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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/03/2022 | . | |
| | . | |
| | . | |
| | . | |

The Committee on Banking and Insurance (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) and subsections
(6) and (7) of section 255.05, Florida Statutes, are amended,
and a new subsection (11) 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,



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11 services, or materials on a project, a contractor or the
12 contractor's agent or attorney may elect to shorten the time
13 within which an action to enforce any claim against a payment
14 bond must be commenced by recording in the clerk's office a
15 notice in substantially the following form:

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



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40 2. A claimant, except a laborer, who is not in privity with
41 the contractor shall, before commencing or not later than 45
42 days after commencing to furnish labor, services, or materials
43 for the prosecution of the work, serve the contractor with a
44 written notice that he or she intends to look to the bond for
45 protection. If the payment bond is not recorded before the
46 commencement of work or before the recommencement of work after
47 a default or abandonment, if applicable, as required by s.
48 255.05(1), the claimant may serve the contractor with such
49 written notice up to 45 days after the date that the claimant is
50 served with a copy of the bond. A claimant who is not in privity
51 with the contractor and who has not received payment for
52 furnishing his or her labor, services, or materials shall serve
53 a written notice of nonpayment on the contractor and a copy of
54 the notice on the surety. The notice of nonpayment must ~~shall~~ be
55 under oath and served during the progress of the work or
56 thereafter but may not be served earlier than 30 ~~45~~ days after
57 the first furnishing of labor, services, or materials by the
58 claimant or later than 90 days after the final furnishing of the
59 labor, services, or materials by the claimant or, with respect
60 to rental equipment, later than 90 days after the date that the
61 rental equipment was last on the ~~job~~ site of the improvement
62 available for use. Any notice of nonpayment served by a claimant
63 who is not in privity with the contractor which includes sums
64 for retainage must specify the portion of the amount claimed for
65 retainage. An action for the labor, services, or materials may
66 not be instituted against the contractor or the surety unless
67 the notice to the contractor and notice of nonpayment have been
68 served, if required by this section. Notices required or



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



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98 fraudulent notice of nonpayment is a complete defense to the
99 claimant's claim against the bond. The notice of nonpayment
100 under this subparagraph must include the following information,
101 current as of the date of the notice, and must be in
102 substantially the following form:

103
104 NOTICE OF NONPAYMENT

105
106 To: ...(name of contractor and address)...

107
108 ...(name of surety and address)...

109
110 The undersigned claimant notifies you that:

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

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

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

123
124 I declare that I have read the foregoing Notice of Nonpayment
125 and that the facts stated in it are true to the best of my
126 knowledge and belief.



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127

128 DATED on,

129

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

131

132 STATE OF FLORIDA

133 COUNTY OF

134

135 The foregoing instrument was sworn to (or affirmed) and
136 subscribed before me by means of physical presence or sworn to
137 (or affirmed) by online notarization this day of,
138 ... (year) ..., by ... (name of signatory)

139

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

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

143

144 Personally Known OR Produced Identification

145

146 Type of Identification Produced.....

147

148 (6) All payment bond forms used by a public owner and all
149 payment bonds executed pursuant to this section by a surety
150 shall make reference to this section by number, shall contain
151 reference to the notice and time limitation provisions in
152 subsections (2) and (9) ~~(10)~~, and shall comply with the
153 requirements of paragraph (1) (a).

154 ~~(7) In lieu of the bond required by this section, a~~
155 ~~contractor may file with the state, county, city, or other~~



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156 ~~political authority an alternative form of security in the form~~
157 ~~of cash, a money order, a certified check, a cashier's check, an~~
158 ~~irrevocable letter of credit, or a security of a type listed in~~
159 ~~part II of chapter 625. Any such alternative form of security~~
160 ~~shall be for the same purpose and be subject to the same~~
161 ~~conditions as those applicable to the bond required by this~~
162 ~~section. The determination of the value of an alternative form~~
163 ~~of security shall be made by the appropriate state, county,~~
164 ~~city, or other political subdivision.~~

165 (11) Unless otherwise provided in this section, service of
166 any document must be made in accordance with s. 713.18.

