



603720

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

255.05 Bond of contractor constructing public buildings;
form; action by claimants.-

(2) (a) 1. If a claimant is no longer furnishing labor,
services, or materials on a project, a contractor or the
contractor's agent or attorney may elect to shorten the time



603720

12 within which an action to enforce any claim against a payment
13 bond must be commenced by recording in the clerk's office a
14 notice in substantially the following form:

15
16 NOTICE OF CONTEST OF CLAIM
17 AGAINST PAYMENT BOND
18

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

20
21 You are notified that the undersigned contests your notice
22 of nonpayment, dated,, and served on the
23 undersigned on,, and that the time within
24 which you may file suit to enforce your claim is limited to 60
25 days after the date of service of this notice.

26
27 DATED on,

28
29 Signed: ...(Contractor or Attorney)...

30
31 The claim of a claimant upon whom such notice is served and who
32 fails to institute a suit to enforce his or her claim against
33 the payment bond within 60 days after service of such notice is
34 ~~shall be~~ extinguished automatically. The contractor or the
35 contractor's attorney shall serve a copy of the notice of
36 contest to the claimant at the address shown in the notice of
37 nonpayment or most recent amendment thereto and shall certify to
38 such service on the face of the notice and record the notice.

39 2. A claimant, except a laborer, who is not in privity with
40 the contractor shall, before commencing or not later than 45



603720

41 days after commencing to furnish labor, services, or materials
42 for the prosecution of the work, serve ~~furnish~~ the contractor
43 with a written notice that he or she intends to look to the bond
44 for protection. A claimant who is not in privity with the
45 contractor and who has not received payment for furnishing his
46 or her labor, services, or materials shall serve a written
47 notice of nonpayment on ~~deliver to~~ the contractor and on ~~to~~ the
48 surety ~~written notice of the performance of the labor or~~
49 ~~delivery of the materials or supplies and of the nonpayment.~~ The
50 notice of nonpayment shall be under oath and served during the
51 progress of the work or thereafter but may not be served earlier
52 than 45 days after the first furnishing of labor, services, or
53 materials by the claimant or later than 90 days after the final
54 furnishing of the labor, services, or materials by the claimant
55 or, with respect to rental equipment, ~~not~~ later than 90 days
56 after the date that the rental equipment was last on the job
57 site available for use. The notice of nonpayment must state the
58 nature of the labor or services performed; the nature of the
59 labor or services to be performed, if known; the materials
60 furnished; the materials to be furnished, if known; the amount
61 paid on account to date; the amount due; and the amount to
62 become due, if known. All such information given must be current
63 as of the stated date of the notice. Any notice of nonpayment
64 served by a claimant who is not in privity with the contractor
65 which includes sums for retainage must specify the portion of
66 the amount claimed for retainage. An action for the labor,
67 services, or materials, ~~or supplies~~ may not be instituted
68 against the contractor or the surety unless the notice to the
69 contractor and notice of nonpayment have been served, if



603720

70 required by this section. Notices required or permitted under
71 this section must ~~shall~~ be served in accordance with s. 713.18.
72 A claimant may not waive in advance his or her right to bring an
73 action under the bond against the surety. In any action brought
74 to enforce a claim against a payment bond under this section,
75 the prevailing party is entitled to recover a reasonable fee for
76 the services of his or her attorney for trial and appeal or for
77 arbitration, in an amount to be determined by the court, which
78 fee must be taxed as part of the prevailing party's costs, as
79 allowed in equitable actions. The time periods for service of a
80 notice of nonpayment or for bringing an action against a
81 contractor or a surety shall be measured from the last day of
82 furnishing labor, services, or materials by the claimant and may
83 not be measured by other standards, such as the issuance of a
84 certificate of occupancy or the issuance of a certificate of
85 substantial completion. The negligent inclusion or omission of
86 any information in the notice of nonpayment that has not
87 prejudiced the contractor or surety does not constitute a
88 default that operates to defeat an otherwise valid bond claim. A
89 claimant who serves a fraudulent notice of nonpayment forfeits
90 his or her rights under the bond. A notice of nonpayment is
91 fraudulent if the claimant has willfully exaggerated the amount
92 due, willfully included a claim for work not performed or
93 materials not furnished for the subject improvement, or prepared
94 the notice with such willful and gross negligence as to amount
95 to a willful exaggeration. However, a minor mistake or error in
96 a notice of nonpayment, or a good faith dispute as to the amount
97 due, does not constitute a willful exaggeration that operates to
98 defeat an otherwise valid claim against the bond. The service of



603720

99 a fraudulent notice of nonpayment is a complete defense to the
100 claimant's claim against the bond. The notice of nonpayment
101 under this subparagraph must be in substantially the following
102 form:

103
104 NOTICE OF NONPAYMENT

105
106 To: ...(name of contractor and address)...

