

By Senator Bogdanoff

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1                                   A bill to be entitled  
2           An act relating to construction liens and bonds;  
3           amending s. 255.05, F.S.; requiring that the bond  
4           number be stated on the first page of a payment and  
5           performance bond relating to a public works  
6           construction project; providing that a provision that  
7           limits the effective duration of the bond is  
8           unenforceable; requiring that a contractor serve a  
9           notice of contest to a claimant against the bond;  
10          extending the time period for a claimant to serve a  
11          notice to contractor or a notice of nonpayment or to  
12          file suit against the contractor or surety if the bond  
13          is not recorded or if the claimant was not notified of  
14          the existence of the bond in writing; requiring that a  
15          claimant who is not in privity with a contractor serve  
16          the notice of nonpayment on the contractor and the  
17          surety; making organizational and technical changes;  
18          amending s. 713.132, F.S.; requiring that an owner  
19          serve a copy of a notice of termination on each lienor  
20          who has a direct contract with the owner before a  
21          notice of termination may take effect; amending s.  
22          713.16, F.S.; requiring that an owner or contract  
23          provide specified information sufficient for a lienor  
24          to properly identify an account when a sworn statement  
25          of account is requested; deleting a requirement that a  
26          lienor have recorded a lien before the lienor may  
27          demand an accounting from the owner; requiring that  
28          the demand for an accounting which is served on the  
29          owner include specified information sufficient for the

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30 owner to identify the project in question; amending s.  
31 713.18, F.S.; providing additional methods by which  
32 certain items may be served; specifying the effective  
33 date of the service of a notice that is served;  
34 authorizing a person who serves an item to correct an  
35 address under certain circumstances; amending s.  
36 713.22, F.S.; requiring that the owner or owner's  
37 attorney serve a notice of contest of lien; amending  
38 s. 713.23, F.S.; authorizing the use of a combined  
39 notice to owner and notice to contractor form;  
40 revising the format of the notice to contractor;  
41 requiring that the contractor or the contractor's  
42 attorney serve the notice of contest; providing that a  
43 provision of a payment bond which restricts the  
44 classes of lienors and the effective duration of the  
45 bond is unenforceable; requiring that the person who  
46 records in the clerk's office a notice of a transfer  
47 of lien to a payment bond attach a copy of the bond;  
48 requiring that the person recording the notice of bond  
49 serve a copy of the notice along with a copy of the  
50 bond; specifying the relationship of provisions  
51 relating to payment bonds with other laws; making  
52 technical changes; providing an effective date.

53  
54 Be It Enacted by the Legislature of the State of Florida:

55  
56 Section 1. Subsection (1), paragraph (a) of subsection (2),  
57 and subsection (10) of section 255.05, Florida Statutes, are  
58 amended to read:

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59 255.05 Bond of contractor constructing public buildings;  
60 form; action by materialmen.-

61 (1) ~~(a)~~ Any person entering into a formal contract with the  
62 state or any county, municipality ~~city~~, or political subdivision  
63 thereof, or other public authority or private entity, for the  
64 construction of a public building, for the prosecution and  
65 completion of a public work, or for repairs upon a public  
66 building or public work must ~~shall be required~~, before  
67 commencing the work or before recommencing the work after a  
68 default or abandonment, ~~to~~ execute and deliver to the public  
69 owner, ~~and record in the public records of the county where the~~  
70 ~~improvement is located~~, a payment and performance bond with a  
71 surety insurer authorized to do business in this state as  
72 surety.

73 (a) A public entity may not require a contractor to secure  
74 a surety bond under this section from a specific agent or  
75 bonding company.

76 (b) The payment and performance bond must state on its  
77 front page: the name, principal business address, and phone  
78 number of the contractor; the surety and the bond number  
79 assigned by the surety; the owner of the property being  
80 improved, and, if different from the owner, the contracting  
81 public entity; the contract number assigned by the contracting  
82 public entity; and a description of the project sufficient to  
83 identify it, such as a legal description or the street address  
84 of the property being improved, and a general description of the  
85 improvement.

86 (c) The payment and performance ~~Such~~ bond shall be  
87 conditioned upon the contractor's performance of the

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88 construction work in the time and manner prescribed in the  
89 contract and upon the contractor's prompt ~~promptly making~~  
90 payments to all persons defined as a lienor in s. 713.01 who  
91 furnish labor, services, or materials for the prosecution of the  
92 work provided for in the contract.

93 (d) The contractor shall record the payment and performance  
94 bond upon issuance in the official records of the county in  
95 which the public works will be located.

