

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Perez offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (a) of subsection (2) of section
7 255.05, Florida Statutes, is amended to read:

8 255.05 Bond of contractor constructing public buildings;
9 form; action by claimants.-

10 (2) (a) 1. If a claimant is no longer furnishing labor,
11 services, or materials on a project, a contractor or the
12 contractor's agent or attorney may elect to shorten the time
13 within which an action to enforce any claim against a payment
14 bond must be commenced by recording in the clerk's office a
15 notice in substantially the following form:

Amendment No.

16 NOTICE OF CONTEST OF CLAIM
17 AGAINST PAYMENT BOND

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

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

24 DATED on,

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

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

34 2. A claimant, except a laborer, who is not in privity
35 with the contractor shall, before commencing or not later than
36 45 days after commencing to furnish labor, services, or
37 materials for the prosecution of the work, serve ~~furnish~~ the

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Amendment No.

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

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Published On: 3/22/2019 6:59:00 PM

Amendment No.

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

002427 - h1247-strikeall.docx

Published On: 3/22/2019 6:59:00 PM

Amendment No.

88 the notice with such willful and gross negligence as to amount
89 to a willful exaggeration. However, a minor mistake or error in
90 a notice of nonpayment, or a good faith dispute as to the amount
91 due, does not constitute a willful exaggeration that operates to
92 defeat an otherwise valid claim against the bond. The service of
93 a fraudulent notice of nonpayment is a complete defense to the
94 claimant's claim against the bond. The notice of nonpayment
95 under this subparagraph must be in substantially the following
96 form:

97
98 NOTICE OF NONPAYMENT
99

100 To: ...(name of contractor and address)...

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

102 The undersigned claimant notifies you that:

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

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

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

Amendment No.

113 (if known).

114

115 I declare that I have read the foregoing Notice of Nonpayment
116 and that the facts stated in it are true to the best of my
117 knowledge and belief

118

119 DATED on,

120

121 ...(signature and address of claimant)...

122

123 STATE OF FLORIDA

124 COUNTY OF

125

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

129 (Signature of Notary Public-State of Florida)

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

131

132 Personally Known.....OR Produced Identification.....

133

134 Type of Identification Produced.....

135

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

Amendment No.

138 627.756 Bonds for construction contracts; attorney fees in
139 case of suit.—

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

148 Section 3. For the purpose of incorporating the amendment
149 made by this act to section 627.756, Florida Statutes, in a
150 reference thereto, Section 627.428, Florida Statutes, is
151 reenacted to read:

152 627.428 Attorney's fee.—

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

Amendment No.

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

167 (3) When so awarded, compensation or fees of the attorney
168 shall be included in the judgment or decree rendered in the
169 case.

170 Section 4. Paragraph (d) of subsection (1) of section
171 713.23, Florida Statutes, is amended to read:

172 713.23 Payment bond.—

173 (1)

174 (d) In addition, a lienor who has not received payment for
175 furnishing his or her labor, service, or materials must ~~is~~
176 required, as a condition precedent to recovery under the bond,
177 ~~to~~ serve a written notice of nonpayment to the contractor and
178 the surety. The notice must be under oath and served during the
179 progress of the work or thereafter, but may not be served ~~not~~
180 later than 90 days after the final furnishing of labor,
181 services, or materials by the lienor, or, with respect to rental
182 equipment, later than 90 days after the date of the rental
183 equipment was on the job site and available for use. The notice
184 of nonpayment must state the nature of the labor or services
185 performed; the nature of the labor or services to be performed,
186 if known; the materials furnished; the materials to be

Amendment No.

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

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Amendment No.

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

230 NOTICE OF NONPAYMENT

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

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

233 The undersigned notifies you that:

Amendment No.

258 (Signature of Notary Public-State of Florida)

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

260
261 Personally Known.....OR Produced Identification.....

262
263 Type of Identification Produced.....

264
265 Section 5. The amendments made by this act to s. 627.756,
266 Florida Statutes, apply only to payment or performance bonds
267 issued on or after October 1, 2019.

268 Section 6. This act shall take effect October 1, 2019.
269
270

271 -----
272 **T I T L E A M E N D M E N T**

273 Remove everything before the enacting clause and insert:

274 An act relating to construction bonds; amending
275 s. 255.05, F.S.; requiring a notice of nonpayment to
276 be under oath; requiring the notice to contain certain
277 statements; specifying that claimant who serves a
278 fraudulent notice of nonpayment forfeits his or her
279 rights under a bond; providing that the service of a
280 fraudulent notice of nonpayment is a complete defense
281 to the claimant's claim against the bond; requiring a
282 notice of nonpayment to be in a prescribed form;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1247 (2019)

Amendment No.

283 | amending s. 627.756, F.S.; providing that a provision
284 | relating to attorney fees applies to certain suits
285 | brought by contractors; deeming contractors to be
286 | insureds or beneficiaries in relation to bonds for
287 | construction contracts; reenacting s. 627.428, F.S.,
288 | relating to attorney fees; amending s. 713.23, F.S.;
289 | requiring a lienor to serve a notice of nonpayment
290 | under oath to specified entities during a certain
291 | period of time; requiring a notice of nonpayment to
292 | contain certain statements; specifying that a lienor
293 | who serves a fraudulent notice of nonpayment forfeits
294 | his or her rights under the bond; providing that the
295 | service of a fraudulent notice of nonpayment is a
296 | complete defense to the lienor's claim against the
297 | bond; requiring a notice of nonpayment to be in a
298 | prescribed form; providing an effective date.

299