

Amendment No. 1.

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WITHDRAWN	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: Commerce Committee
2 Representative Toledo offered the following:

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

5 Remove everything after the enacting clause and insert:
6 Section 1. Subsection (12) is added to 255.05, Florida
7 Statutes, and paragraphs (a), (d), and (f) of subsection (2) of
8 that section, are amended to read:

9 255.05 Bond of contractor constructing public buildings;
10 form; action by claimants.—

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

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17 NOTICE OF CONTEST OF CLAIM
18 AGAINST PAYMENT BOND

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

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

25 DATED on,

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

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

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

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39 | with a written notice that he or she intends to look to the bond
40 | for protection. A claimant who is not in privity with the
41 | contractor and who has not received payment for furnishing his
42 | or her labor, services, or materials shall serve a written
43 | notice of nonpayment on the contractor and a copy of the notice
44 | on the surety. The notice of nonpayment shall be under oath and
45 | served during the progress of the work or thereafter but may not
46 | be served earlier than 45 days after the first furnishing of
47 | labor, services, or materials by the claimant or later than 90
48 | days after the final furnishing of the labor, services, or
49 | materials by the claimant or, with respect to rental equipment,
50 | later than 90 days after the date that the rental equipment was
51 | last on the job site available for use. Any notice of nonpayment
52 | served by a claimant who is not in privity with the contractor
53 | which includes sums for retainage must specify the portion of
54 | the amount claimed for retainage. An action for the labor,
55 | services, or materials may not be instituted against the
56 | contractor or the surety unless the notice to the contractor and
57 | notice of nonpayment have been served, if required by this
58 | section. Notices required or permitted under this section must
59 | be served in accordance with s. 713.18. A claimant may not waive
60 | in advance his or her right to bring an action under the bond
61 | against the surety. In any action brought to enforce a claim
62 | against a payment bond under this section, the prevailing party
63 | is entitled to recover a reasonable fee for the services of his

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64 or her attorney for trial and appeal or for arbitration, in an
65 amount to be determined by the court, which fee must be taxed as
66 part of the prevailing party's costs, as allowed in equitable
67 actions. The time periods for service of a notice of nonpayment
68 or for bringing an action against a contractor or a surety are
69 ~~shall be~~ measured from the last day of furnishing labor,
70 services, or materials by the claimant and may not be measured
71 by other standards, such as the issuance of a certificate of
72 occupancy or the issuance of a certificate of substantial
73 completion. The negligent inclusion or omission of any
74 information in the notice of nonpayment that has not prejudiced
75 the contractor or surety does not constitute a default that
76 operates to defeat an otherwise valid bond claim. A claimant who
77 serves a fraudulent notice of nonpayment forfeits his or her
78 rights under the bond. A notice of nonpayment is fraudulent if
79 the claimant has willfully exaggerated the amount unpaid,
80 willfully included a claim for work not performed or materials
81 not furnished for the subject improvement, or prepared the
82 notice with such willful and gross negligence as to amount to a
83 willful exaggeration. However, a minor mistake or error in a
84 notice of nonpayment, or a good faith dispute as to the amount
85 unpaid, does not constitute a willful exaggeration that operates
86 to defeat an otherwise valid claim against the bond. The service
87 of a fraudulent notice of nonpayment is a complete defense to
88 the claimant's claim against the bond. The notice of nonpayment

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89 | under this subparagraph must include the following information,
90 | current as of the date of the notice, and must be in
91 | substantially the following form:

92 | NOTICE OF NONPAYMENT

93 | To: ...(name of contractor and address)...

94 | ...(name of surety and address)...

95 | The undersigned claimant notifies you that:

96 | 1. Claimant has furnished ...(describe labor, services, or
97 | materials)... for the improvement of the real property
98 | identified as ...(property description).... The corresponding
99 | amount unpaid to date is \$...., of which \$.... is unpaid
100 | retainage.

101 | 2. Claimant has been paid to date the amount of \$.... for
102 | previously furnishing ...(describe labor, services, or
103 | materials)... for this improvement.

104 | 3. Claimant expects to furnish ...(describe labor,
105 | services, or materials)... for this improvement in the future
106 | (if known), and the corresponding amount expected to become due
107 | is \$.... (if known).

108 | I declare that I have read the foregoing Notice of Nonpayment
109 | and that the facts stated in it are true to the best of my
110 | knowledge and belief.

