

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Duggan offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended, and subsection (12) is added to that section, 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 within which an action to enforce any claim against a payment

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14 | bond must be commenced by recording in the clerk's office a  
15 | notice in substantially the following form:

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

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

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

27 |  
28 | DATED on ....., .....

29 |  
30 | Signed: ...(Contractor or Attorney)...

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

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38 most recent amendment thereto and shall certify to such service  
39 on the face of the notice and record the notice.

40 2. A claimant, except a laborer, who is not in privity  
41 with the contractor shall, before commencing or not later than  
42 45 days after commencing to furnish labor, services, or  
43 materials for the prosecution of the work, serve the contractor  
44 with a written notice that he or she intends to look to the bond  
45 for protection. A claimant who is not in privity with the  
46 contractor and who has not received payment for furnishing his  
47 or her labor, services, or materials shall serve a written  
48 notice of nonpayment on the contractor and a copy of the notice  
49 on the surety. The notice of nonpayment shall be under oath and  
50 served during the progress of the work or thereafter but may not  
51 be served earlier than 45 days after the first furnishing of  
52 labor, services, or materials by the claimant or later than 90  
53 days after the final furnishing of the labor, services, or  
54 materials by the claimant or, with respect to rental equipment,  
55 later than 90 days after the date that the rental equipment was  
56 last on the job site available for use. Any notice of nonpayment  
57 served by a claimant who is not in privity with the contractor  
58 which includes sums for retainage must specify the portion of  
59 the amount claimed for retainage. An action for the labor,  
60 services, or materials may not be instituted against the  
61 contractor or the surety unless the notice to the contractor and  
62 notice of nonpayment have been served, if required by this

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

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

97  
98 NOTICE OF NONPAYMENT  
99

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

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

103  
104 The undersigned claimant notifies you that:

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

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

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

117  
118 I declare that I have read the foregoing Notice of Nonpayment  
119 and that the facts stated in it are true to the best of my  
120 knowledge and belief.

121  
122 DATED on ....., .....

123  
124 ...(signature and address of claimant)...

125  
126 STATE OF FLORIDA  
127 COUNTY OF .....

128  
129 The foregoing instrument was sworn to (or affirmed) and  
130 subscribed before me by means of  physical presence or sworn to  
131 (or affirmed) by  online notarization this .... day of .....,  
132 ...(year)..., by ...(name of signatory)....

133  
134 ...(Signature of Notary Public - State of Florida)..  
135 ...(Print, Type, or Stamp Commissioned Name of Notary  
136 Public)...

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138 Personally Known ..... OR Produced Identification .....

139

140 Type of Identification Produced

141

142 (d) A person may not require a claimant to furnish a  
143 waiver that is different from the forms in paragraphs (b) and  
144 (c), unless the claimant has entered into a contract that  
145 requires the claimant to furnish a waiver that is different from  
146 the forms in paragraphs (b) and (c).

147 (f) Any provisions in a waiver which are ~~that is~~ not  
148 related to the waiver of a claim or a right to claim against a  
149 payment bond as provided in this subsection are unenforceable  
150 unless the claimant has otherwise agreed to those provisions in  
151 the contract ~~substantially similar to the forms in this~~  
152 ~~subsection is enforceable in accordance with its terms.~~

153 (12) Unless otherwise provided in this section, service of  
154 any document must be made in accordance with s. 713.18.

155 Section 2. Paragraph (c) of subsection (1) of section  
156 337.18, Florida Statutes, is amended, and subsection (6) is  
157 added to that section, to read:

158 337.18 Surety bonds for construction or maintenance  
159 contracts; requirement with respect to contract award; bond  
160 requirements; defaults; damage assessments.-

161 (1)

