with the contractor
184 and who has not received payment for his or her labor, services,
185 or materials shall deliver to the contractor and to the surety
186 written notice of the performance of the labor or delivery of
187 the materials or supplies and of the nonpayment. The notice of



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188 nonpayment shall ~~may~~ be served ~~at any time~~ during the progress
189 of the work or thereafter but may not be served earlier than
190 ~~before~~ 45 days after the first furnishing of labor, services, or
191 materials or, and not later than 90 days after the final
192 furnishing of the labor, services, or materials by the claimant
193 or, with respect to rental equipment, not later than 90 days
194 after the date that the rental equipment was last on the job
195 site available for use. Any notice of nonpayment served by a
196 claimant who is not in privity with the contractor which
197 includes sums for retainage must specify the portion of the
198 amount claimed for retainage. An ~~No~~ action for the labor,
199 materials, or supplies may not be instituted against the
200 contractor or the surety unless the notice to the contractor and
201 notice of nonpayment have been served, if required by this
202 section both notices have been given. If the payment bond is not
203 recorded before commencement of construction, the time period
204 for the claimant to serve the required notices may at the option
205 of the claimant be calculated from the dates specified in this
206 section or from the date the claimant is served a copy of the
207 bond. However, the limitation period for commencement of an
208 action on the bond as established in subsection (10) may not be
209 expanded. Notices required or permitted under this section shall
210 ~~may~~ be served in accordance with s. 713.18. A claimant may not
211 waive in advance his or her right to bring an action under the
212 bond against the surety. In any action brought to enforce a
213 claim against a payment bond under this section, the prevailing
214 party is entitled to recover a reasonable fee for the services
215 of his or her attorney for trial and appeal or for arbitration,
216 in an amount to be determined by the court, which fee must be



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217 taxed as part of the prevailing party's costs, as allowed in
218 equitable actions. The time periods for service of a notice of
219 nonpayment or for bringing an action against a contractor or a
220 surety shall be measured from the last day of furnishing labor,
221 services, or materials by the claimant and may ~~shall~~ not be
222 measured by other standards, such as the issuance of a
223 certificate of occupancy or the issuance of a certificate of
224 substantial completion.

225 (b) When a person is required to execute a waiver of his or
226 her right to make a claim against the payment bond in exchange
227 for, or to induce payment of, a progress payment, the waiver may
228 be in substantially the following form:

229
230 WAIVER OF RIGHT TO CLAIM
231 AGAINST THE PAYMENT BOND
232 (PROGRESS PAYMENT)
233

234 The undersigned, in consideration of the sum of \$....,
235 hereby waives its right to claim against the payment bond for
236 labor, services, or materials furnished through ...(insert
237 date)... to ...(insert the name of your customer)... on the job
238 of ...(insert the name of the owner)..., for improvements to the
239 following described project:

240
241 (description of project)
242

243 This waiver does not cover any retention or any labor, services,
244 or materials furnished after the date specified.
245



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246 DATED ON,

247 ... (Claimant)...

248 By:.....

249

250 (c) When a person is required to execute a waiver of his or

251 her right to make a claim against the payment bond, in exchange

252 for, or to induce payment of, the final payment, the waiver may

253 be in substantially the following form:

254

255 WAIVER OF RIGHT TO CLAIM

256 AGAINST THE PAYMENT BOND

257 (FINAL PAYMENT)

258

259 The undersigned, in consideration of the final payment in

260 the amount of \$...., hereby waives its right to claim against

261 the payment bond for labor, services, or materials furnished to

262 ... (insert the name of your customer)... on the job of

263 ... (insert the name of the owner)..., for improvements to the

264 following described project:

265

266 (description of project)

267

268 DATED ON,

269 ... (Claimant)...

270 By:.....

271

272 (d) A person may not require a claimant to furnish a waiver

273 that is different from the forms in paragraphs (b) and (c).

274

(e) A claimant who executes a waiver in exchange for a



275 check may condition the waiver on payment of the check.

276 (f) A waiver that is not substantially similar to the forms
277 in this subsection is enforceable in accordance with its terms.

278 (3) The bond required in subsection (1) may be in
279 substantially the following form:

280

281 PUBLIC CONSTRUCTION BOND

282 Bond No....(enter bond number)...

283

284 BY THIS BOND, We, as Principal and, a
285 corporation, as Surety, are bound to, herein called Owner,
286 in the sum of \$....., for payment of which we bind ourselves, our
287 heirs, personal representatives, successors, and assigns,
288 jointly and severally.