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111 DATED on,

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

113 STATE OF FLORIDA

114 COUNTY OF

115 The foregoing instrument was sworn to (or affirmed) and

116 subscribed before me by means of physical presence or online

117 notarization, this....day of, ... (year)...., by ... (name of

118 signatory)....

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

120 ... (Print, Type, or Stamp Commissioned Name of Notary

121 Public)...

122 Personally Known OR Produced Identification

123 Type of Identification Produced.....

124 (d) A person may not require a claimant to furnish a

125 waiver that is different from the forms in paragraphs (b) and

126 (c) in exchange for, or to induce payment of, a progress payment

127 or final payment, unless the claimant has entered into a direct

128 contract that requires the claimant to furnish a waiver that is

129 different from the forms in paragraphs (b) and (c).

130 (f) Any provisions in a waiver that are ~~is~~ not related to

131 the waiver of right to claim against a payment bond as provided

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132 | in this subsection are unenforceable, unless the claimant has
133 | otherwise agreed to those provisions in the claimant's direct
134 | contract substantially similar to the forms in this subsection
135 | is enforceable in accordance with its terms.

136 | (12) Unless otherwise provided in this section, service of
137 | any document must be served in accordance with s. 713.18.

138 | Section 2. Subsection (6) is added to 337.18, Florida
139 | Statutes, and paragraph (c) of subsection (1) of that section,
140 | is amended to read:

141 | 337.18 Surety bonds for construction or maintenance
142 | contracts; requirement with respect to contract award; bond
143 | requirements; defaults; damage assessments.—

144 | (1)

145 | (c) A claimant, except a laborer, who is not in privity
146 | with the contractor shall, before commencing or not later than
147 | 90 days after commencing to furnish labor, materials, or
148 | supplies for the prosecution of the work, furnish the contractor
149 | with a notice that he or she intends to look to the bond for
150 | protection. A claimant who is not in privity with the contractor
151 | and who has not received payment for his or her labor,
152 | materials, or supplies shall deliver to the contractor and to
153 | the surety written notice of the performance of the labor or
154 | delivery of the materials or supplies and of the nonpayment. The
155 | notice of nonpayment may be served at any time during the
156 | progress of the work or thereafter but not before 45 days after

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157 the first furnishing of labor, services, or materials, and not
158 later than 90 days after the final furnishing of the labor,
159 services, or materials by the claimant or, with respect to
160 rental equipment, not later than 90 days after the date that the
161 rental equipment was last on the job site available for use. An
162 action by a claimant, except a laborer, who is not in privity
163 with the contractor for the labor, materials, or supplies may
164 not be instituted against the contractor or the surety unless
165 both notices have been given. Notices required or permitted
166 under this section may be served in any manner provided in s.
167 713.18, and provisions for the waiver of right to claim against
168 a payment bond contained in s. 713.235 apply to all contracts
169 under this section.

170 (6) Unless otherwise provided in this section, service of
171 any document must be served in accordance with s. 713.18.

172 Section 3. Subsections (8) and (26) of section 713.01,
173 Florida Statutes, are amended to read:

174 713.01 Definitions.—As used in this part, the term:

175 (8) "Contractor" means a person other than a materialman
176 or laborer who enters into a contract with the owner of real
177 property for improving it, or who takes over from a contractor
178 as so defined the entire remaining work under such contract. The
179 term "contractor" includes an architect, landscape architect, or
180 engineer who improves real property pursuant to a design-build
181 contract authorized by s. 489.103(16). The term "contractor"

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182 also includes a licensed general contractor or building
183 contractor, as those terms are defined in s. 489.105(3)(a) and
184 (b), who provides construction management services, which
185 include responsibility for scheduling and coordination in both
186 preconstruction and construction phases and for the successful,
187 timely, and economical completion of the construction project,
188 or who provides program management services, which include
189 responsibility for schedule control, cost control, and
190 coordination in providing or procuring planning, design, and
191 construction.

192 (26) "Real property" means the land that is improved and
193 the improvements thereon, including fixtures, except any such
194 property owned by the state or any county, municipality, school
195 board, or governmental agency, commission, or political
196 subdivision. The term "real property" includes a private
197 leasehold interest that is improved, and the improvements
198 thereto, on land that is owned by the state or any county,
199 municipality, school board, or governmental agency, commission,
200 or political subdivision.