96 (e) ~~Any claimant may apply to~~ The governmental entity  
97 having charge of the work shall provide a certified copy for  
98 ~~copies~~ of the contract and of the bond to any claimant upon  
99 request and ~~shall thereupon be furnished with a certified copy~~  
100 ~~of the contract and bond.~~ The claimant has ~~shall have~~ a right of  
101 action against the contractor and surety for the amount due him  
102 or her, including unpaid finance charges due under the  
103 claimant's contract. Such action may ~~shall~~ not involve the  
104 public authority in any expense.

105 (f)1. A payment and performance bond is not required for a  
106 contract with the state for \$100,000 or less. ~~When such work is~~  
107 ~~done for the state and the contract is for \$100,000 or less, no~~  
108 ~~payment and performance bond shall be required.~~

109 2. ~~At the discretion of~~ The official or board awarding a  
110 such contract ~~when such work is done for a~~ any county,  
111 municipality ~~city~~, political subdivision, or public authority  
112 may exempt a contract, ~~any person entering into such a contract~~  
113 ~~which is for \$200,000 or less~~ from the requirement for a ~~may be~~  
114 ~~exempted from executing the~~ payment and performance bond.

115 3. ~~When such work is done for the state,~~ The Secretary of  
116 Management Services may delegate to a state agency ~~agencies~~ the

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117 authority to exempt ~~any person entering into such~~ a contract for  
118 ~~amounting to~~ more than \$100,000 but less than \$200,000 from the  
119 requirement for a ~~executing the~~ payment and performance bond. If  
120 ~~In the event~~ such exemption is granted, the officer or officials  
121 are shall not be personally liable to a person who suffers a  
122 persons suffering loss due to the ~~because of granting such~~  
123 exemption. The Department of Management Services shall maintain  
124 information on the number of requests by state agencies for  
125 delegation of authority to waive the bond requirements by agency  
126 and project number and whether any request for delegation was  
127 denied and the justification for the denial.

128 (g) The persons who may be protected by a payment and  
129 performance bond for payments due to them for furnishing labor,  
130 services, or materials for the prosecution of the work are  
131 limited to those persons defined as a lienor in s. 713.01. A ~~Any~~  
132 provision of in a payment and performance bond furnished for a  
133 public works contract ~~work contracts~~ as provided by this  
134 subsection which further restricts the classes of persons ~~as~~  
135 ~~defined in s. 713.01~~ protected by the bond or the venue of any  
136 proceeding relating to such bond, or which limits the duration  
137 of the bond, is unenforceable.

138 (h) ~~(b)~~ The Department of Management Services shall adopt  
139 rules with respect to all contracts for \$200,000 or less, to  
140 provide:

141 1. Procedures for retaining up to 10 percent of each  
142 request for payment submitted by a contractor and procedures for  
143 determining disbursements from the amount retained on a pro rata  
144 basis to laborers, materialmen, and subcontractors, as defined  
145 in s. 713.01.

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146           2. Procedures for requiring certification from laborers,  
147 materialmen, and subcontractors, as defined in s. 713.01, before  
148 ~~prior to~~ final payment to the contractor, that they do not that  
149 ~~such laborers, materialmen, and subcontractors~~ have a claim ~~no~~  
150 ~~claims~~ against the contractor resulting from the completion of  
151 the work provided for in the contract.

152  
153 The state is ~~shall~~ not ~~be held~~ liable to any laborer,  
154 materialman, or subcontractor for any amount ~~amounts~~ greater  
155 than the pro rata share as determined under this section.

156           (i)~~(e)~~1. The amount of the bond shall equal the contract  
157 price, except that for a contract in excess of \$250 million, if  
158 the state, county, municipality, political subdivision, or other  
159 public entity finds that a bond in the amount of the contract  
160 price is not reasonably available, the public owner shall set  
161 the amount of the bond at the largest amount reasonably  
162 available, but not less than \$250 million.

163           2. For construction-management or design-build contracts,  
164 if the public owner does not include in the bond amount the cost  
165 of design or other nonconstruction services, the bond may not be  
166 conditioned on performance of such services or payment to  
167 persons furnishing such services. Notwithstanding paragraph (g)  
168 ~~(a)~~, such a bond may exclude persons furnishing such services  
169 from the classes of persons protected by the bond.

170           (2) (a)1. If a claimant is no longer furnishing labor,  
171 services, or materials on a project, a contractor ~~or the~~  
172 ~~contractor's agent or attorney~~ may elect to shorten the  
173 ~~prescribed time in this paragraph~~ within which an action to  
174 enforce any claim against a payment bond must ~~provided pursuant~~

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175 ~~to this section may~~ be commenced by recording in the clerk's  
176 office a notice in substantially the following form:

177 NOTICE OF CONTEST OF CLAIM  
178 AGAINST PAYMENT BOND  
179

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

181  
182 You are notified that the undersigned contests your notice  
183 of nonpayment, dated ....., ....., and served on the  
184 undersigned on ....., ....., and that the time within  
185 which you may file suit to enforce your claim is limited to 60  
186 days after the date of service of this notice.