107 ...(name of surety and address)...

108 The undersigned claimant notifies you that:

109 1. Claimant has furnished ...(describe labor, services, or
110 materials)... for the improvement of the real property
111 identified as ...(property description).... The corresponding
112 amount now due and unpaid is \$

113 2. Claimant has been paid on account to date the amount of
114 \$ for previously furnishing ...(describe labor, service, or
115 materials)... for this improvement.

116 3. Claimant expects to furnish ...(describe labor, service,
117 or materials)... for this improvement in the future (if known),
118 and the corresponding amount expected to become due is \$
119 (if known).

120
121 I declare that I have read the foregoing Notice of Nonpayment
122 and that the facts stated in it are true to the best of my
123 knowledge and belief.

124
125 DATED on,

126
127 ...(signature and address of claimant)...



603720

128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and
subscribed before me this day of, ...(year)..., by
...(name of signatory)....

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

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

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 2. Subsection (1) of section 627.756, Florida
Statutes, is amended to read:

627.756 Bonds for construction contracts; attorney fees in
case of suit.—

(1) Section 627.428 applies to suits brought by owners,
contractors, subcontractors, laborers, and materialmen against a
surety insurer under payment or performance bonds written by the
insurer under the laws of this state to indemnify against
pecuniary loss by breach of a building or construction contract.
Owners, contractors, subcontractors, laborers, and materialmen
shall be deemed to be insureds or beneficiaries for the purposes
of this section.

Section 3. For the purpose of incorporating the amendment
made by this act to section 627.756, Florida Statutes, in a
reference thereto, section 627.428, Florida Statutes, is



603720

157 reenacted to read:

158 627.428 Attorney's fee.—

159 (1) Upon the rendition of a judgment or decree by any of
160 the courts of this state against an insurer and in favor of any
161 named or omnibus insured or the named beneficiary under a policy
162 or contract executed by the insurer, the trial court or, in the
163 event of an appeal in which the insured or beneficiary prevails,
164 the appellate court shall adjudge or decree against the insurer
165 and in favor of the insured or beneficiary a reasonable sum as
166 fees or compensation for the insured's or beneficiary's attorney
167 prosecuting the suit in which the recovery is had.

168 (2) As to suits based on claims arising under life
169 insurance policies or annuity contracts, no such attorney's fee
170 shall be allowed if such suit was commenced prior to expiration
171 of 60 days after proof of the claim was duly filed with the
172 insurer.

173 (3) When so awarded, compensation or fees of the attorney
174 shall be included in the judgment or decree rendered in the
175 case.

176 Section 4. Paragraph (d) of subsection (1) of section
177 713.23, Florida Statutes, is amended to read:

178 713.23 Payment bond.—

179 (1)

180 (d) In addition, a lienor who has not received payment for
181 furnishing his or her labor, services, or materials must ~~is~~
182 ~~required~~, as a condition precedent to recovery under the bond,
183 ~~to~~ serve a written notice of nonpayment to the contractor and
184 the surety. The notice must be under oath and served during the
185 progress of the work or thereafter, but may not be served ~~not~~



603720

186 later than 90 days after the final furnishing of labor,
187 services, or materials by the lienor, or, with respect to rental
188 equipment, later than 90 days after the date the rental
189 equipment was on the job site and available for use. The notice
190 of nonpayment must state the nature of the labor or services
191 performed; the nature of the labor or services to be performed,
192 if known; the materials furnished; the materials to be
193 furnished, if known; the amount paid on account to date; the
194 amount due; and the amount to become due, if known. All such
195 information given must be current as of the stated date of the
196 notice. A notice of nonpayment that includes sums for retainage
197 must specify the portion of the amount claimed for retainage.
198 The required. ~~A written~~ notice satisfies this condition
199 precedent with respect to the payment described in the notice of
200 nonpayment, including unpaid finance charges due under the
201 lienor's contract, and with respect to any other payments which
202 become due to the lienor after the date of the notice of
203 nonpayment. The time period for serving a ~~written~~ notice of
204 nonpayment shall be measured from the last day of furnishing
205 labor, services, or materials by the lienor and may ~~shall~~ not be
206 measured by other standards, such as the issuance of a
207 certificate of occupancy or the issuance of a certificate of
208 substantial completion. The failure of a lienor to receive
209 retainage sums not in excess of 10 percent of the value of
210 labor, services, or materials furnished by the lienor is not
211 considered a nonpayment requiring the service of the notice
212 provided under this paragraph. If the payment bond is not
213 recorded before commencement of construction, the time period
214 for the lienor to serve a notice of nonpayment may at the option