201 Section 4. Section 713.09, Florida Statutes, is amended to
202 read:

203 713.09 Single claim of lien.—A lienor may ~~is required to~~
204 record only one claim of lien covering his or her entire demand
205 against the real property when the amount demanded is for labor
206 or services or material furnished for more than one improvement

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207 | under the same direct contract or multiple direct contracts. The
208 | single claim of lien is sufficient even though the improvement
209 | is for one or more improvements located on separate lots,
210 | parcels, or tracts of land. If materials to be used on one or
211 | more improvements on separate lots, parcels, or tracts of land
212 | ~~under one direct contract~~ are delivered by a lienor to a place
213 | designated by the person with whom the materialman contracted,
214 | other than the site of the improvement, the delivery to the
215 | place designated is prima facie evidence of delivery to the site
216 | of the improvement and incorporation in the improvement. The
217 | single claim of lien may be limited to a part of multiple lots,
218 | parcels, or tracts of land and their improvements or may cover
219 | all of the lots, parcels, or tracts of land and improvements. If
220 | a ~~In each~~ claim of lien under this section is for multiple
221 | direct contracts, the owner under the direct contracts ~~contract~~
222 | must be the same person for all lots, parcels, or tracts of land
223 | against which a single claim of lien is recorded.

224 | Section 5. Subsection (4) is added to 713.10, Florida
225 | Statutes, and paragraph (b) of subsection (2) of that section,
226 | is amended to read:

227 | 713.10 Extent of liens.—

228 | (2)

229 | (b) The interest of the lessor is not subject to liens for
230 | improvements made by the lessee when:

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231 1. The lease, or a short form or a memorandum of the lease
232 that contains the specific language in the lease prohibiting
233 such liability, is recorded in the official records of the
234 county where the premises are located before the recording of a
235 notice of commencement for improvements to the premises and the
236 terms of the lease expressly prohibit such liability; or

237 2. The terms of the lease expressly prohibit such
238 liability, and a notice advising that leases for the rental of
239 premises on a parcel of land prohibit such liability has been
240 recorded in the official records of the county in which the
241 parcel of land is located before the recording of a notice of
242 commencement for improvements to the premises, and the notice
243 includes the following:

244 a. The name of the lessor.

245 b. The legal description of the parcel of land to which
246 the notice applies.

247 c. The specific language contained in the various leases
248 prohibiting such liability.

249 d. A statement that all or a majority of the leases
250 entered into for premises on the parcel of land expressly
251 prohibit such liability.

252 ~~3. The lessee is a mobile home owner who is leasing a~~
253 ~~mobile home lot in a mobile home park from the lessor.~~

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255 A notice that is consistent with subparagraph 2. effectively
256 prohibits liens for improvements made by a lessee even if other
257 leases for premises on the parcel do not expressly prohibit
258 liens or if provisions of each lease restricting the application
259 of liens are not identical.

260 (4) The interest of the lessor is not subject to liens for
261 improvements made by the lessee when the lessee is a mobile home
262 owner who is leasing a mobile home lot in a mobile home park
263 from the lessor.

264 Section 6. Paragraphs (a) and (d) of subsection (1) of
265 section 713.13, Florida Statutes, are amended to read:

266 713.13 Notice of commencement.—

267 (1) (a) Except for an improvement that is exempt under
268 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
269 agent before actually commencing to improve any real property,
270 or recommencing completion of any improvement after default or
271 abandonment, whether or not a project has a payment bond
272 complying with s. 713.23, shall record a notice of commencement
273 in the clerk's office and forthwith post either a certified copy
274 thereof or a notarized statement that the notice of commencement
275 has been filed for recording along with a copy thereof. The
276 notice of commencement shall contain the following information:

277 1. A description sufficient for identification of the real
278 property to be improved. The description should include the
279 legal description of the property and also should include the

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280 street address and tax folio number of the property if available
281 or, if there is no street address available, such additional
282 information as will describe the physical location of the real
283 property to be improved.

284 2. A general description of the improvement.

285 3. The name and address of the owner, the owner's interest
286 in the site of the improvement, and the name and address of the
287 fee simple titleholder, if other than such owner.