187  
188 DATED on ....., .....

189  
190 Signed:...(Contractor ~~or Attorney~~)...

191  
192 The claim of any claimant upon whom such notice is served and  
193 who fails to institute a suit to enforce his or her claim  
194 against the payment bond within 60 days after service of the  
195 ~~such~~ notice is ~~shall be~~ extinguished automatically. The  
196 contractor ~~clerk~~ shall serve ~~mail~~ a copy of the notice of  
197 contest to the claimant at the address shown in the notice of  
198 nonpayment or the most recent amendment thereto and shall  
199 certify to such service on the face of the ~~such~~ notice and  
200 record the notice. ~~Service is complete upon mailing.~~

201 2.a. A claimant, except a laborer, who is not in privity  
202 with the contractor must ~~shall~~, before commencing or not later  
203 than 45 days after commencing to furnish labor, services, or

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204 materials for the prosecution of the work, serve ~~furnish~~ the  
205 contractor with a written notice that he or she intends to look  
206 to the bond for protection. If the payment bond is not recorded  
207 before the commencement of construction or if the claimant was  
208 not otherwise notified in writing of the existence of the bond,  
209 the 45-day period runs from the date that the claimant is  
210 notified in writing of the existence of the bond.

211 b. A claimant who is not in privity with the contractor and  
212 who has not received payment for his or her labor, services, or  
213 materials must serve on ~~shall deliver to~~ the contractor and ~~to~~  
214 the surety written notice of the performance of the labor or  
215 services, or the delivery of ~~the~~ materials, ~~or supplies~~ and of  
216 the nonpayment. Any notice of nonpayment served by a claimant  
217 who is not in privity with the contractor which includes sums  
218 for retainage must specify the portion of the amount claimed for  
219 retainage. The notice of nonpayment must ~~may~~ be served at any  
220 time during the progress of the work or thereafter but not  
221 before 45 days after the first furnishing of labor, services, or  
222 materials, and not later than 90 days after the final furnishing  
223 of the labor, services, or materials by the claimant or, with  
224 respect to rental equipment, not later than 90 days after the  
225 date that the rental equipment was last on the job site  
226 available for use. If the payment bond is not recorded before  
227 the commencement of construction or if the claimant was not  
228 otherwise notified in writing of the existence of the bond, the  
229 time periods for serving a notice of nonpayment run from the  
230 date that the claimant is notified in writing of the existence  
231 of the bond. ~~Any notice of nonpayment served by a claimant who~~  
232 ~~is not in privity with the contractor which includes sums for~~



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233 ~~retainage must specify the portion of the amount claimed for~~  
234 ~~retainage.~~

235 c. An ~~No~~ action for ~~the~~ labor, services, or materials, ~~or~~  
236 ~~supplies~~ may not be instituted against the contractor or the  
237 surety unless the notice to the contractor and the notice of  
238 nonpayment ~~both notices~~ have been given, if required by this  
239 section. Service of all notices or other instruments required or  
240 permitted under this section shall ~~may~~ be made ~~served~~ in  
241 accordance with s. 713.18. A claimant may not waive in advance  
242 his or her right to bring an action under the bond against the  
243 surety. In any action brought to enforce a claim against a  
244 payment bond under this section, the prevailing party is  
245 entitled to recover a reasonable fee for the services of his or  
246 her attorney for trial and appeal or for arbitration, in an  
247 amount to be determined by the court, and the ~~which~~ fee must be  
248 taxed as part of the prevailing party's costs, as allowed in  
249 equitable actions. The time periods for service of a notice of  
250 nonpayment or for bringing an action against a contractor or a  
251 surety shall be measured from the last day of furnishing labor,  
252 services, or materials by the claimant and may ~~shall~~ not be  
253 measured by other standards, such as the issuance of a  
254 certificate of occupancy or the issuance of a certificate of  
255 substantial completion.

256 (10) (a) An action, except an action for recovery of  
257 retainage, must be instituted against the contractor or the  
258 surety on the payment bond or the payment provisions of a  
259 combined payment and performance bond within 1 year after the  
260 performance of the labor or completion of delivery of the  
261 materials ~~or supplies~~. If the payment bond is not recorded

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262 before the commencement of construction or if the claimant was  
263 not otherwise notified in writing of the existence of the bond,  
264 the 1-year period runs from the date that the claimant is  
265 notified in writing of the existence of the bond.