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162 (c) A claimant, except a laborer, who is not in privity  
163 with the contractor shall, before commencing or not later than  
164 90 days after commencing to furnish labor, materials, or  
165 supplies for the prosecution of the work, furnish the contractor  
166 with a notice that he or she intends to look to the bond for  
167 protection. A claimant who is not in privity with the contractor  
168 and who has not received payment for his or her labor,  
169 materials, or supplies shall deliver to the contractor and to  
170 the surety written notice of the performance of the labor or  
171 delivery of the materials or supplies and of the nonpayment. The  
172 notice of nonpayment may be served at any time during the  
173 progress of the work or thereafter but not before 45 days after  
174 the first furnishing of labor, services, or materials, and not  
175 later than 90 days after the final furnishing of the labor,  
176 services, or materials by the claimant or, with respect to  
177 rental equipment, not later than 90 days after the date that the  
178 rental equipment was last on the job site available for use. An  
179 action by a claimant, except a laborer, who is not in privity  
180 with the contractor for the labor, materials, or supplies may  
181 not be instituted against the contractor or the surety unless  
182 both notices have been given. Written notices required or  
183 permitted under this section must ~~may~~ be served in accordance  
184 with any manner provided in s. 713.18, and provisions for the  
185 waiver of a claim or a right to claim against a payment bond

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186 | contained in s. 713.235 apply to all contracts under this  
187 | section.

188 | (6) Unless otherwise provided in this section, service of  
189 | any document must be made in accordance with s. 713.18.

190 | Section 3. Subsections (4) and (8) of section 713.01,  
191 | Florida Statutes, are amended to read:

192 | 713.01 Definitions.—As used in this part, the term:

193 | (4) "Clerk's office" means the office of the clerk of the  
194 | circuit court of the county, or another office serving as the  
195 | county recorder as provided by law, in which the real property  
196 | is located.

197 | (8) "Contractor" means a person other than a materialman  
198 | or laborer who enters into a contract with the owner of real  
199 | property for improving it, or who takes over from a contractor  
200 | as so defined the entire remaining work under such contract. The  
201 | term "contractor" includes an architect, landscape architect, or  
202 | engineer who improves real property pursuant to a design-build  
203 | contract authorized by s. 489.103(16). The term also includes a  
204 | licensed general contractor or building contractor, as those  
205 | terms are defined in s. 489.105(3)(a) and (b), respectively, who  
206 | provides construction management services, which include  
207 | responsibility for scheduling and coordination in both  
208 | preconstruction and construction phases and for the successful,  
209 | timely, and economical completion of the construction project,  
210 | or who provides program management services, which include

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211 responsibility for schedule control, cost control, and  
212 coordination in providing or procuring planning, design, and  
213 construction.

214 Section 4. Section 713.09, Florida Statutes, is amended to  
215 read:

216 713.09 Single claim of lien.—A lienor may ~~is required to~~  
217 record only one claim of lien covering his or her entire demand  
218 against the real property when the amount demanded is for labor  
219 or services or material furnished for more than one improvement  
220 under the same direct contract or multiple direct contracts. The  
221 single claim of lien is sufficient even though the improvement  
222 is for one or more improvements located on separate lots,  
223 parcels, or tracts of land. If materials to be used on one or  
224 more improvements on separate lots, parcels, or tracts of land  
225 ~~under one direct contract~~ are delivered by a lienor to a place  
226 designated by the person with whom the materialman contracted,  
227 other than the site of the improvement, the delivery to the  
228 place designated is prima facie evidence of delivery to the site  
229 of the improvement and incorporation in the improvement. The  
230 single claim of lien may be limited to a part of multiple lots,  
231 parcels, or tracts of land and their improvements or may cover  
232 all of the lots, parcels, or tracts of land and improvements. If  
233 a ~~In each~~ claim of lien under this section is for multiple  
234 direct contracts, the owner under the direct contracts ~~contract~~

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235 must be the same person for all lots, parcels, or tracts of land  
236 against which a single claim of lien is recorded.