288 4. The name and address of the lessee, if the A lessee who
289 contracts for the improvements as is an owner as defined in s.
290 713.01 under s. 713.01(23) and must be listed as the owner
291 together with a statement that the ownership interest is a
292 leasehold interest.

293 5.4. The name and address of the contractor.

294 6.5. The name and address of the surety on the payment
295 bond under s. 713.23, if any, and the amount of such bond.

296 7.6. The name and address of any person making a loan for
297 the construction of the improvements.

298 8.7. The name and address within the state of a person
299 other than himself or herself who may be designated by the owner
300 as the person upon whom notices or other documents may be served
301 under this part; and service upon the person so designated
302 constitutes service upon the owner.

303 (d) A notice of commencement must be in substantially the
304 following form:

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305 Permit No..... Tax Folio No.....

306 NOTICE OF COMMENCEMENT

307 State of....

308 County of....

309 The undersigned hereby gives notice that improvement will be
310 made to certain real property, and in accordance with Chapter
311 713, Florida Statutes, the following information is provided in
312 this Notice of Commencement.

313 1. Description of property: ...(legal description of the
314 property, and street address if available)....

315 2. General description of improvement:.....

316 3.a. Owner: ...(name and address)....

317 b. Owner's phone number:.....

318 c. Name and address of fee simple titleholder (if
319 different from Owner listed above):.....

320 4.a. Lessee, if the lessee contracted for the
321 improvements: ...(name and address)....

322 b. Lessee's phone number:..... ~~owner information or Lessee~~
323 ~~information if the Lessee contracted for the improvement:~~

324 a. ~~Name and address:.....~~

325 b. ~~Interest in property:.....~~

326 c. ~~Name and address of fee simple titleholder (if~~
327 ~~different from Owner listed above):.....~~

328 5.a.4.a. Contractor: ...(name and address)....

329 b. Contractor's phone number:.....

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330 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
331 attached):

332 a. Name and address:.....

333 b. Phone number:.....

334 c. Amount of bond: \$.....

335 ~~7.a.6.a.~~ Lender: ...(name and address)....

336 b. Lender's phone number:.....

337 ~~8.7.~~ Persons within the State of Florida designated by
338 Owner upon whom notices or other documents may be served as
339 provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
340 Statutes:

341 a. Name and address:.....

342 b. Phone numbers of designated persons:.....

343 ~~9.a.8.a.~~ In addition to himself or herself, Owner
344 designates of to receive a copy of the
345 Lienor's Notice as provided in Section 713.13(1)(b), Florida
346 Statutes.

347 b. Phone number of person or entity designated by
348 owner:.....

349 ~~10.9.~~ Expiration date of notice of commencement (the
350 expiration date will be 1 year after ~~from~~ the date of recording
351 unless a different date is specified).....

352 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
353 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
354 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA

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355 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
356 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
357 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
358 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
359 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
360 COMMENCEMENT.

361 ... (Signature of Owner or Lessee, or Owner's or Lessee's
362 Authorized Officer/Director/Partner/Manager) ...

363 ... (Signatory's Title/Office) ...

364

365 STATE OF FLORIDA

366

367 COUNTY OF

368

369 The foregoing instrument was acknowledged before me by means of
370 physical presence or online notarization, this day of
371, ... (year) ..., by ... (name of person) ... as ... (type of
372 authority, . . . e.g. officer, trustee, attorney in fact) ...
373 for ... (name of party on behalf of whom instrument was
374 executed)

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

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

377 Personally Known OR Produced Identification

378 Type of Identification Produced.....

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379 Section 7. Paragraphs (b) and (f) of subsection (1) and
380 subsections (3) and (4) of section 713.132, Florida Statutes,
381 are amended to read:

382 713.132 Notice of termination.—

383 (1) An owner may terminate the period of effectiveness of
384 a notice of commencement by executing, swearing to, and
385 recording a notice of termination that contains:

386 (b) The official records' ~~recording office document book~~
387 ~~and page~~ reference numbers and recording date affixed by the
388 recording office on ~~of~~ the recorded notice of commencement;

389 (f) A statement that the owner has, before recording the
390 notice of termination, served a copy of the notice of
391 termination ~~on the contractor and~~ on each lienor who has a
392 direct contract with the owner or who has timely served a notice
393 to owner, and a statement that the owner will serve a copy of
394 the notice of termination on each lienor who timely serves a
395 notice to owner after the notice of termination has been
396 recorded. The owner is not required to serve a copy of the
397 notice of termination on any lienor who has executed a waiver
398 and release of lien upon final payment in accordance with s.
399 713.20.