167 Section 2. Paragraph (c) of subsection (1) of section
168 337.18, Florida Statutes, is amended, and subsection (6) is
169 added to that section, to read:

170 337.18 Surety bonds for construction or maintenance
171 contracts; requirement with respect to contract award; bond
172 requirements; defaults; damage assessments.-

173 (1)

174 (c) A claimant, except a laborer, who is not in privity
175 with the contractor shall, before commencing or not later than
176 90 days after commencing to furnish labor, materials, or
177 supplies for the prosecution of the work, furnish the contractor
178 with a notice that he or she intends to look to the bond for
179 protection. A claimant who is not in privity with the contractor
180 and who has not received payment for his or her labor,
181 materials, or supplies shall deliver to the contractor and to
182 the surety written notice of the performance of the labor or
183 delivery of the materials or supplies and of the nonpayment. The
184 notice of nonpayment may be served at any time during the



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185 progress of the work or thereafter but not before 30 ~~45~~ days
186 after the first furnishing of labor, services, or materials, and
187 not later than 90 days after the final furnishing of the labor,
188 services, or materials by the claimant or, with respect to
189 rental equipment, not later than 90 days after the date that the
190 rental equipment was last on the ~~job~~ site of the improvement
191 available for use. An action by a claimant, except a laborer,
192 who is not in privity with the contractor for the labor,
193 materials, or supplies may not be instituted against the
194 contractor or the surety unless both notices have been given.
195 Written notices required or permitted under this section must
196 ~~may~~ be served in accordance with ~~any manner provided in~~ s.
197 713.18.

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

200 Section 3. Present subsections (13) through (27) and
201 subsections (28) and (29) of section 713.01, Florida Statutes,
202 are redesignated as subsections (14) through (28) and
203 subsections (30) and (31), respectively, new subsections (13)
204 and (29) are added to that section, and subsections (4), (8),
205 and (12) of that section are amended, to read:

206 713.01 Definitions.—As used in this part, the term:

207 (4) "Clerk's office" means the office of the clerk of the
208 circuit court of the county, or another office serving as the
209 county recorder as provided by law, in which the real property
210 is located.

211 (8) "Contractor" means a person other than a materialman or
212 laborer who enters into a contract with the owner of real
213 property for improving it, or who takes over from a contractor



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214 as so defined the entire remaining work under such contract. The
215 term "contractor" includes an architect, landscape architect, or
216 engineer who improves real property pursuant to a design-build
217 contract authorized by s. 489.103(16). The term also includes a
218 licensed general contractor or building contractor, as those
219 terms are defined in s. 489.105(3)(a) and (b), respectively, who
220 provides construction management services, which include
221 scheduling and coordinating both preconstruction and
222 construction phases for the successful, timely, and economical
223 completion of the construction project or who provides program
224 management services, which include schedule control, cost
225 control, and coordination in providing or procuring planning,
226 design, and construction.

227 (12) "Final furnishing" means the last date that the lienor
228 furnishes labor, services, or materials. Such date may not be
229 measured by other standards, such as the issuance of a
230 certificate of occupancy or the issuance of a certificate of
231 final completion, and does not include the correction of
232 deficiencies in the lienor's previously performed work or
233 materials supplied. With respect to rental equipment, the term
234 means the date that the rental equipment was last on the ~~job~~
235 site of the improvement and available for use. With respect to
236 specially fabricated materials, the term means the date that the
237 last portion of the specially fabricated materials is delivered
238 to the site of the improvement, or if any portion of the
239 specially fabricated materials is not delivered to the site of
240 the improvement by no fault of the lienor, the term means 90
241 days after the date the lienor completes the fabrication or 90
242 days before the expiration of the notice of commencement,



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243 whichever is earlier.

244 (13) "Finance charge" means a contractually specified
245 additional amount to be paid by the obligor on any balance that
246 remains unpaid by the due date set forth in the credit agreement
247 or other contract.

248 (29) "Specially fabricated materials" means materials
249 designed and fabricated for use in a particular improvement that
250 are not generally suited for or readily adaptable for use in a
251 similar improvement.

252 Section 4. Section 713.011, Florida Statutes, is created to
253 read:

254 713.011 Computation of time.—

255 (1) In computing any time period for recording a document
256 or filing an action under this part, if the last day of the time
257 period is a Saturday, Sunday, legal holiday, or any day observed
258 as a holiday by the clerk's office, the time period is extended
259 to the end of the next business day.

260 (2) During a state of emergency declared under chapter 252
261 during which the clerk's office is closed, the time periods for
262 recording a document or filing an action under this part are
263 tolled. Upon the expiration of the declared state of emergency,
264 the number of days that were remaining for any such time period
265 on the first day of the declared state of emergency commences on
266 the first business day after the expiration of the declared
267 state of emergency.

268 (3) For purposes of this section, a federal, state, or
269 local governmental order closing or directing the closure of the
270 clerk's office for any reason constitutes a state of emergency
271 and a clerk's office is considered closed if it is not accepting



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272 documents for recording or filing by any means.