266 (b) An action for recovery of retainage must be instituted  
267 against the contractor or the surety within the 1-year period ~~±~~  
268 ~~year~~ after the performance of the labor or completion of  
269 delivery of the materials, as described in paragraph (a) ~~or~~  
270 ~~supplies~~; however, such an action may not be instituted until  
271 one of the following conditions is satisfied:

272 1. (a) The public entity has paid out the claimant's  
273 retainage to the contractor, ~~and~~ the time provided under s.  
274 218.735 or s. 255.073(3) for payment of that retainage to the  
275 claimant has expired. ~~±~~

276 2. (b) The claimant has completed all work required under  
277 its contract and 70 days have passed since the contractor sent  
278 its final payment request to the public entity. ~~± or~~

279 3. (c) At least 160 days have passed since reaching  
280 substantial completion of the construction services purchased,  
281 as defined in the contract, or if not defined in the contract,  
282 since reaching beneficial occupancy or use of the project.

283 4. (d) The claimant has asked the contractor, in writing,  
284 for any of the following information and the contractor has  
285 failed to respond to the claimant's request, in writing, within  
286 10 days after receipt of the request:

287 a. 1. Whether the project has reached substantial  
288 completion, as that term is defined in the contract, or if not  
289 defined in the contract, if beneficial occupancy or use of the  
290 project has occurred.

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291 ~~b.2.~~ Whether the contractor has received payment of the  
292 claimant's retainage, and if so, the date the retainage was  
293 received by the contractor.

294 ~~c.3.~~ Whether the contractor has sent its final payment  
295 request to the public entity, and if so, the date on which the  
296 final payment request was sent.

297  
298 If none of the conditions described in subparagraph 1.,  
299 subparagraph 2., subparagraph 3., or subparagraph 4. ~~paragraph~~  
300 ~~(a), paragraph (b), paragraph (c), or paragraph (d)~~ is satisfied  
301 and an action for recovery of retainage cannot be instituted  
302 within the 1-year limitation period set forth in this  
303 subsection, this limitation period shall be extended until 120  
304 days after one of these conditions is satisfied.

305 Section 2. Section 713.132, Florida Statutes, is amended to  
306 read:

307 713.132 Notice of termination.—

308 (1) An owner may terminate the period of effectiveness of a  
309 notice of commencement by executing, swearing to, and recording  
310 a notice of termination which ~~that~~ contains:

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

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

314 (c) A statement of the date as of which the notice of  
315 commencement is terminated, which date may not be earlier than  
316 30 days after the notice of termination is recorded;

317 (d) A statement specifying that the notice applies to all  
318 the real property subject to the notice of commencement or  
319 specifying the portion of such real property to which it

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320 applies;

321 (e) A statement that all lienors have been paid in full;  
322 and

323 (f) A statement that the owner has, before recording the  
324 notice of termination, served a copy of the notice of  
325 termination on the contractor and on each lienor who has served  
326 a notice to the owner or who has a direct contract with the  
327 owner ~~given notice~~. The owner is not required to serve a copy of  
328 the notice of termination on any lienor who has executed a  
329 waiver and release of lien upon final payment in accordance with  
330 s. 713.20.

331 (2) An owner has the right to rely on a contractor's  
332 affidavit given under s. 713.06(3)(d), except with respect to  
333 lienors who have already given notice, in connection with the  
334 execution, swearing to, and recording of a notice of  
335 termination. However, the notice of termination must be  
336 accompanied by the contractor's affidavit.

337 (3) An owner may not record a notice of termination except  
338 after completion of construction, or after construction ceases  
339 before completion and all lienors have been paid in full or pro  
340 rata in accordance with s. 713.06(4). If an owner or a  
341 contractor, by fraud or collusion, knowingly makes any  
342 fraudulent statement or affidavit in a notice of termination or  
343 any accompanying affidavit, the owner and the contractor, or  
344 either of them, as the case may be, is liable to any lienor who  
345 suffers damages as a result of the filing of the fraudulent  
346 notice of termination; and any such lienor has a right of action  
347 for damages occasioned thereby.

348 (4) A notice of termination is effective to terminate the

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349 notice of commencement at the later of 30 days after recording  
350 of the notice of termination or the date stated in the notice of  
351 termination as the date on which the notice of commencement is  
352 terminated, if provided that the notice of termination has been  
353 served pursuant to paragraph (1)(f) on the contractor and on  
354 each lienor who has served a notice to the owner or who has a  
355 direct contract with the owner ~~given notice.~~