237 Section 5. Paragraph (b) of subsection (2) of section  
238 713.10, Florida Statutes, is amended, and subsection (4) is  
239 added to that section, to read:

240 713.10 Extent of liens.—

241 (2)

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

244 1. The lease, or a short form or a memorandum of the lease  
245 that contains the specific language in the lease prohibiting  
246 such liability, is recorded in the official records of the  
247 county where the premises are located before the recording of a  
248 notice of commencement for improvements to the premises and the  
249 terms of the lease expressly prohibit such liability; or

250 2. The terms of the lease expressly prohibit such  
251 liability, and a notice advising that leases for the rental of  
252 premises on a parcel of land prohibit such liability has been  
253 recorded in the official records of the county in which the  
254 parcel of land is located before the recording of a notice of  
255 commencement for improvements to the premises, and the notice  
256 includes the following:

257 a. The name of the lessor.

258 b. The legal description of the parcel of land to which  
259 the notice applies.

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260 c. The specific language contained in the various leases  
261 prohibiting such liability.

262 d. A statement that all or a majority of the leases  
263 entered into for premises on the parcel of land expressly  
264 prohibit such liability.

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

267

268 A notice that is consistent with subparagraph 2. effectively  
269 prohibits liens for improvements made by a lessee even if other  
270 leases for premises on the parcel do not expressly prohibit  
271 liens or if provisions of each lease restricting the application  
272 of liens are not identical.

273 (4) The interest of the lessor is not subject to liens for  
274 improvements made by the lessee when the lessee is a mobile home  
275 owner who is leasing a mobile home lot in a mobile home park  
276 from the lessor.

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

279 713.13 Notice of commencement.—

280 (1) (a) Except for an improvement that is exempt under  
281 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized  
282 agent before actually commencing to improve any real property,  
283 or recommencing completion of any improvement after default or  
284 abandonment, whether or not a project has a payment bond

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285 complying with s. 713.23, shall record a notice of commencement  
286 in the clerk's office and forthwith post either a certified copy  
287 thereof or a notarized statement that the notice of commencement  
288 has been filed for recording along with a copy thereof. The  
289 notice of commencement shall contain the following information:

290 1. A description sufficient for identification of the real  
291 property to be improved. The description should include the  
292 legal description of the property and also should include the  
293 street address and tax folio number of the property if available  
294 or, if there is no street address available, such additional  
295 information as will describe the physical location of the real  
296 property to be improved.

297 2. A general description of the improvement.

298 3. The name and address of the owner, the owner's interest  
299 in the site of the improvement, and the name and address of the  
300 fee simple titleholder, if other than such owner.

301 4. The name and address of the lessee, if the A lessee who  
302 contracts for the improvements as is an owner as defined in s.  
303 713.01 under s. 713.01(23) and must be listed as the owner  
304 together with a statement that the ownership interest is a  
305 leasehold interest.

306 5.4. The name and address of the contractor.

307 6.5. The name and address of the surety on the payment  
308 bond under s. 713.23, if any, and the amount of such bond.

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333 713, Florida Statutes, the following information is provided in  
334 this Notice of Commencement.

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

337 2. General description of improvement:.....

338 3.a. Owner: ...name and address....

339 b. Owner's phone number:.... ~~Owner information or Lessee~~  
340 ~~information if the Lessee contracted for the improvement:~~

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

342 ~~c.b.~~ Interest in property:.....

343 ~~d.e.~~ Name and address of fee simple titleholder (if  
344 different from Owner listed above):.....

345 4.a. Lessee, if the lessee contracted for the improvement:  
346 ...(name and address)....

347 b. Lessee's phone number:.....

348 5.a. Contractor: ...(name and address)....

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

350 6.5. Surety (if applicable, a copy of the payment bond is  
351 attached):

352 a. Name and address:.....

353 b. Phone number:.....

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

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

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

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357 ~~8.7.~~ Persons within the State of Florida designated by  
358 Owner upon whom notices or other documents may be served as  
359 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida  
360 Statutes:

361 a. Name and address:.....

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

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

367 b. Phone number of person or entity designated by  
368 owner:.....

369 ~~10.9.~~ Expiration date of notice of commencement (the  
370 expiration date will be 1 year after ~~from~~ the date of recording  
371 unless a different date is specified).....

372  
373 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE  
374 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER  
375 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA  
376 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS  
377 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND  
378 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU  
379 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN  
380 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF  
381 COMMENCEMENT.