400 (3) An owner may ~~not~~ record a notice of termination at any
401 time after ~~except after completion of construction, or after~~
402 ~~construction ceases before completion and~~ all lienors have been
403 paid in full or pro rata in accordance with s. 713.06(4).

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404 (4) If an owner or a contractor, by fraud or collusion,
405 knowingly makes any fraudulent statement or affidavit in a
406 notice of termination or any accompanying affidavit, the owner
407 and the contractor, or either of them, ~~as the case may be,~~ is
408 liable to any lienor who suffers damages as a result of the
409 filing of the fraudulent notice of termination,^r and any such
410 lienor has a right of action for damages ~~occasioned thereby.~~

411 (5)-(4) A notice of termination must be served before
412 recording on each lienor who has a direct contract with the
413 owner and on each lienor who has timely and properly served a
414 notice to owner in accordance with this part before the
415 recording of the notice of termination. A notice of termination
416 must be recorded in the official records of the county in which
417 the project is located. If properly served before recording in
418 accordance with this subsection, the notice of termination
419 terminates the period of effectiveness of the notice of
420 commencement 30 days after the notice of termination is recorded
421 in the official records is effective to terminate the notice of
422 commencement at the later of 30 days after recording of the
423 notice of termination or a later the date stated in the notice
424 of termination as the date on which the notice of commencement
425 is terminated. However, if a lienor, who began work under the
426 notice of commencement before its termination, lacks a direct
427 contract with the owner, and timely serves his or her notice to
428 owner after the notice of termination has been recorded, the

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429 owner must serve a copy of the notice of termination upon such
430 lienor, and the termination of the notice of commencement as to
431 that lienor is effective 30 days after service of the notice of
432 termination ~~if the notice of termination has been served~~
433 ~~pursuant to paragraph (1) (f) on the contractor and on each~~
434 ~~lienor who has a direct contract with the owner or who has~~
435 ~~served a notice to owner.~~

436 Section 8. Section 713.18, Florida Statutes, is amended to
437 read:

438 713.18 Manner of serving documents ~~notices and other~~
439 ~~instruments.-~~

440 (1) Unless otherwise specifically provided by law, service
441 of any document ~~notices, claims of lien, affidavits,~~
442 ~~assignments, and other instruments~~ permitted or required under
443 this part, s. 255.05, or s. 337.18, or copies thereof when so
444 permitted or required, ~~unless otherwise specifically provided in~~
445 ~~this part,~~ must be made by one of the following methods:

446 (a) By hand ~~actual~~ delivery to the person to be served; if
447 a partnership, to one of the partners; if a corporation, to an
448 officer, director, managing agent, or business agent; or, if a
449 limited liability company, to a member or manager.

450 (b) By common carrier delivery service or by registered,
451 Global Express Guaranteed, or certified mail to the person to be
452 served, with postage or shipping paid by the sender and with
453 evidence of delivery, which may be in an electronic format.

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454 ~~(c) By posting on the site of the improvement if service~~
455 ~~as provided by paragraph (a) or paragraph (b) cannot be~~
456 ~~accomplished.~~

457 (2) Notwithstanding subsection (1), Service of a notice to
458 owner or a preliminary notice to contractor under this part, s.
459 255.05, or s. 337.18, or s. 713.23 is effective as of the date
460 of mailing and the requirements for service under this section
461 have been satisfied if:

462 (a) The notice is mailed by registered, Global Express
463 Guaranteed, or certified mail, with postage prepaid, to the
464 person to be served, and addressed as prescribed at any of the
465 addresses set forth in subsection (3);

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

468 (c)1. The person who served the notice maintains a
469 registered or certified mail log that shows the registered or
470 certified mail number issued by the United States Postal
471 Service, the name and address of the person served, and the date
472 stamp of the United States Postal Service confirming the date of
473 mailing; or

474 2. The person who served the notice maintains ~~electronic~~
475 tracking records approved or generated by the United States
476 Postal Service containing the postal tracking number, the name
477 and address of the person served, and verification of the date
478 of receipt by the United States Postal Service.