356 Section 3. Section 713.16, Florida Statutes, is amended to  
357 read:

358 713.16 Demand for copy of contract and statements of  
359 account; form.—

360 (1) A copy of the contract of a lienor or owner and a  
361 statement of the amount due or to become due if fixed or  
362 ascertainable thereon must be furnished by any party thereto,  
363 upon written demand of an owner or a lienor contracting with or  
364 employed by the other party to such contract. If the owner or  
365 lienor refuses or neglects to furnish a ~~such~~ copy of the  
366 contract or the ~~such~~ statement, or willfully and falsely states  
367 the amount due or to become due if fixed or ascertainable under  
368 such contract, any person who suffers any detriment thereby has  
369 a cause of action against the person refusing or neglecting to  
370 furnish a copy of the contract or the statement ~~the same~~ or  
371 willfully and falsely stating the amount due or to become due  
372 for his or her damages sustained thereby. The information  
373 contained in the ~~such~~ copy or statement furnished pursuant to a  
374 ~~such~~ written demand is binding upon the owner or lienor  
375 furnishing it unless actual notice of any modification is given  
376 to the person demanding the copy or statement before such person  
377 acts in good faith in reliance on it. The person demanding the

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378 ~~such~~ documents must pay for the reproduction thereof, ~~+~~ and, if  
379 the ~~such~~ person fails or refuses to do so, he or she is entitled  
380 only to inspect the ~~such~~ documents at reasonable times and  
381 places.

382 (2) The owner may serve in writing a demand of any lienor  
383 for a written statement under oath of his or her account showing  
384 the nature of the labor or services performed and to be  
385 performed, if any, the materials furnished, the materials to be  
386 furnished, if known, the amount paid on account to date, the  
387 amount due, and the amount to become due, if known, as of the  
388 date of the statement by the lienor. Any such demand to a lienor  
389 must be served on the lienor at the address and to the attention  
390 of any person who is designated to receive the demand in the  
391 notice to owner served by such lienor and must include a  
392 description of the project, including the names of the owner,  
393 the contractor, and the lienor's customer, as set forth in the  
394 lienor's notice to owner, sufficient for the lienor to properly  
395 identify the account in question. The failure or refusal to  
396 furnish the statement does not deprive the lienor of his or her  
397 lien if the demand is not served at the address of the lienor or  
398 directed to the attention of the person designated to receive  
399 the demand in the notice to owner. The failure or refusal to  
400 furnish the statement under oath within 30 days after the  
401 demand, or the furnishing of a false or fraudulent statement,  
402 deprives the person so failing or refusing to furnish such  
403 statement of his or her lien. If the owner serves more than one  
404 demand for statement of account on a lienor and none of the  
405 information regarding the account has changed since the lienor's  
406 last response to a demand, the failure or refusal to furnish

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407 such statement does not deprive the lienor of his or her lien.  
 408 The negligent inclusion or omission of any information deprives  
 409 the person of his or her lien to the extent the owner can  
 410 demonstrate prejudice from such act or omission by the lienor.  
 411 The failure to furnish a response to a demand for statement of  
 412 account does not affect the validity of any claim of lien being  
 413 enforced through a foreclosure case filed before ~~prior to~~ the  
 414 date the demand for statement is received by the lienor.

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

417 REQUEST FOR SWORN STATEMENT OF ACCOUNT

418  
 419 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED  
 420 UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE  
 421 STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

422  
 423 To: ...(Lienor's name and address)...

424  
 425 The undersigned hereby demands a written statement under oath of  
 426 his or her account showing the nature of the labor or services  
 427 performed and to be performed, if any, the materials furnished,  
 428 the materials to be furnished, if known, the amount paid on  
 429 account to date, the amount due, and the amount to become due,  
 430 if known, as of the date of the statement for the improvement of  
 431 real property identified as .....(property description).....