603720

215 of the lienor be calculated from the date specified in this
216 section or the date the lienor is served a copy of the bond.
217 However, the limitation period for commencement of an action on
218 the payment bond as established in paragraph (e) may not be
219 expanded. The negligent inclusion or omission of any information
220 in the notice of nonpayment that has not prejudiced the
221 contractor or surety does not constitute a default that operates
222 to defeat an otherwise valid bond claim. A lienor who serves a
223 fraudulent notice of nonpayment forfeits his or her rights under
224 the bond. A notice of nonpayment is fraudulent if the lienor has
225 willfully exaggerated the amount due, willfully included a claim
226 for work not performed or materials not furnished for the
227 subject improvement, or prepared the notice with such willful
228 and gross negligence as to amount to a willful exaggeration.
229 However, a minor mistake or error in a notice of nonpayment, or
230 a good faith dispute as to the amount due, does not constitute a
231 willful exaggeration that operates to defeat an otherwise valid
232 claim against the bond. The service of a fraudulent notice of
233 nonpayment is a complete defense to the lienor's claim against
234 the bond. The notice under this paragraph must ~~may~~ be in
235 substantially the following form:

236
237 NOTICE OF NONPAYMENT
238

239 To ... (name of contractor and address) ...

240 ... (name of surety and address) ...

241 The undersigned notifies you that:

242 1. The lienor ~~he or she~~ has furnished ... (describe labor,
243 services, or materials) ... for the improvement of the real



244 property identified as ...(property description).... The
245 corresponding amount now due and unpaid is \$.....

246 2. The lienor has been paid on account to date the amount
247 of \$.... for previously furnishing ...(describe labor, services,
248 or materials)... for this improvement.

249 3. The lienor expects to furnish ...(describe labor,
250 service, or materials)... for this improvement in the future (if
251 known), and the corresponding amount expected to become due is
252 \$.... (if known).

253
254 I declare that I have read the foregoing Notice of Nonpayment
255 and that the facts stated in it are true to the best of my
256 knowledge and belief.

257
258 DATED on,

259
260 ...(signature and address of lienor)...

261
262 STATE OF FLORIDA

263 COUNTY OF

264
265 The foregoing instrument was sworn to (or affirmed) and
266 subscribed before me this day of, ...(year)..., by
267 ...(name of signatory)....

268 ...(Signature of Notary Public - State of Florida)...

269 ...(Print, Type, or Stamp Commissioned Name of Notary
270 Public)...

271
272 Personally Known OR Produced Identification



603720

273 Type of Identification Produced.....

274

275 Section 5. The amendments made by this act to s. 627.756,
276 Florida Statutes, apply only to payment or performance bonds
277 issued on or after October 1, 2019.

278 Section 6. This act shall take effect October 1, 2019.

279

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

281 And the title is amended as follows:

282 Delete everything before the enacting clause
283 and insert:

284 A bill to be entitled
285 An act relating to construction bonds; amending s.
286 255.05, F.S.; requiring a notice of nonpayment to be
287 under oath; requiring the notice to contain certain
288 statements; specifying that certain negligent
289 inclusions or omissions do not constitute a default
290 that operates to default an otherwise valid bond
291 claim; specifying that a claimant who serves a
292 fraudulent notice of nonpayment forfeits his or her
293 rights under a bond; providing that the service of a
294 fraudulent notice of nonpayment is a complete defense
295 to the claimant's claim against the bond; requiring a
296 notice of nonpayment to be in a prescribed form;
297 amending s. 627.756, F.S.; providing that a provision
298 relating to attorney fees applies to certain suits
299 brought by contractors; deeming contractors to be
300 insureds or beneficiaries in relation to bonds for
301 construction contracts; reenacting s. 627.428, F.S.,



603720

302 relating to attorney fees; amending s. 713.23, F.S.;

303 requiring a lienor to serve a notice of nonpayment

304 under oath to specified entities during a certain

305 period of time; requiring a notice of nonpayment to

306 contain certain statements; specifying that certain

307 negligent inclusions or omissions do not constitute a

308 default that operates to default an otherwise valid

309 bond claim; specifying that a lienor who serves a

310 fraudulent notice of nonpayment forfeits his or her

311 rights under the bond; providing that the service of a

312 fraudulent notice of nonpayment is a complete defense

313 to the lienor's claim against the bond; requiring a

314 notice of nonpayment to be in a prescribed form;

315 providing applicability; providing an effective date.