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405

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

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

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

...(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 7. Subsections (1), (3), and (4) of section  
713.132, Florida Statutes, are amended to read:

713.132 Notice of termination.-

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

409 (a) The same information as the notice of commencement;

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

413 (c) A statement of the date as of which the notice of  
414 commencement is terminated, which date may not be earlier than  
415 30 days after the notice of termination is recorded;

416 (d) A statement specifying that the notice applies to all  
417 the real property subject to the notice of commencement or  
418 specifying the portion of such real property to which it  
419 applies;

420 (e) A statement that all lienors have been paid in full;  
421 and

422 (f) A statement that the owner has, before recording the  
423 notice of termination, served a copy of the notice of  
424 termination ~~on the contractor and~~ on each lienor who has a  
425 direct contract with the owner or who has timely served a notice  
426 to owner, and a statement that the owner will serve a copy of  
427 the notice of termination on each lienor who timely serves a  
428 notice to owner after the notice of termination has been  
429 recorded. The owner is not required to serve a copy of the  
430 notice of termination on any lienor who has executed a waiver

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431 and release of lien upon final payment in accordance with s.  
432 713.20.

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

437 (4) If an owner or a contractor, by fraud or collusion,  
438 knowingly makes any fraudulent statement or affidavit in a  
439 notice of termination or any accompanying affidavit, the owner  
440 and the contractor, or either of them, ~~as the case may be,~~ is  
441 liable to any lienor who suffers damages as a result of the  
442 filing of the fraudulent notice of termination,† and any such  
443 lienor has a right of action for damages ~~occasioned thereby.~~

444 (5)~~(4)~~ A notice of termination must be served before  
445 recording on each lienor who has a direct contract with the  
446 owner and on each lienor who has timely and properly served a  
447 notice to owner in accordance with this part before the  
448 recording of the notice of termination. A notice of termination  
449 must be recorded in the official records of the county in which  
450 the improvement is located. If properly served before recording  
451 in accordance with this subsection, the notice of termination  
452 terminates the period of effectiveness of the notice of  
453 commencement 30 days after the notice of termination is recorded  
454 in the official records ~~is effective to terminate the notice of~~  
455 ~~commencement at the later of 30 days after recording of the~~

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456 ~~notice of termination or a later the~~ date stated in the notice  
457 of termination as the date on which the notice of commencement  
458 is terminated. However, if a lienor who began work under the  
459 notice of commencement before its termination lacks a direct  
460 contract with the owner and timely serves his or her notice to  
461 owner after the notice of termination has been recorded, the  
462 owner must serve a copy of the notice of termination upon such  
463 lienor, and the termination of the notice of commencement as to  
464 that lienor is effective 30 days after service of the notice of  
465 termination ~~if the notice of termination has been served~~  
466 ~~pursuant to paragraph (1) (f) on the contractor and on each~~  
467 ~~lienor who has a direct contract with the owner or who has~~  
468 ~~served a notice to owner.~~

469 Section 8. Section 713.18, Florida Statutes, is amended to  
470 read:

471 713.18 Manner of serving documents ~~notices and other~~  
472 ~~instruments.~~

473 (1) Unless otherwise specifically provided by law, service  
474 of any document ~~notices, claims of lien, affidavits,~~  
475 ~~assignments, and other instruments~~ permitted or required under  
476 this part, s. 255.05, or s. 337.18, or copies thereof when so  
477 permitted or required, ~~unless otherwise specifically provided in~~  
478 ~~this part,~~ must be made by one of the following methods:

479 (a) By hand ~~actual~~ delivery to the person to be served; if  
480 a partnership, to one of the partners; if a corporation, to an

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481 officer, director, managing agent, or business agent; or, if a  
482 limited liability company, to a member or manager.

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

487 (c) By posting on the site of the improvement if service  
488 as provided by paragraph (a) or paragraph (b) cannot be  
489 accomplished.