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479 (3) (a) Notwithstanding subsection (1), service of a
480 document under an instrument pursuant to this section is
481 effective on the date of mailing or shipping and the
482 requirements for service under this section have been satisfied
483 the instrument if it:

484 1. Is sent using one of the methods provided in paragraph
485 (1)(b) to the last address shown in the notice of commencement
486 or any amendment thereto or, in the absence of a notice of
487 commencement, to the last address shown in the building permit
488 application, or, in the absence of a notice of commencement and
489 building permit application, to the last known address of the
490 person to be served, unless otherwise specifically provided in
491 this part, s. 255.05, or s. 337.18; and

492 2. Is returned as being "refused," "moved, not
493 forwardable," or "unclaimed," or is otherwise not delivered or
494 deliverable through no fault of the person serving the document
495 item.

496 (b) If the address shown in the notice of commencement or
497 any amendment thereto ~~to the notice of commencement~~, or, in the
498 absence of a notice of commencement, in the building permit
499 application, is incomplete for purposes of mailing or delivery,
500 the person serving the document ~~item~~ may complete the address
501 and properly format it according to United States Postal Service
502 addressing standards using information obtained from the
503 property appraiser or another public record without affecting

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504 the validity of service under this section.

505 (4) A document ~~notice~~ served by a lienor on one owner or
506 one partner of a partnership owning the real property is deemed
507 serve ~~notice~~ to all owners and partners.

508 Section 9. Subsections (6) and (8) of section 713.20,
509 Florida Statutes, are amended to read:

510 713.20 Waiver or release of liens.—

511 (6) A person may not require a lienor to furnish a lien
512 waiver or release of lien that is different from the forms in
513 subsection (4) or subsection (5) in exchange for, or to induce
514 payment of, a progress payment or final payment, unless the
515 lienor has entered into a direct contract that requires the
516 lienor to furnish a waiver or release that is different from the
517 forms in subsection (4) or subsection (5).

518 (8) Any provisions in a lien waiver or lien release that
519 are is not related to the waiver or release of lien rights as
520 provided in this section are unenforceable, unless the lienor
521 has otherwise agreed to those provisions in the lienor's direct
522 contract substantially similar to the forms in subsections (4)
523 and (5) is enforceable in accordance with the terms of the lien
524 waiver or lien release.

525 Section 10. Paragraph (d) of subsection (1) of section
526 713.23, Florida Statutes, is amended to read:

527 713.23 Payment bond.—

528 (1)

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529 (d) In addition, a lienor who has not received payment for
530 furnishing his or her labor, services, or materials must, as a
531 condition precedent to recovery under the bond, serve a written
532 notice of nonpayment on ~~to~~ the contractor and a copy of the
533 notice on the surety. The notice must be under oath and served
534 during the progress of the work or thereafter, but may not be
535 served later than 90 days after the final furnishing of labor,
536 services, or materials by the lienor, or, with respect to rental
537 equipment, later than 90 days after the date the rental
538 equipment was on the job site and available for use. A notice of
539 nonpayment that includes sums for retainage must specify the
540 portion of the amount claimed for retainage. The required notice
541 satisfies this condition precedent with respect to the payment
542 described in the notice of nonpayment, including unpaid finance
543 charges due under the lienor's contract, and with respect to any
544 other payments which become due to the lienor after the date of
545 the notice of nonpayment. The time period for serving a notice
546 of nonpayment is ~~shall be~~ measured from the last day of
547 furnishing labor, services, or materials by the lienor and may
548 not be measured by other standards, such as the issuance of a
549 certificate of occupancy or the issuance of a certificate of
550 substantial completion. The failure of a lienor to receive
551 retainage sums not in excess of 10 percent of the value of
552 labor, services, or materials furnished by the lienor is not
553 considered a nonpayment requiring the service of the notice