289 THE CONDITION OF THIS BOND is that if Principal:

290 1. Performs the contract dated,, between
291 Principal and Owner for construction of, the contract being
292 made a part of this bond by reference, at the times and in the
293 manner prescribed in the contract; and

294 2. Promptly makes payments to all claimants, as defined in
295 Section 255.05(1), Florida Statutes, supplying Principal with
296 labor, materials, or supplies, used directly or indirectly by
297 Principal in the prosecution of the work provided for in the
298 contract; and

299 3. Pays Owner all losses, damages, expenses, costs, and
300 attorney's fees, including appellate proceedings, that Owner
301 sustains because of a default by Principal under the contract;
302 and

303 4. Performs the guarantee of all work and materials



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304 furnished under the contract for the time specified in the
305 contract, then this bond is void; otherwise it remains in full
306 force.

307
308 Any action instituted by a claimant under this bond for payment
309 must be in accordance with the notice and time limitation
310 provisions in Section 255.05(2), Florida Statutes.

311
312 Any changes in or under the contract documents and compliance or
313 noncompliance with any formalities connected with the contract
314 or the changes does not affect Surety's obligation under this
315 bond.

316
317 DATED ON,

318
319 ... (Name of Principal) ...
320 By ... (As Attorney in Fact) ...
321 ... (Name of Surety) ...

322
323 (4) The payment bond provisions of all bonds required by
324 subsection (1) shall be construed and deemed statutory payment
325 bonds furnished pursuant to this section and such bonds shall
326 not under any circumstances be converted into common law bonds.

327 (5) In addition to the provisions of chapter 47, any action
328 authorized under this section may be brought in the county in
329 which the public building or public work is being constructed or
330 repaired. This subsection shall not apply to an action
331 instituted prior to May 17, 1977.

332 (6) All payment bond forms used by a public owner and all



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333 payment bonds executed pursuant to this section by a surety
334 shall make reference to this section by number and shall contain
335 reference to the notice and time limitation provisions in
336 subsection (2).

337 (7) In lieu of the bond required by this section, a
338 contractor may file with the state, county, city, or other
339 political authority an alternative form of security in the form
340 of cash, a money order, a certified check, a cashier's check, an
341 irrevocable letter of credit, or a security of a type listed in
342 part II of chapter 625. Any such alternative form of security
343 shall be for the same purpose and be subject to the same
344 conditions as those applicable to the bond required by this
345 section. The determination of the value of an alternative form
346 of security shall be made by the appropriate state, county,
347 city, or other political subdivision.

348 (8) When a contractor has furnished a payment bond pursuant
349 to this section, he or she may, when the state, county,
350 municipality, political subdivision, or other public authority
351 makes any payment to the contractor or directly to a claimant,
352 serve a written demand on any claimant who is not in privity
353 with the contractor for a written statement under oath of his or
354 her account showing the nature of the labor or services
355 performed and to be performed, if any; the materials furnished;
356 the materials to be furnished, if known; the amount paid on
357 account to date; the amount due; and the amount to become due,
358 if known, as of the date of the statement by the claimant. Any
359 such demand to a claimant who is not in privity with the
360 contractor must be served on the claimant at the address and to
361 the attention of any person who is designated to receive the



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362 demand in the notice to contractor served by the claimant. The
363 failure or refusal to furnish the statement does not deprive the
364 claimant of his or her rights under the bond if the demand is
365 not served at the address of the claimant or directed to the
366 attention of the person designated to receive the demand in the
367 notice to contractor. The failure to furnish the statement
368 within 30 days after the demand, or the furnishing of a false or
369 fraudulent statement, deprives the claimant who fails to furnish
370 the statement, or who furnishes the false or fraudulent
371 statement, of his or her rights under the bond. If the
372 contractor serves more than one demand for statement of account
373 on a claimant and none of the information regarding the account
374 has changed since the claimant's last response to a demand, the
375 failure or refusal to furnish such statement does not deprive
376 the claimant of his or her rights under the bond. The negligent
377 inclusion or omission of any information deprives the claimant
378 of his or her rights under the bond to the extent that the
379 contractor can demonstrate prejudice from such act or omission
380 by the claimant. The failure to furnish a response to a demand
381 for statement of account does not affect the validity of any
382 claim on the bond being enforced in a lawsuit filed before the
383 date the demand for statement of account is received by the
384 claimant.