490 (2) Notwithstanding subsection (1), service of a notice to  
491 owner or a preliminary notice to contractor under this part, s.  
492 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date  
493 of mailing and the requirements for service under this section  
494 have been satisfied if:

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

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

501 (c)1. The person who served the notice maintains a  
502 registered or certified mail log that shows the registered or  
503 certified mail number issued by the United States Postal  
504 Service, the name and address of the person served, and the date

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505 stamp of the United States Postal Service confirming the date of  
506 mailing; or

507 2. The person who served the notice maintains ~~electronic~~  
508 tracking records approved or generated by the United States  
509 Postal Service containing the postal tracking number, ~~the name~~  
510 ~~and address of the person served,~~ and verification of the date  
511 of receipt by the United States Postal Service.

512 (3) (a) Notwithstanding subsection (1), service of a  
513 document under an instrument pursuant to this section is  
514 effective on the date of mailing or shipping, and the  
515 requirements for service under this section have been satisfied,  
516 ~~the instrument if it:~~

517 1. The document is sent to the last address shown in the  
518 notice of commencement or any amendment thereto or, in the  
519 absence of a notice of commencement, to the last address shown  
520 in the building permit application, or to the last known address  
521 of the person to be served. ~~and~~

522 2. The document is returned as being "refused," "moved,  
523 not forwardable," or "unclaimed," or is otherwise not delivered  
524 or deliverable through no fault of the person serving the  
525 document item.

526 (b) If the address shown in the notice of commencement or  
527 any amendment thereto ~~to the notice of commencement, or, in the~~  
528 ~~absence of a notice of commencement, in the building permit~~  
529 ~~application,~~ is incomplete for purposes of mailing or delivery,

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530 the person serving the document ~~item~~ may complete the address  
531 and properly format it according to United States Postal Service  
532 addressing standards using information obtained from the  
533 property appraiser or another public record without affecting  
534 the validity of service under this section.

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

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

540 713.20 Waiver or release of liens.—

541 (6) A person may not require a lienor to furnish a lien  
542 waiver or release of lien that is different from the forms in  
543 subsections (4) and (5) ~~subsection (4) or subsection (5)~~, unless  
544 the lienor has entered into a contract that requires the lienor  
545 to furnish a waiver or release that is different from the forms  
546 in subsections (4) and (5).

547 (8) Any provisions in a lien waiver or lien release which  
548 are that is not related to the waiver or release of a lien or  
549 the right to claim a lien as provided in this section are  
550 unenforceable, unless the lienor has otherwise agreed to those  
551 provisions in the contract ~~substantially similar to the forms in~~  
552 ~~subsections (4) and (5) is enforceable in accordance with the~~  
553 ~~terms of the lien waiver or lien release.~~

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554 Section 10. Section 713.21, Florida Statutes, is amended  
555 to read:

556 713.21 Discharge of lien.—A lien properly perfected under  
557 this chapter may be discharged, or released in whole or in part,  
558 by any of the following methods:

559 (1) By entering satisfaction of the lien upon the margin  
560 of the record thereof in the clerk's office when not otherwise  
561 prohibited by law. This satisfaction shall be signed by the  
562 lienor, the lienor's agent or attorney and attested by said  
563 clerk. Any person who executes a claim of lien has ~~shall have~~  
564 authority to execute a satisfaction in the absence of actual  
565 notice of lack of authority to any person relying on the same.

566 (2) By the satisfaction or release of the lienor, duly  
567 acknowledged and recorded in the clerk's office. The  
568 satisfaction or release must include the lienor's notarized  
569 signature and set forth the official records' reference numbers  
570 and recording date affixed by the recording office on the  
571 subject lien. Any person who executes a claim of lien has ~~shall~~  
572 ~~have~~ authority to execute a satisfaction or release in the  
573 absence of actual notice of lack of authority to any person  
574 relying on the same.

575 (3) By failure to begin an action to enforce the lien  
576 within the time prescribed in this part.

577 (4) By an order of the circuit court of the county where  
578 the property is located, as provided in this subsection. Upon

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579 filing a complaint therefor by any interested party the clerk  
580 shall issue a summons to the lienor to show cause within 20 days  
581 why his or her lien should not be enforced by action or vacated  
582 and canceled of record. Upon failure of the lienor to show cause  
583 why his or her lien should not be enforced or the lienor's  
584 failure to commence such action before the return date of the  
585 summons the court shall forthwith order cancellation of the  
586 lien.