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554 provided under this paragraph. If the payment bond is not
555 recorded before commencement of construction, the time period
556 for the lienor to serve a notice of nonpayment may at the option
557 of the lienor be calculated from the date specified in this
558 section or the date the lienor is served a copy of the bond.
559 However, the limitation period for commencement of an action on
560 the payment bond as established in paragraph (e) may not be
561 expanded. The negligent inclusion or omission of any information
562 in the notice of nonpayment that has not prejudiced the
563 contractor or surety does not constitute a default that operates
564 to defeat an otherwise valid bond claim. A lienor who serves a
565 fraudulent notice of nonpayment forfeits his or her rights under
566 the bond. A notice of nonpayment is fraudulent if the lienor has
567 willfully exaggerated the amount unpaid, willfully included a
568 claim for work not performed or materials not furnished for the
569 subject improvement, or prepared the notice with such willful
570 and gross negligence as to amount to a willful exaggeration.
571 However, a minor mistake or error in a notice of nonpayment, or
572 a good faith dispute as to the amount unpaid, does not
573 constitute a willful exaggeration that operates to defeat an
574 otherwise valid claim against the bond. The service of a
575 fraudulent notice of nonpayment is a complete defense to the
576 lienor's claim against the bond. The notice under this paragraph
577 must include the following information, current as of the date
578 of the notice, and must be in substantially the following form:

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NOTICE OF NONPAYMENT

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

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

The undersigned lienor notifies you that:

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

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

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

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

DATED on,

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

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of physical presence or online

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604 notarization, this day of, ... (year)...., by ... (name
605 of signatory)....

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

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

609 Personally Known OR Produced Identification

610 Type of Identification Produced

611 Section 11. Subsections (3) and (5) of section 713.235,
612 Florida Statutes, are amended to read: 713.235 Waivers of
613 right to claim against payment bond; forms.-

614 (3) A person may not require a claimant to furnish a
615 waiver that is different from the forms in subsections (1) and
616 (2) in exchange for, or to induce payment of, a progress payment
617 or final payment, unless the claimant has entered into a direct
618 contract that requires the claimant to furnish a waiver that is
619 different from the forms in subsections (1) and (2).

620 (5) Any provisions in a waiver that are ~~is~~ not related to
621 the waiver of the right to claim against the payment bond as
622 provided in this section are unenforceable, unless the claimant
623 has otherwise agreed to those provisions in the claimant's
624 direct contract ~~substantially similar to the forms in this~~
625 section is ~~enforceable in accordance with its terms.~~

626 Section 12. Section 713.29, Florida Statutes, is amended to
627 read:

628 713.29 Attorney ~~Attorney's~~ fees.-In any action brought to

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629 enforce a lien, including a lien that has been transferred to
630 security, or to enforce a claim against a bond under this part,
631 the prevailing party is entitled to recover a reasonable fee for
632 the services of her or his attorney for trial and appeal or for
633 arbitration, in an amount to be determined by the court, which
634 fee must be taxed as part of the prevailing party's costs, as
635 allowed in equitable actions.

636 Section 13. This act shall take effect July 1, 2020.

637 -----

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

639 Remove everything before the enacting clause and insert:

640 An act relating to liens and bonds; amending s.

641 255.05, F.S.; requiring that a copy of a notice of

642 nonpayment be served on the surety; prohibiting a

643 person from requiring a claimant to furnish a certain

644 waiver in exchange for or to induce certain payments;

645 providing that specified provisions in certain waivers

646 are unenforceable; providing an exception; revising

647 process to notarize a notice of nonpayment; amending

648 s. 337.18, F.S.; providing that certain waivers apply

649 to certain contracts; amending s. 713.01, F.S.;

650 revising definitions; amending s. 713.09, F.S.;

651 authorizing a lienor to record one claim of lien for

652 multiple direct contracts; amending s. 713.10, F.S.;

653 revising the extent of liens; amending s. 713.13,

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654 F.S.; revising information to be included in a notice
655 of commencement; revising process to notarize a notice
656 of commencement; amending s. 713.132, F.S.; revising
657 requirements for a notice of termination; amending s.
658 713.18, F.S.; providing the manner in which documents
659 relating to certain construction bonds must be served;
660 providing that service of a document may be by hand
661 delivery; providing that service of a document is
662 effective on the date of mailing or shipping; making
663 technical changes; amending ss. 713.20 and 713.235,
664 F.S.; prohibiting a person from requiring a lienor to
665 furnish a certain waiver or release in exchange for or
666 to induce certain payments; providing that specified
667 provisions in certain waivers or releases are
668 unenforceable; providing an exception; amending s.
669 713.23, F.S.; requiring that a copy of a notice of
670 nonpayment be served on the surety; revising process
671 to notarize a notice of nonpayment; amending s.
672 713.29, F.S.; authorizing attorney fees in actions to
673 enforce a lien that has been transferred to security;
674 providing an effective date