385 (9) On any public works project for which the public
386 authority requires a performance and payment bond, suits at law
387 and in equity may be brought and maintained by and against the
388 public authority on any contract claim arising from breach of an
389 express provision or an implied covenant of a written agreement
390 or a written directive issued by the public authority pursuant



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391 to the written agreement. In any such suit, the public authority
392 and the contractor shall have all of the same rights and
393 obligations as a private person under a like contract except
394 that no liability may be based on an oral modification of either
395 the written contract or written directive. Nothing herein shall
396 be construed to waive the sovereign immunity of the state and
397 its political subdivisions from equitable claims and equitable
398 remedies. The provisions of this subsection shall apply only to
399 contracts entered into on or after July 1, 1999.

400 (10) An action, except an action for recovery of retainage,
401 must be instituted against the contractor or the surety on the
402 payment bond or the payment provisions of a combined payment and
403 performance bond within 1 year after the performance of the
404 labor or completion of delivery of the materials or supplies. An
405 action for recovery of retainage must be instituted against the
406 contractor or the surety within 1 year after the performance of
407 the labor or completion of delivery of the materials or
408 supplies; however, such an action may not be instituted until
409 one of the following conditions is satisfied:

410 (a) The public entity has paid out the claimant's retainage
411 to the contractor, and the time provided under s. 218.735 or s.
412 255.073(3) for payment of that retainage to the claimant has
413 expired;

414 (b) The claimant has completed all work required under its
415 contract and 70 days have passed since the contractor sent its
416 final payment request to the public entity; or

417 (c) At least 160 days have passed since reaching
418 substantial completion of the construction services purchased,
419 as defined in the contract, or if not defined in the contract,



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420 since reaching beneficial occupancy or use of the project.

421 (d) The claimant has asked the contractor, in writing, for
422 any of the following information and the contractor has failed
423 to respond to the claimant's request, in writing, within 10 days
424 after receipt of the request:

425 1. Whether the project has reached substantial completion,
426 as that term is defined in the contract, or if not defined in
427 the contract, if beneficial occupancy or use of the project has
428 occurred.

429 2. Whether the contractor has received payment of the
430 claimant's retainage, and if so, the date the retainage was
431 received by the contractor.

432 3. Whether the contractor has sent its final payment
433 request to the public entity, and if so, the date on which the
434 final payment request was sent.

435
436 If none of the conditions described in paragraph (a), paragraph
437 (b), paragraph (c), or paragraph (d) is satisfied and an action
438 for recovery of retainage cannot be instituted within the 1-year
439 limitation period set forth in this subsection, this limitation
440 period shall be extended until 120 days after one of these
441 conditions is satisfied.

442 (11) When a contractor furnishes and records a payment and
443 performance bond for a public works project in accordance with
444 this section, the public authority may not condition its
445 payments to the contractor on the production of a release,
446 waiver, or like documentation from a claimant demonstrating that
447 the claimant does not have an outstanding claim against the
448 contractor, the surety, the payment bond, or the public



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449 authority for payments due on labor, services, or materials
450 furnished on the public works project.

451 Section 3. Paragraph (b) of subsection (2) of section
452 713.10, Florida Statutes, is amended to read:

453 713.10 Extent of liens.-

454 (2)

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

457 1. The lease, or a short form or a memorandum of the lease
458 that contains the specific language in the lease prohibiting
459 such liability, is recorded in the official records of the
460 county where the premises are located before the recording of a
461 notice of commencement for improvements to the premises and the
462 terms of the lease expressly prohibit such liability; or

463 2. The terms of the lease expressly prohibit such
464 liability, and a notice advising that leases for the rental of
465 premises on a parcel of land prohibit such liability has been
466 recorded in the official records of the county in which the
467 parcel of land is located before the recording of a notice of
468 commencement for improvements to the premises, and the notice
469 includes the following:

470 a. The name of the lessor.

471 b. The legal description of the parcel of land to which the
472 notice applies.

473 c. The specific language contained in the various leases
474 prohibiting such liability.

475 d. A statement that all or a majority of the leases entered
476 into for premises on the parcel of land expressly prohibit such
477 liability.



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

480

481 A notice that is consistent with subparagraph 2. effectively
482 prohibits liens for improvements made by a lessee even if other
483 leases for premises on the parcel do not expressly prohibit
484 liens or if provisions of each lease restricting the application
485 of liens are not identical.

486 Section 4. Paragraph (e) of subsection (1) of section
487 713.13, Florida Statutes, is amended to read:

488 713.13 Notice of commencement.—

489 (1)

490 (e) A copy of any payment bond must be attached at the time
491 of recordation of the notice of commencement. The failure to
492 attach a copy of the bond to the notice of commencement when the
493 notice is recorded negates the exemption provided in s.

