

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Perez offered the following:

Amendment (with title amendment)

Remove lines 81-156 and insert:

on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials, ~~or supplies~~ may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must ~~shall~~ be served in accordance with s. 713.18.

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14 A claimant may not waive in advance his or her right to bring an
15 action under the bond against the surety. In any action brought
16 to enforce a claim against a payment bond under this section,
17 the prevailing party is entitled to recover a reasonable fee for
18 the services of his or her attorney for trial and appeal or for
19 arbitration, in an amount to be determined by the court, which
20 fee must be taxed as part of the prevailing party's costs, as
21 allowed in equitable actions. The time periods for service of a
22 notice of nonpayment or for bringing an action against a
23 contractor or a surety shall be measured from the last day of
24 furnishing labor, services, or materials by the claimant and may
25 not be measured by other standards, such as the issuance of a
26 certificate of occupancy or the issuance of a certificate of
27 substantial completion. The negligent inclusion or omission of
28 any information in the notice of nonpayment that has not
29 prejudiced the contractor or surety does not constitute a
30 default that operates to defeat an otherwise valid bond claim. A
31 claimant who serves a fraudulent notice of nonpayment forfeits
32 his or her rights under the bond. A notice of nonpayment is
33 fraudulent if the claimant has willfully exaggerated the amount
34 unpaid, willfully included a claim for work not performed or
35 materials not furnished for the subject improvement, or prepared
36 the notice with such willful and gross negligence as to amount
37 to a willful exaggeration. However, a minor mistake or error in
38 a notice of nonpayment, or a good faith dispute as to the amount

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

46
47 NOTICE OF NONPAYMENT

48
49 To: ... (name of contractor and address)...

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

51 The undersigned claimant notifies you that:

52 1. Claimant has furnished ... (describe labor, services, or
53 materials) ... for the improvement of the real property
54 identified as ... (property description) ... The corresponding
55 amount unpaid to date is \$, of which \$ is unpaid
56 retainage.

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

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

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64
65 I declare that I have read the foregoing Notice of Nonpayment
66 and that the facts stated in it are true to the best of my
67 knowledge and belief.

68
69 DATED on,

70
71 ...(signature and address of claimant)...

72
73 STATE OF FLORIDA

74 COUNTY OF

75
76 The foregoing instrument was sworn to (or affirmed) and
77 subscribed before me this.....day of....., ...(year)...., by
78 ...(name of

79
80 -----

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

82 Remove lines 4-5 and insert:
83 under oath; specifying that a claimant who serves a