432 Name of contractor: .....

433 Name of the lienor's customer (as specified in the lienor's

434 Notice to Owner, if such notice has been served): .....

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

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

437           (4) If ~~When a contractor has furnished a payment bond~~

438 ~~pursuant to s. 713.23, he or she may, when~~ an owner makes any

439 payment to the contractor or directly to a lienor and the

440 contractor has furnished a payment bond pursuant to s. 713.23,

441 the contractor may serve a written demand on any other lienor

442 for a written statement under oath of his or her account showing

443 the nature of the labor or services performed and to be

444 performed, if any, the materials furnished, the materials to be

445 furnished, if known, the amount paid on account to date, the

446 amount due, and the amount to become due, if known, as of the

447 date of the statement by the lienor. Any such demand to a lienor

448 must be served on the lienor at the address and to the attention

449 of any person who is designated to receive the demand in the

450 notice to contractor served by such lienor. The demand must

451 include a description of the project, the names of the owner,

452 the contractor, and the lienor's customer, as set forth in the

453 lienor's notice to contractor, sufficient for the lienor to

454 properly identify the account in question. The failure or

455 refusal to furnish the statement does not deprive the lienor of

456 his or her rights under the bond if the demand is not served at

457 the address of the lienor or directed to the attention of the

458 person designated to receive the demand in the notice to

459 contractor. The failure to furnish the statement within 30 days

460 after the demand, or the furnishing of a false or fraudulent

461 statement, deprives the person who fails to furnish the

462 statement, or who furnishes the false or fraudulent statement,

463 of his or her rights under the bond. If the contractor serves

464 more than one demand for statement of account on a lienor and



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465 none of the information regarding the account has changed since  
466 the lienor's last response to a demand, the failure or refusal  
467 to furnish such statement does not deprive the lienor of his or  
468 her rights under the bond. The negligent inclusion or omission  
469 of any information deprives the person of his or her rights  
470 under the bond to the extent the contractor can demonstrate  
471 prejudice from such act or omission by the lienor. The failure  
472 to furnish a response to a demand for statement of account does  
473 not affect the validity of any claim on the bond being enforced  
474 in a lawsuit filed before ~~prior to~~ the date the demand for  
475 statement of account is received by the lienor.

476 (5) (a) Any lienor ~~who has recorded a claim of lien~~ may  
477 serve a ~~make~~ written demand on the owner for a written statement  
478 under oath showing:

479 1. The amount of the direct contract under which the lien  
480 was recorded;

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

484 3. The reasonable estimated costs of completing the direct  
485 contract under which the lien was claimed pursuant to the scope  
486 of the direct contract; and

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

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

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494           WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT  
495 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL  
496 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY  
497 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING  
498 THIS STATEMENT.

499           (6) Any written demand served on the owner must include a  
500 description of the project, the names of the contractor and the  
501 lienor's customer, as set forth in the lienor's notice to owner,  
502 sufficient for the owner to properly identify the project in  
503 question.

504           (7)~~(6)~~ For purposes of this section, the term "information"  
505 means the nature and quantity of the labor, services, and  
506 materials furnished or to be furnished by a lienor and the  
507 amount paid, the amount due, and the amount to become due on the  
508 lienor's account.

509           Section 4. Section 713.18, Florida Statutes, is amended to  
510 read:

511           713.18 Manner of serving notices and other instruments.—

512           (1) Service of notices, claims of lien, affidavits,  
513 assignments, and other instruments permitted or required under  
514 this part, or copies thereof when so permitted or required,  
515 unless otherwise specifically provided in this part, must be  
516 made by one of the following methods:

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

521           (b) By sending the same by common carrier delivery service  
522 or by registered, global express guaranteed, or certified mail,

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523 with postage or shipping prepaid, ~~and or by overnight or second-~~  
524 ~~day delivery~~ with evidence of delivery, which may be in an  
525 electronic format.

526 (c) ~~If the method specified in paragraph (a) or paragraph~~  
527 ~~(b) cannot be accomplished,~~ By posting on the site of the  
528 improvement if service as provided by paragraph (a) or paragraph  
529 (b) cannot be accomplished premises.

530 (2) Notwithstanding subsection (1), service of ~~if~~ a notice  
531 to owner ~~or,~~ a notice to contractor under s. 255.05, s. 337.18,  
532 or s. 713.23, ~~or a preliminary notice under s. 255.05 is mailed~~  
533 ~~by registered or certified mail with postage prepaid to the~~  
534 ~~person to be served at any of the addresses set forth in~~  
535 ~~subsection (3) within 40 days after the date the lienor first~~  
536 ~~furnishes labor, services, or materials, service of that notice~~  
537 is effective as of the date of mailing if:

538 (a) The notice is mailed by registered, global express  
539 guaranteed, or certified mail, with postage or shipping prepaid,  
540 to the person to be served at any of the addresses set forth in  
541 subsection (3);

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

544 (c) 1. The person who served the notice maintains a  
545 registered or certified mail log that shows the registered or  
546 certified mail number issued by the United States Postal  
547 Service, the name and address of the person served, and the date  
548 stamp of the United States Postal Service confirming the date of  
549 mailing; ~~or if~~

550 2. The person who served the notice maintains electronic  
551 tracking records generated through use of the United States

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552 Postal Service Confirm service or a similar service containing  
 553 the postal tracking number, the name and address of the person  
 554 served, and verification of the date of receipt by the United  
 555 States Postal Service.

556 (3) (a) Service of ~~If~~ an instrument served pursuant to this  
 557 section is effective on the date of mailing if the instrument:

558 1. Is sent to the last address shown in the notice of  
 559 commencement or any amendment thereto or, in the absence of a  
 560 notice of commencement, to the last address shown in the  
 561 building permit application, or to the last known address of the  
 562 person to be served; ~~and, is not received, but~~

563 2. Is returned as being "refused," "moved, not  
 564 forwardable," or "unclaimed," or is otherwise not delivered or  
 565 deliverable through no fault of the person serving the  
 566 instrument item, then service is effective on the date the  
 567 instrument was sent.