273 Section 5. Paragraph (b) of subsection (2) of section
274 713.10, Florida Statutes, is amended, and subsection (4) is
275 added to that section, to read:

276 713.10 Extent of liens.—

277 (2)

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

280 1. The lease, or a short form or a memorandum of the lease
281 that contains the specific language in the lease prohibiting
282 such liability, is recorded in the official records of the
283 county where the premises are located before the recording of a
284 notice of commencement for improvements to the premises and the
285 terms of the lease expressly prohibit such liability; or

286 2. The terms of the lease expressly prohibit such
287 liability, and a notice advising that leases for the rental of
288 premises on a parcel of land prohibit such liability has been
289 recorded in the official records of the county in which the
290 parcel of land is located before the recording of a notice of
291 commencement for improvements to the premises, and the notice
292 includes the following:

293 a. The name of the lessor.

294 b. The legal description of the parcel of land to which the
295 notice applies.

296 c. The specific language contained in the various leases
297 prohibiting such liability.

298 d. A statement that all or a majority of the leases entered
299 into for premises on the parcel of land expressly prohibit such
300 liability.



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

303
304 A notice that is consistent with subparagraph 2. effectively
305 prohibits liens for improvements made by a lessee even if other
306 leases for premises on the parcel do not expressly prohibit
307 liens or if provisions of each lease restricting the application
308 of liens are not identical.

309 (4) The interest of the lessor is not subject to liens for
310 improvements made by the lessee when the lessee is a mobile home
311 owner who is leasing a mobile home lot in a mobile home park
312 from the lessor.

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

315 713.13 Notice of commencement.—

316 (1) (a) Except for an improvement that is exempt under
317 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
318 agent before actually commencing to improve any real property,
319 or recommencing completion of any improvement after default or
320 abandonment, whether or not a project has a payment bond
321 complying with s. 713.23, shall record a notice of commencement
322 in the clerk's office and ~~forthwith~~ post either a certified copy
323 thereof or a notarized statement that the notice of commencement
324 has been filed for recording along with a copy thereof. The
325 notice of commencement shall contain all of the following
326 information:

327 1. A description sufficient for identification of the real
328 property to be improved. The description should include the
329 legal description of the property and also should include the



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330 street address and tax folio number of the property if available
331 or, if there is no street address available, such additional
332 information as will describe the physical location of the real
333 property to be improved.

334 2. A general description of the improvement.

335 3. The name and address of the owner, the owner's interest
336 in the site of the improvement, and the name and address of the
337 fee simple titleholder, if other than such owner. A lessee who
338 contracts for the improvements is an owner as defined under s.
339 713.01 ~~s. 713.01(23)~~ and must be listed as the owner together
340 with a statement that the ownership interest is a leasehold
341 interest.

342 4. The name and address of the contractor.

343 5. The name and address of the surety on the payment bond
344 under s. 713.23, if any, and the amount of such bond.

345 6. The name and address of any person making a loan for the
346 construction of the improvements.

347 7. The name and address within the state of a person other
348 than himself or herself who may be designated by the owner as
349 the person upon whom notices or other documents may be served
350 under this part; and service upon the person so designated
351 constitutes service upon the owner.

352 (d) A notice of commencement must be in substantially the
353 following form:

354
355 Permit No..... Tax Folio No.....

356 NOTICE OF COMMENCEMENT

357 State of....

358 County of....



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

1. Description of property: ...(legal description of the property, and street address if available)....
2. General description of improvement:.....
3. Owner information or Lessee information if the Lessee contracted for the improvement:
 - a. Name and address:.....
 - b. Interest in property:.....
 - c. Name and address of fee simple titleholder (if different from Owner listed above):.....
- 4.a. Contractor: ...(name and address)....
 - b. Contractor's phone number:.....
5. Surety (if applicable, a copy of the payment bond is attached):
 - a. Name and address:.....
 - b. Phone number:.....
 - c. Amount of bond: \$.....
- 6.a. Lender: ...(name and address)....
 - b. Lender's phone number:.....
7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:
 - a. Name and address:.....
 - b. Phone numbers of designated persons:.....
 - 8.a. In addition to himself or herself, Owner designates



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388 of to receive a copy of the Lienor's
389 Notice as provided in Section 713.13(1)(b), Florida Statutes.

390 b. Phone number of person or entity designated by
391 owner:.....

392 9. Expiration date of notice of commencement (the
393 expiration date will be 1 year after ~~from~~ the date of recording
394 unless a different date is specified).....

395
396 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
397 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
398 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
399 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
400 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
401 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
402 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
403 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
404 COMMENCEMENT.

405
406 ...(Signature of Owner or Lessee, or Owner's or Lessee's
407 Authorized Officer/Director/Partner/Manager)...

408
409 ...(Signatory's Title/Office)...