494 713.02(6). However, if a payment bond under s. 713.23 exists but
495 was not attached at the time of recordation of the notice of
496 commencement, the bond may be used to transfer any recorded lien
497 of a lienor except that of the contractor by the recordation and
498 service of a notice of bond pursuant to s. 713.23(2). The notice
499 requirements of s. 713.23 apply to any claim against the bond;
500 however, the time limits for serving any required notices shall,
501 at the option of the lienor, be calculated from the dates ~~begin~~
502 ~~running from the later of the time~~ specified in s. 713.23 or the
503 date the notice of bond is served on the lienor.

504 Section 5. Subsections (1) and (4) of section 713.132,
505 Florida Statutes, are amended to read:

506 713.132 Notice of termination.—



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

510 (a) The same information as the notice of commencement;

511 (b) The recording office document book and page reference
512 numbers and date of the notice of commencement;

513 (c) A statement of the date as of which the notice of
514 commencement is terminated, which date may not be earlier than
515 30 days after the notice of termination is recorded;

516 (d) A statement specifying that the notice applies to all
517 the real property subject to the notice of commencement or
518 specifying the portion of such real property to which it
519 applies;

520 (e) A statement that all lienors have been paid in full;
521 and

522 (f) A statement that the owner has, before recording the
523 notice of termination, served a copy of the notice of
524 termination on the contractor and on each lienor who has a
525 direct contract with the owner or who has served a notice to
526 owner given notice. The owner is not required to serve a copy of
527 the notice of termination on any lienor who has executed a
528 waiver and release of lien upon final payment in accordance with
529 s. 713.20.

530 (4) A notice of termination is effective to terminate the
531 notice of commencement at the later of 30 days after recording
532 of the notice of termination or the date stated in the notice of
533 termination as the date on which the notice of commencement is
534 terminated, if provided that the notice of termination has been
535 served pursuant to paragraph (1)(f) on the contractor and on



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536 each lienor who has a direct contract with the owner or who has
537 served a notice to owner ~~given notice.~~

538 Section 6. Section 713.16, Florida Statutes, is amended to
539 read:

540 713.16 Demand for copy of contract and statements of
541 account; form.—

542 (1) A copy of the contract of a lienor or owner and a
543 statement of the amount due or to become due if fixed or
544 ascertainable thereon must be furnished by any party thereto,
545 upon written demand of an owner or a lienor contracting with or
546 employed by the other party to such contract. If the owner or
547 lienor refuses or neglects to furnish such copy of the contract
548 or such statement, or willfully and falsely states the amount
549 due or to become due if fixed or ascertainable under such
550 contract, any person who suffers any detriment thereby has a
551 cause of action against the person refusing or neglecting to
552 furnish the same or willfully and falsely stating the amount due
553 or to become due for his or her damages sustained thereby. The
554 information contained in such copy or statement furnished
555 pursuant to such written demand is binding upon the owner or
556 lienor furnishing it unless actual notice of any modification is
557 given to the person demanding the copy or statement before such
558 person acts in good faith in reliance on it. The person
559 demanding such documents must pay for the reproduction thereof;
560 and, if such person fails or refuses to do so, he or she is
561 entitled only to inspect such documents at reasonable times and
562 places.

563 (2) The owner may serve in writing a demand of any lienor
564 for a written statement under oath of his or her account showing



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565 the nature of the labor or services performed and to be
566 performed, if any, the materials furnished, the materials to be
567 furnished, if known, the amount paid on account to date, the
568 amount due, and the amount to become due, if known, as of the
569 date of the statement by the lienor. Any such demand to a lienor
570 must be served on the lienor at the address and to the attention
571 of any person who is designated to receive the demand in the
572 notice to owner served by such lienor and must include a
573 description of the property and the names of the owner, the
574 contractor, and the lienor's customer, as set forth in the
575 lienor's notice to owner. The failure or refusal to furnish the
576 statement does not deprive the lienor of his or her lien if the
577 demand is not served at the address of the lienor or directed to
578 the attention of the person designated to receive the demand in
579 the notice to owner. The failure or refusal to furnish the
580 statement under oath within 30 days after the demand, or the
581 furnishing of a false or fraudulent statement, deprives the
582 person so failing or refusing to furnish such statement of his
583 or her lien. If the owner serves more than one demand for
584 statement of account on a lienor and none of the information
585 regarding the account has changed since the lienor's last
586 response to a demand, the failure or refusal to furnish such
587 statement does not deprive the lienor of his or her lien. The
588 negligent inclusion or omission of any information deprives the
589 person of his or her lien to the extent the owner can
590 demonstrate prejudice from such act or omission by the lienor.
591 The failure to furnish a response to a demand for statement of
592 account does not affect the validity of any claim of lien being
593 enforced through a foreclosure case filed before ~~prior to~~ the



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594 date the demand for statement is received by the lienor.