587 (5) By recording in the clerk's office the original or a  
588 certified copy of a judgment or decree of a court of competent  
589 jurisdiction showing a final determination of the action.

590 Section 11. Paragraph (d) of subsection (1) of section  
591 713.23, Florida Statutes, is amended to read:

592 713.23 Payment bond.—

593 (1)

594 (d) In addition, a lienor who has not received payment for  
595 furnishing his or her labor, services, or materials must, as a  
596 condition precedent to recovery under the bond, serve a written  
597 notice of nonpayment on ~~to~~ the contractor and a copy of the  
598 notice on the surety. The notice must be under oath and served  
599 during the progress of the work or thereafter, but may not be  
600 served later than 90 days after the final furnishing of labor,  
601 services, or materials by the lienor, or, with respect to rental  
602 equipment, later than 90 days after the date the rental  
603 equipment was on the job site and available for use. A notice of

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604 nonpayment that includes sums for retainage must specify the  
605 portion of the amount claimed for retainage. The required notice  
606 satisfies this condition precedent with respect to the payment  
607 described in the notice of nonpayment, including unpaid finance  
608 charges due under the lienor's contract, and with respect to any  
609 other payments which become due to the lienor after the date of  
610 the notice of nonpayment. The time period for serving a notice  
611 of nonpayment is ~~shall be~~ measured from the last day of  
612 furnishing labor, services, or materials by the lienor and may  
613 not be measured by other standards, such as the issuance of a  
614 certificate of occupancy or the issuance of a certificate of  
615 substantial completion. The failure of a lienor to receive  
616 retainage sums not in excess of 10 percent of the value of  
617 labor, services, or materials furnished by the lienor is not  
618 considered a nonpayment requiring the service of the notice  
619 provided under this paragraph. If the payment bond is not  
620 recorded before commencement of construction, the time period  
621 for the lienor to serve a notice of nonpayment may at the option  
622 of the lienor be calculated from the date specified in this  
623 section or the date the lienor is served a copy of the bond.  
624 However, the limitation period for commencement of an action on  
625 the payment bond as established in paragraph (e) may not be  
626 expanded. The negligent inclusion or omission of any information  
627 in the notice of nonpayment that has not prejudiced the  
628 contractor or surety does not constitute a default that operates

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629 to defeat an otherwise valid bond claim. A lienor who serves a  
630 fraudulent notice of nonpayment forfeits his or her rights under  
631 the bond. A notice of nonpayment is fraudulent if the lienor has  
632 willfully exaggerated the amount unpaid, willfully included a  
633 claim for work not performed or materials not furnished for the  
634 subject improvement, or prepared the notice with such willful  
635 and gross negligence as to amount to a willful exaggeration.  
636 However, a minor mistake or error in a notice of nonpayment, or  
637 a good faith dispute as to the amount unpaid, does not  
638 constitute a willful exaggeration that operates to defeat an  
639 otherwise valid claim against the bond. The service of a  
640 fraudulent notice of nonpayment is a complete defense to the  
641 lienor's claim against the bond. The notice under this paragraph  
642 must include the following information, current as of the date  
643 of the notice, and must be in substantially the following form:

## NOTICE OF NONPAYMENT

644  
645  
646  
647 To ...(name of contractor and address)...

648  
649 ...(name of surety and address)...

650  
651 The undersigned lienor notifies you that:

652 1. The lienor has furnished ...(describe labor, services,  
653 or materials)... for the improvement of the real property

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654 identified as ...(property description).... The corresponding  
655 amount unpaid to date is \$....., of which \$.... is unpaid  
656 retainage.

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

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

664  
665 I declare that I have read the foregoing Notice of Nonpayment  
666 and that the facts stated in it are true to the best of my  
667 knowledge and belief.

668  
669 DATED on ....., .....

670  
671 ...(signature and address of lienor)...

672  
673 STATE OF FLORIDA  
674 COUNTY OF.....

