

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Perez offered the following:

2  
3 **Amendment (with title amendment)**

4 Remove lines 209-286 and insert:

5 equipment was on the job site and available for use. A notice of  
6 nonpayment that includes sums for retainage must specify the  
7 portion of the amount claimed for retainage. The required. A  
8 ~~written~~ notice satisfies this condition precedent with respect  
9 to the payment described in the notice of nonpayment, including  
10 unpaid finance charges due under the lienor's contract, and with  
11 respect to any other payments which become due to the lienor  
12 after the date of the notice of nonpayment. The time period for  
13 serving a ~~written~~ notice of nonpayment shall be measured from

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14 the last day of furnishing labor, services, or materials by the  
15 lienor and may ~~shall~~ not be measured by other standards, such as  
16 the issuance of a certificate of occupancy or the issuance of a  
17 certificate of substantial completion. The failure of a lienor  
18 to receive retainage sums not in excess of 10 percent of the  
19 value of labor, services, or materials furnished by the lienor  
20 is not considered a nonpayment requiring the service of the  
21 notice provided under this paragraph. If the payment bond is not  
22 recorded before commencement of construction, the time period  
23 for the lienor to serve a notice of nonpayment may at the option  
24 of the lienor be calculated from the date specified in this  
25 section or the date the lienor is served a copy of the bond.  
26 However, the limitation period for commencement of an action on  
27 the payment bond as established in paragraph (e) may not be  
28 expanded. The negligent inclusion or omission of any information  
29 in the notice of nonpayment that has not prejudiced the  
30 contractor or surety does not constitute a default that operates  
31 to defeat an otherwise valid bond claim. A lienor who serves a  
32 fraudulent notice of nonpayment forfeits his or her rights under  
33 the bond. A notice of nonpayment is fraudulent if the lienor has  
34 willfully exaggerated the amount unpaid, willfully included a  
35 claim for work not performed or materials not furnished for the  
36 subject improvement, or prepared the notice with such willful  
37 and gross negligence as to amount to a willful exaggeration.  
38 However, a minor mistake or error in a notice of nonpayment, or

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39 a good faith dispute as to the amount unpaid, does not  
40 constitute a willful exaggeration that operates to defeat an  
41 otherwise valid claim against the bond. The service of a  
42 fraudulent notice of nonpayment is a complete defense to the  
43 lienor's claim against the bond. The notice under this paragraph  
44 must include the following information, current as of the date  
45 of the notice, and must ~~may~~ be in substantially the following  
46 form:

## NOTICE OF NONPAYMENT

47  
48  
49  
50 To ...(name of contractor and address)...

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

52 The undersigned lienor notifies you that:

53 1. The lienor ~~he or she~~ has furnished ...(describe labor,  
54 services, or materials)...for the improvement of the real  
55 property identified as ...(property description).... The  
56 corresponding amount ~~now due and unpaid to date~~ is \$...., of  
57 which \$.... is unpaid retainage.

58 2. The lienor has been paid to date the amount of \$....  
59 for previously furnishing ...(describe labor, services, or  
60 materials)...for this improvement.

61 3. The lienor expects to furnish ...(describe labor,  
62 services, or materials)...for this improvement in the future (if  
63 known), and the corresponding amount expected to become due is \$

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64 .... (if known).

65  
66 I declare that I have read the foregoing Notice of Nonpayment  
67 and that the facts stated in it are true to the best of my  
68 knowledge and belief.

69  
70 DATED on ....., .....

71  
72 ...(signature and address of lienor)...

73  
74 STATE OF FLORIDA  
75 COUNTY OF

76  
77 The foregoing instrument was sworn to (or affirmed) and  
78 subscribed before me this.....day of....., ...(year)...., by  
79 ...(name of

80  
81 -----

82 **T I T L E A M E N D M E N T**

83 Remove line 18

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