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

597

598 REQUEST FOR SWORN STATEMENT OF ACCOUNT

599

600 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED
601 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE
602 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

603

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

605

606 The undersigned hereby demands a written statement under oath of
607 his or her account showing the nature of the labor or services
608 performed and to be performed, if any, the materials furnished,
609 the materials to be furnished, if known, the amount paid on
610 account to date, the amount due, and the amount to become due,
611 if known, as of the date of the statement for the improvement of
612 real property identified as ...(property description)....

613

614 ...(name of contractor)...

615

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

618

619

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

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

622



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623
624 (4) When a contractor has furnished a payment bond pursuant
625 to s. 713.23, he or she may, when an owner makes any payment to
626 the contractor or directly to a lienor, serve a written demand
627 on any other lienor for a written statement under oath of his or
628 her account showing the nature of the labor or services
629 performed and to be performed, if any, the materials furnished,
630 the materials to be furnished, if known, the amount paid on
631 account to date, the amount due, and the amount to become due,
632 if known, as of the date of the statement by the lienor. Any
633 such demand to a lienor must be served on the lienor at the
634 address and to the attention of any person who is designated to
635 receive the demand in the notice to contractor served by such
636 lienor. The demand must include a description of the property
637 and the names of the owner, the contractor, and the lienor's
638 customer, as set forth in the lienor's notice to contractor. The
639 failure or refusal to furnish the statement does not deprive the
640 lienor of his or her rights under the bond if the demand is not
641 served at the address of the lienor or directed to the attention
642 of the person designated to receive the demand in the notice to
643 contractor. The failure to furnish the statement within 30 days
644 after the demand, or the furnishing of a false or fraudulent
645 statement, deprives the person who fails to furnish the
646 statement, or who furnishes the false or fraudulent statement,
647 of his or her rights under the bond. If the contractor serves
648 more than one demand for statement of account on a lienor and
649 none of the information regarding the account has changed since
650 the lienor's last response to a demand, the failure or refusal
651 to furnish such statement does not deprive the lienor of his or



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652 her rights under the bond. The negligent inclusion or omission
653 of any information deprives the person of his or her rights
654 under the bond to the extent the contractor can demonstrate
655 prejudice from such act or omission by the lienor. The failure
656 to furnish a response to a demand for statement of account does
657 not affect the validity of any claim on the bond being enforced
658 in a lawsuit filed prior to the date the demand for statement of
659 account is received by the lienor.

660 (5) (a) Any lienor who is perfecting a claim of lien ~~has~~
661 ~~recorded a claim of lien~~ may serve with the claim of lien or
662 thereafter a ~~make~~ written demand on the owner for a written
663 statement under oath showing:

664 1. The amount of the direct contract under which the lien
665 was recorded;

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

669 3. The reasonable estimated costs of completing the direct
670 contract under which the lien was claimed pursuant to the scope
671 of the direct contract; and

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

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

679
680 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT WITHIN



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681 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN
682 THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY ACTION TO
683 ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING THIS
684 STATEMENT.

685 (6) Any written demand served on the owner must include a
686 description of the property and the names of the contractor and
687 the lienor's customer, as set forth in the lienor's notice to
688 owner.

689 (7)~~(6)~~ For purposes of this section, the term "information"
690 means the nature and quantity of the labor, services, and
691 materials furnished or to be furnished by a lienor and the
692 amount paid, the amount due, and the amount to become due on the
693 lienor's account.

694 Section 7. Section 713.18, Florida Statutes, is amended to
695 read:

696 713.18 Manner of serving notices and other instruments.—

697 (1) Service of notices, claims of lien, affidavits,
698 assignments, and other instruments permitted or required under
699 this part, or copies thereof when so permitted or required,
700 unless otherwise specifically provided in this part, must be
701 made by one of the following methods:

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

706 (b) By common carrier delivery service or ~~sending the same~~
707 by registered, Global Express Guaranteed, or certified mail,
708 with postage or shipping paid by the sender and prepaid, ~~or by~~
709 ~~overnight or second-day delivery~~ with evidence of delivery,



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710 which may be in an electronic format.

711 ~~(c) If the method specified in paragraph (a) or paragraph~~
712 ~~(b) cannot be accomplished,~~ By posting on the site of the
713 improvement if service as provided by paragraph (a) or paragraph
714 (b) cannot be accomplished premises.