675  
676 The foregoing instrument was sworn to (or affirmed) and  
677 subscribed before me by means of  physical presence or sworn to

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678 (or affirmed) by  online notarization, this .... day of .....  
 679 ...(year)...., by ...(name of signatory)....  
 680 ...(Signature of Notary Public - State of Florida)...  
 681 ...(Print, Type, or Stamp Commissioned Name of Notary  
 682 Public)...

683  
684 Personally Known ..... OR Produced Identification .....

685  
686 Type of Identification Produced.....

687 Section 12. Subsections (3) and (5) of section 713.235,  
688 Florida Statutes, are amended to read:

689 713.235 Waivers of right to claim against payment bond;  
690 forms.-

691 (3) A person may not require a claimant to furnish a  
 692 waiver that is different from the forms in subsections (1) and  
 693 (2), unless the claimant has entered into a contract that  
 694 requires the claimant to furnish a waiver that is different from  
 695 the forms in subsections (1) and (2).

696 (5) Any provisions in a waiver which are that is not  
 697 related to the waiver of a claim or a right to claim against the  
 698 payment bond as provided in this section are unenforceable,  
 699 unless the claimant has otherwise agreed to those provisions in  
 700 the claimant's contract substantially similar to the forms in  
 701 this section is enforceable in accordance with its terms.

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702 Section 13. Section 713.29, Florida Statutes, is amended  
703 to read:

704 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to  
705 enforce a lien, including a lien that has been transferred to  
706 security, or to enforce a claim against a bond under this part,  
707 the prevailing party is entitled to recover a reasonable fee for  
708 the services of her or his attorney for trial and appeal or for  
709 arbitration, in an amount to be determined by the court, which  
710 fee must be taxed as part of the prevailing party's costs, as  
711 allowed in equitable actions.

712 Section 14. This act shall take effect July 1, 2021.

713

714 -----

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

716 Remove everything before the enacting clause and insert:

717 A bill to be entitled

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

719 255.05, F.S.; requiring that a copy of a notice of

720 nonpayment be served on the surety; revising the

721 process for notarizing a notice of nonpayment;

722 requiring certain waivers to be in specified forms

723 unless the claimant's contract requires the use of

724 other forms; providing that specified provisions in

725 certain waivers are unenforceable; providing an

726 exception; amending s. 337.18, F.S.; providing that

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727 certain waivers apply to certain contracts; requiring  
728 that service of documents be made in a specified  
729 manner; amending s. 713.01, F.S.; revising  
730 definitions; amending s. 713.09, F.S.; authorizing a  
731 lienor to record one claim of lien for multiple direct  
732 contracts; amending s. 713.10, F.S.; revising the  
733 extent of certain liens; amending s. 713.13, F.S.;  
734 revising information to be included in a notice of  
735 commencement; revising the process for notarizing a  
736 notice of commencement; amending s. 713.132, F.S.;  
737 revising requirements for a notice of termination;  
738 amending s. 713.18, F.S.; requiring that service of  
739 documents relating to construction bonds be made in a  
740 specified manner; requiring that specified waivers and  
741 releases be in a certain form; making technical  
742 changes; amending s. 713.20, F.S.; requiring certain  
743 waivers or releases to be in specified forms unless  
744 the lienor's contract requires the use of other forms;  
745 providing that specified provisions in certain waivers  
746 or releases are unenforceable; providing an exception;  
747 amending s. 713.21, F.S.; authorizing the full or  
748 partial release of a lien under specified conditions;  
749 amending s. 713.23, F.S.; requiring that a copy of a  
750 notice of nonpayment be served on the surety; revising  
751 the process for notarizing a notice of nonpayment

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752 under a payment bond; amending s. 713.235, F.S.;

753 requiring certain waivers to be in specified forms

754 unless the claimant's contract requires the use of

755 other forms; providing that specified provisions in

756 certain waivers are unenforceable; providing an

757 exception; amending s. 713.29, F.S.; authorizing

758 attorney fees in actions to enforce a lien that has

759 been transferred to security; providing an effective

760 date.

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