568 (b) If the address shown in the notice of commencement or  
 569 any amendment thereto or, in the absence of a notice of  
 570 commencement, in the building permit application, is incomplete  
 571 for purposes of mailing or delivery, the person serving the item  
 572 may complete the address and properly format it according to the  
 573 United States Postal Service addressing standards using  
 574 information obtained from the property appraiser or another  
 575 public record or directory without affecting the validity of  
 576 service under this section.

577 (4) A notice served by a lienor on one owner or one partner  
 578 of a partnership owning the real property ~~If the real property~~  
 579 ~~is owned by more than one person or a partnership, a lienor may~~  
 580 ~~serve any notices or other papers under this part on any one of~~

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581 ~~such owners or partners, and such notice~~ is deemed notice to all  
 582 owners and partners.

583 Section 5. Section 713.22, Florida Statutes, is amended to  
 584 read:

585 713.22 Duration of lien.—

586 (1) ~~A~~ ~~No~~ lien provided by this part does not ~~shall~~ continue  
 587 for a ~~longer~~ period longer than 1 year after the claim of lien  
 588 has been recorded or 1 year after the recording of an amended  
 589 claim of lien which ~~that~~ shows a later date of final furnishing  
 590 of labor, services, or materials, unless within that time an  
 591 action to enforce the lien is commenced in a court of competent  
 592 jurisdiction. A lien that is continued beyond the 1-year period  
 593 ~~The continuation of the lien effected by the commencement of an~~  
 594 ~~the action is~~ ~~shall~~ not enforceable ~~be good~~ against creditors or  
 595 subsequent purchasers for a valuable consideration and without  
 596 notice, unless a notice of lis pendens is recorded.

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

603 NOTICE OF CONTEST OF LIEN

604 To: ...(Name and address of lienor)...

605 You are notified that the undersigned contests the claim of lien  
 606 filed by you on ....., ...(year)...., and recorded in .... Book  
 607 ....., Page ....., of the public records of .... County, Florida,  
 608 and that the time within which you may file suit to enforce your  
 609 lien is limited to 60 days from the date of service of this

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610 notice. This .... day of ....., ...(year).....

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

612  
 613 The lien of any lienor upon whom such notice is served and  
 614 who fails to institute a suit to enforce his or her lien within  
 615 60 days after service of such notice shall be extinguished  
 616 automatically. The owner or the owner's attorney ~~clerk~~ shall  
 617 serve mail a copy of the notice of contest to the lien claimant  
 618 at the address shown in the claim of lien or in the most recent  
 619 amendment thereto and shall certify to such service on the face  
 620 of the ~~such~~ notice and record the notice. ~~Service shall be~~  
 621 ~~deemed complete upon mailing.~~

622 Section 6. Paragraphs (c), (e), and (f) of subsection (1)  
 623 and subsections (2) and (4) of section 713.23, Florida Statutes,  
 624 are amended to read:

625 713.23 Payment bond.—

626 (1)

627 (c) ~~Either~~ Before beginning or within 45 days after  
 628 beginning to furnish labor or, materials, ~~or supplies~~, a lienor  
 629 who is not in privity with the contractor, except a laborer,  
 630 shall serve the contractor with notice in writing that the  
 631 lienor will look to the contractor's bond for protection on the  
 632 work. If a notice of commencement is not recorded, or a  
 633 reference to the bond is not given in the notice of  
 634 commencement, and ~~in either case~~ if the lienor not in privity  
 635 with the contractor is not otherwise notified in writing of the  
 636 existence of the bond, the lienor has not in privity with the  
 637 ~~contractor shall have~~ 45 days after ~~from~~ the date the lienor is  
 638 notified of the existence of the bond within which to serve the

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639 notice. The notice may be in substantially the following form  
 640 and may be combined with a notice to owner given under s. 713.06  
 641 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO  
 642 CONTRACTOR":

644 NOTICE TO CONTRACTOR

645  
 646 To ... (name and address of contractor) ...

647  
 648 The undersigned hereby informs ~~notifies~~ you that he or she has  
 649 furnished or is furnishing services or materials as follows:  
 650 ... (General description of services or materials) ... for the  
 651 improvement of the real property identified as ... (property  
 652 description) ... ~~owned by ... (owner's name and address) ...~~ under  
 653 an order given by ~~..... and that the undersigned will~~  
 654 ~~look to the contractor's bond for protection on the work.~~

655  
 656 ... (name of lienor) ...

657 ... (Signature of lienor or lienor's representative ~~signature and~~  
 658 ~~address) ...~~

659 ... (date) ...

660 ... (lienor's address) ...