715 (2) Notwithstanding subsection (1), service of ~~if~~ a notice
716 to owner ~~or,~~ a notice to contractor under s. 713.23, s. 337.18,
717 ~~or a preliminary notice under s. 255.05 is mailed by registered~~
718 ~~or certified mail with postage prepaid to the person to be~~
719 ~~served at any of the addresses set forth in subsection (3)~~
720 ~~within 40 days after the date the lienor first furnishes labor,~~
721 ~~services, or materials, service of that notice is effective as~~
722 of the date of mailing if:

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

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

729 (c)1. The person who served the notice maintains a
730 registered or certified mail log that shows the registered or
731 certified mail number issued by the United States Postal
732 Service, the name and address of the person served, and the date
733 stamp of the United States Postal Service confirming the date of
734 mailing; ~~or if~~

735 2. The person who served the notice maintains electronic
736 tracking records generated by ~~through use of~~ the United States
737 Postal Service ~~Confirm service or a similar service~~ containing
738 the postal tracking number, the name and address of the person



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739 served, and verification of the date of receipt by the United
740 States Postal Service.

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

744 1. Is sent to the last address shown in the notice of
745 commencement or any amendment thereto or, in the absence of a
746 notice of commencement, to the last address shown in the
747 building permit application, or to the last known address of the
748 person to be served; ~~and, is not received, but~~

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

753 (b) If the address shown in the notice of commencement or
754 any amendment to the notice of commencement, or, in the absence
755 of a notice of commencement, in the building permit application,
756 is incomplete for purposes of mailing or delivery, the person
757 serving the item may complete the address and properly format it
758 according to United States Postal Service addressing standards
759 using information obtained from the property appraiser or
760 another public record without affecting the validity of service
761 under this section.

762 (4) A notice served by a lienor on one owner or one partner
763 of a partnership owning the real property ~~If the real property~~
764 ~~is owned by more than one person or a partnership, a lienor may~~
765 ~~serve any notices or other papers under this part on any one of~~
766 ~~such owners or partners, and such notice is deemed notice to all~~
767 owners and partners.



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768 Section 8. Section 713.22, Florida Statutes, is amended to
769 read:

770 713.22 Duration of lien.—

771 (1) A ~~No~~ lien provided by this part does not ~~shall~~ continue
772 for a longer period than 1 year after the claim of lien has been
773 recorded or 1 year after the recording of an amended claim of
774 lien that shows a later date of final furnishing of labor,
775 services, or materials, unless within that time an action to
776 enforce the lien is commenced in a court of competent
777 jurisdiction. A lien that has been continued beyond the 1-year
778 period ~~The continuation of the lien effected by the commencement~~
779 ~~of an~~ the ~~action is~~ shall not enforceable ~~be good~~ against
780 creditors or subsequent purchasers for a valuable consideration
781 and without notice, unless a notice of lis pendens is recorded.

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

788
789 NOTICE OF CONTEST OF LIEN
790 To: ...(Name and address of lienor)...
791 You are notified that the undersigned contests the claim of lien
792 filed by you on, ...(year)..., and recorded in Book
793, Page, of the public records of County, Florida,
794 and that the time within which you may file suit to enforce your
795 lien is limited to 60 days from the date of service of this
796 notice. This day of, ...(year)....



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

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, mail a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the such notice and record the notice. ~~Service shall be deemed complete upon mailing.~~

Section 9. Paragraphs (c), (d), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. If a notice of commencement with the attached bond is not recorded before commencement of construction, ~~or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond~~, the lienor not in privity with the contractor may, in the alternative, elect to serve the notice to the contractor up to ~~shall have~~ 45 days after ~~from~~ the date the lienor is served with



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826 ~~a copy notified of the existence of the bond within which to~~
827 ~~serve the notice. A notice to owner pursuant to s. 713.06 which~~
828 ~~has been timely served on the contractor satisfies the~~
829 ~~requirements of this paragraph. In no event, however, shall the~~
830 ~~limitation period for commencement of an action on the payment~~
831 ~~bond as established in paragraph (e) be expanded. The notice may~~
832 ~~be in substantially the following form and may be combined with~~
833 ~~a notice to owner given under s. 713.06 and, if so, may be~~
834 ~~entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR:~~

835
836
837 NOTICE TO CONTRACTOR

838
839 To ... (name and address of contractor) ...

840
841 The undersigned hereby informs you that he or she has furnished
842 or is furnishing services or materials as follows:

843
844 ...(general description of services or materials)... for the
845 improvement of the real property identified as ...(property
846 description)... under an order given by ...(lienor's
847 customer)....

848
849 This notice is to inform you that the undersigned intends to
850 look to the contractor's bond to secure payment for the
851 furnishing of materials or services for the improvement of the
852 real property.

853
854 ...(name of lienor)...



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

856 ...(date)...

857 ...(lienor's address)...

858

859 ~~The undersigned notifies you that he or she has furnished or is~~
860 ~~furnishing ...(services or materials)... for the improvement of~~
861 ~~the real property identified as ...(property description)...~~
862 ~~owned by ...(owner's name and address)... under an order given~~
863 ~~by and that the undersigned will look to the contractor's~~
864 ~~bond for protection on the work.~~

865

866 ~~...(Lienor's signature and address)...~~

867

868 (d) In addition, a lienor is required, as a condition
869 precedent to recovery under the bond, to serve a written notice
870 of nonpayment to the contractor and the surety not later than 90
871 days after the final furnishing of labor, services, or materials
872 by the lienor. A written notice satisfies this condition
873 precedent with respect to the payment described in the notice of
874 nonpayment, including unpaid finance charges due under the
875 lienor's contract, and with respect to any other payments which
876 become due to the lienor after the date of the notice of
877 nonpayment. The time period for serving a written notice of
878 nonpayment shall be measured from the last day of furnishing
879 labor, services, or materials by the lienor and shall not be
880 measured by other standards, such as the issuance of a
881 certificate of occupancy or the issuance of a certificate of
882 substantial completion. The failure of a lienor to receive
883 retainage sums not in excess of 10 percent of the value of



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884 labor, services, or materials furnished by the lienor is not
885 considered a nonpayment requiring the service of the notice
886 provided under this paragraph. If the payment bond is not
887 recorded before commencement of construction, the time period
888 for the lienor to serve a notice of nonpayment may at the option
889 of the lienor be calculated from the date specified in this
890 section or the date the lienor is served a copy of the bond.
891 However, the limitation period for commencement of an action on
892 the payment bond as established in paragraph (e) may not be
893 expanded. The notice under this paragraph may be in
894 substantially the following form:

895
896 NOTICE OF NONPAYMENT

897
898 To ...(name of contractor and address)...

899
900 ...(name of surety and address)...

901
902 The undersigned notifies you that he or she has furnished
903 ...(describe labor, services, or materials)... for the
904 improvement of the real property identified as ...(property
905 description).... The amount now due and unpaid is \$.....

906
907 ...(signature and address of lienor)...

908
909 (e) An ~~Ne~~ action for the labor or materials or supplies may
910 not be instituted or prosecuted against the contractor or surety
911 unless both notices have been given, if required by this
912 section. An ~~Ne~~ action may not ~~shall~~ be instituted or prosecuted



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913 against the contractor or against the surety on the bond under
914 this section after 1 year from the performance of the labor or
915 completion of delivery of the materials and supplies. The time
916 period for bringing an action against the contractor or surety
917 on the bond shall be measured from the last day of furnishing
918 labor, services, or materials by the lienor. The time period ~~and~~
919 may shall not be measured by other standards, such as the
920 issuance of a certificate of occupancy or the issuance of a
921 certificate of substantial completion. A contractor or the
922 contractor's ~~agent or~~ attorney may elect to shorten the
923 ~~prescribed~~ time within which an action to enforce any claim
924 against a payment bond provided under this section or s. 713.245
925 must may be commenced at any time after a notice of nonpayment,
926 if required, has been served for the claim by recording in the
927 clerk's office a notice in substantially the following form:
928

929 NOTICE OF CONTEST OF CLAIM
930 AGAINST PAYMENT BOND

931
932 To: ...(Name and address of lienor)...

933 You are notified that the undersigned contests your notice
934 of nonpayment, dated,, and served on the undersigned
935 on,, and that the time within which you may file suit
936 to enforce your claim is limited to 60 days from the date of
937 service of this notice.

938
939 DATED on,

940
941 Signed: ...(Contractor or Attorney)...



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942
943 The claim of any lienor upon whom the notice is served and who
944 fails to institute a suit to enforce his or her claim against
945 the payment bond within 60 days after service of the notice
946 shall be extinguished automatically. The contractor or the
947 contractor's attorney ~~clerk~~ shall serve mail a copy of the
948 notice of contest to the lienor at the address shown in the
949 notice of nonpayment or most recent amendment thereto and shall
950 certify to such service on the face of the notice and record the
951 notice. ~~Service is complete upon mailing.~~

952 (f) A Any lienor has a direct right of action on the bond
953 against the surety. Any provision in a payment bond which
954 further restricts ~~A bond must not contain any provisions~~
955 ~~restricting~~ the classes of persons who are protected by the
956 payment bond, which restricts ~~thereby or~~ the venue of any
957 proceeding relating to such payment bond, which limits or
958 expands the effective duration of the payment bond, or which
959 adds conditions precedent to the enforcement of a claim against
960 a payment bond beyond those provided in this part is
961 unenforceable. The surety is not entitled to the defense of pro
962 tanto discharge as against any lienor because of changes or
963 modifications in the contract to which the surety is not a
964 party; but the liability of the surety may not be increased
965 beyond the penal sum of the bond. A lienor may not waive in
966 advance his or her right to bring an action under the bond
967 against the surety.