661  
 662 (e) An ~~No~~ action for the labor or materials ~~or supplies~~ may  
 663 not be instituted or prosecuted against the contractor or surety  
 664 unless the notice to contractor and the notice of nonpayment  
 665 ~~both notices~~ have been given, if required by this section. ~~An~~ ~~No~~  
 666 action may not ~~shall~~ be instituted or prosecuted against the  
 667 contractor or against the surety on the bond under this section

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668 after 1 year from the performance of the labor or completion of  
669 delivery of the materials ~~and supplies~~. The time period for  
670 bringing an action against the contractor or surety on the bond  
671 shall be measured from the last day of furnishing labor,  
672 services, or materials by the lienor. The time period may ~~and~~  
673 ~~shall~~ not be measured by other standards, such as the issuance  
674 of a certificate of occupancy or the issuance of a certificate  
675 of substantial completion. A contractor ~~or the contractor's~~  
676 ~~agent or attorney~~ may elect to shorten the ~~prescribed~~ time  
677 within which an action to enforce any claim against a payment  
678 bond ~~provided~~ under this section or s. 713.245 must ~~may~~ be  
679 commenced at any time after a notice of nonpayment, if required,  
680 has been served for the claim by recording in the clerk's office  
681 a notice in substantially the following form:

682 NOTICE OF CONTEST OF CLAIM  
683 AGAINST PAYMENT BOND

684 To: ... (Name and address of lienor)...

685 You are notified that the undersigned contests your notice  
686 of nonpayment, dated ....., ....., and served on the undersigned  
687 on ....., ....., and that the time within which you may file suit  
688 to enforce your claim is limited to 60 days from the date of  
689 service of this notice.

690  
691 DATED on ....., .....

692  
693 Signed: ... (Contractor or Attorney)...

694  
695 The claim of any lienor upon whom the notice is served and who  
696 fails to institute a suit to enforce his or her claim against



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697 the payment bond within 60 days after service of the notice  
698 shall be extinguished automatically. The contractor ~~clerk~~ shall  
699 serve mail a copy of the notice of contest to the lienor at the  
700 address shown in the notice of nonpayment or in the most recent  
701 amendment thereto and shall certify to such service on the face  
702 of the notice and record the notice. ~~Service is complete upon~~  
703 ~~mailing.~~

704 (f) Any lienor has a direct right of action on the bond  
705 against the surety. A provision of a payment bond which further  
706 restricts ~~must not contain any provisions restricting~~ the  
707 classes of lienors ~~persons~~ protected by the payment bond thereby  
708 or the venue of any proceeding relating to the payment bond or  
709 which limits the effective duration of the payment bond, is  
710 unenforceable. The surety is not entitled to the defense of pro  
711 tanto discharge as against any lienor because of changes or  
712 modifications in the contract to which the surety is not a  
713 party; however, ~~but~~ the liability of the surety may not be  
714 increased beyond the penal sum of the bond. A lienor may not  
715 waive in advance his or her right to bring an action under the  
716 bond against the surety.

717 (2) The bond shall secure every lien under the direct  
718 contract accruing subsequent to its execution and delivery,  
719 except that of the contractor. Every claim of lien, except that  
720 of the contractor, filed subsequent to execution and delivery of  
721 the bond shall be transferred to it with the same effect as  
722 liens transferred under s. 713.24. Record notice of the transfer  
723 shall be effected by the contractor, or any person having an  
724 interest in the property against which the claim of lien has  
725 been asserted, by recording in the clerk's office a notice, with

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726 a copy of the bond attached, in substantially the following  
 727 form:

728 NOTICE OF BOND

729  
 730 To ...(Name and Address of Lienor)...

731  
 732 You are notified that the claim of lien filed by you on .....,  
 733 ....., and recorded in Official Records Book .... at page .... of  
 734 the public records of .... County, Florida, is secured by a  
 735 bond, a copy being attached.

736  
 737 Signed: ...(Name of person recording notice)...

738  
 739 The notice shall be verified. The person recording the notice of  
 740 bond ~~clerk~~ shall serve mail a copy of the notice along with a  
 741 copy of the bond on ~~to~~ the lienor at the address shown in the  
 742 claim of lien, or the most recent amendment to it; shall certify  
 743 to the service on the face of the notice; and shall record the  
 744 notice. ~~The clerk shall receive the same fee as prescribed in s.~~  
 745 ~~713.24(1) for certifying to a transfer of lien.~~

746 (4) Section 713.24(3) applies ~~The provisions of s.~~  
 747 ~~713.24(3) shall apply~~ to bonds under this section. However, this  
 748 section prevails in the event of a conflict with s. 713.24(3).

749 Section 7. This act shall take effect October 1, 2012.