968 (2) The bond shall secure every lien under the direct
969 contract accruing subsequent to its execution and delivery,
970 except that of the contractor. Every claim of lien, except that



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971 of the contractor, filed subsequent to execution and delivery of
972 the bond shall be transferred to it with the same effect as
973 liens transferred under s. 713.24. Record notice of the transfer
974 shall be effected by the contractor, or any person having an
975 interest in the property against which the claim of lien has
976 been asserted, by recording in the clerk's office a notice, with
977 the bond attached, in substantially the following form:

978
979 NOTICE OF BOND

980
981 To ... (Name and Address of Lienor) ...

982
983 You are notified that the claim of lien filed by you on,
984, and recorded in Official Records Book at page of
985 the public records of County, Florida, is secured by a
986 bond, a copy being attached.

987
988 Signed: ... (Name of person recording notice) ...

989
990 The notice shall be verified. The person recording the notice of
991 bond clerk shall serve mail a copy of the notice with a copy of
992 the bond to the lienor at the address shown in the claim of
993 lien, or the most recent amendment to it; shall certify to the
994 service on the face of the notice; and shall record the notice.
995 ~~The clerk shall receive the same fee as prescribed in s.~~
996 ~~713.24(1) for certifying to a transfer of lien.~~

997 (4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds
998 under this section except when those provisions conflict with
999 this section.



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1000 Section 10. This act shall take effect October 1, 2012.

1001

1002 ===== T I T L E A M E N D M E N T =====

1003 And the title is amended as follows:

1004 Delete everything before the enacting clause
1005 and insert:

1006 A bill to be entitled
1007 An act relating to construction liens and bonds;
1008 amending s. 95.11, F.S.; adding a cross-reference;
1009 deleting a provision for the limitation of actions
1010 against a bond; amending s. 255.05, F.S.; requiring
1011 that the bond number be stated on the first page of
1012 the bond; providing that a provision in a payment bond
1013 furnished for a public works contract that limits or
1014 expands the effective duration of the bond or adds
1015 conditions precedent is unenforceable; requiring a
1016 contractor, or the contractor's attorney, to serve
1017 rather than mail a notice of contest of claim against
1018 the payment bond; providing additional time for
1019 service when the bond is not recorded; specifying the
1020 duration of the bond; providing that payment to a
1021 contractor who has furnished a payment bond on a
1022 public works project may not be conditioned upon
1023 production of certain documents; providing
1024 prerequisites for commencement of an action against a
1025 payment bond; amending s. 713.10, F.S.; providing that
1026 a specified notice concerning a lessor's liability for
1027 liens for improvements made by the lessee prohibits
1028 liens even if other leases do not expressly prohibit



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1029 liens or if certain other provisions are not
1030 identical; amending s. 713.13, F.S.; providing
1031 additional time for service when a notice of
1032 commencement is not recorded with a copy of the bond
1033 attached; amending s. 713.132, F.S.; requiring notice
1034 of termination to be served on lienors in privity with
1035 the owner; amending s. 713.16, F.S.; revising
1036 requirements for demands for a copy of a construction
1037 contract and a statement of account; authorizing a
1038 lienor to make certain written demands to an owner for
1039 certain written statements; providing requirements for
1040 such written demands; amending s. 713.18, F.S.;
1041 providing additional methods by which certain items
1042 may be served; revising provisions relating to when
1043 service of specified items is effective; specifying
1044 requirements for certain written instruments under
1045 certain circumstances; amending s. 713.22, F.S.;
1046 requiring that the clerk serve rather than mail a
1047 notice of contest of lien; amending s. 713.23, F.S.;
1048 revising the contents of a notice to contractor;
1049 requiring that a contractor serve rather than mail a
1050 notice of contest of claim against the payment bond
1051 and a notice of bond; clarifying the attachment of the
1052 bond to the notice; providing that a provision in a
1053 payment bond that limits or expands the effective
1054 duration of the bond or adds conditions precedent is
1055 unenforceable; clarifying applicability of certain
1056 provisions; providing an effective date.