410
411 The foregoing instrument was acknowledged before me by means of
412 physical presence or acknowledged before me by means of
413 online notarization, this day of, ...(year)...., by
414 ...(name of person)... as ...(type of authority, . . . e.g.
415 officer, trustee, attorney in fact)... for ...(name of party on
416 behalf of whom instrument was executed)....



417
418 ... (Signature of Notary Public - State of Florida) ...
419
420 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
421

422 Personally Known OR Produced Identification

423
424 Type of Identification Produced.....

425 Section 7. Subsections (1), (3), and (4) of section
426 713.132, Florida Statutes, are amended to read:

427 713.132 Notice of termination.—

428 (1) An owner may terminate the period of effectiveness of a
429 notice of commencement by executing, swearing to, and recording
430 a notice of termination that contains all of the following:

431 (a) The same information as the notice of commencement.†

432 (b) The official records' ~~recording office document book~~
433 ~~and page~~ reference numbers and recording date affixed by the
434 recording office on ~~of~~ the recorded notice of commencement.†

435 (c) A statement of the date as of which the notice of
436 commencement is terminated, which date may not be earlier than
437 30 days after the notice of termination is recorded.†

438 (d) A statement specifying that the notice applies to all
439 the real property subject to the notice of commencement or
440 specifying the portion of such real property to which it
441 applies.†

442 (e) A statement that all lienors have been paid in full.†
443 ~~and~~

444 (f) A statement that the owner has, before recording the
445 notice of termination, served a copy of the notice of



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446 ~~termination on the contractor and~~ on each lienor who has a
447 direct contract with the owner or who has timely served a notice
448 to owner, and a statement that the owner will serve a copy of
449 the notice of termination on each lienor who timely serves a
450 notice to owner after the notice of termination has been
451 recorded. The owner is not required to serve a copy of the
452 notice of termination on any lienor who has executed a waiver
453 and release of lien upon final payment in accordance with s.
454 713.20.

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

459 (4) If an owner or a contractor, by fraud or collusion,
460 knowingly makes any fraudulent statement or affidavit in a
461 notice of termination or any accompanying affidavit, the owner
462 and the contractor, or either of them, ~~as the case may be,~~ is
463 liable to any lienor who suffers damages as a result of the
464 filing of the fraudulent notice of termination, ~~and~~ and any such
465 lienor has a right of action for damages ~~occasioned thereby.~~

466 (5) ~~(4)~~ A notice of termination must be served before
467 recording on each lienor who has a direct contract with the
468 owner and on each lienor who has timely and properly served a
469 notice to owner in accordance with this part before the
470 recording of the notice of termination. A notice of termination
471 must be recorded in the official records of the county in which
472 the improvement is located. If properly served before recording
473 in accordance with this subsection, the notice of termination
474 terminates the period of effectiveness of the notice of



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475 commencement 30 days after the notice of termination is recorded
476 in the official records is effective to terminate the notice of
477 commencement at the later of 30 days after recording of the
478 notice of termination or a later the date stated in the notice
479 of termination as the date on which the notice of commencement
480 is terminated. However, if a lienor who began work under the
481 notice of commencement before its termination lacks a direct
482 contract with the owner and timely serves his or her notice to
483 owner after the notice of termination has been recorded, the
484 owner must serve a copy of the notice of termination upon such
485 lienor, and the termination of the notice of commencement as to
486 that lienor is effective 30 days after service of the notice of
487 termination, if the notice of termination has been served
488 pursuant to paragraph (1)(f) on the contractor and on each
489 lienor who has a direct contract with the owner or who has
490 served a notice to owner.

491 Section 8. Subsections (1) and (3) of section 713.135,
492 Florida Statutes, are amended to read:

493 713.135 Notice of commencement and applicability of lien.-

494 (1) When a any person applies for a building permit, the
495 authority issuing such permit shall:

496 (a) Print on the face of each permit card in no less than
497 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
498 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
499 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
500 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
501 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
502 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
503 COMMENCEMENT."



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504 (b) Provide the applicant and the owner of the real
505 property upon which improvements are to be constructed with a
506 printed statement stating that the right, title, and interest of
507 the person who has contracted for the improvement may be subject
508 to attachment under the Construction Lien Law. The Department of
509 Business and Professional Regulation shall furnish, for
510 distribution, the statement described in this paragraph, and the
511 statement must be a summary of the Construction Lien Law and
512 must include an explanation of the provisions of the
513 Construction Lien Law relating to the recording, and the posting
514 of copies, of notices of commencement and a statement
515 encouraging the owner to record a notice of commencement and
516 post a copy of the notice of commencement in accordance with s.
517 713.13. The statement must also contain an explanation of the
518 owner's rights if a lienor fails to furnish the owner with a
519 notice as provided in s. 713.06(2) and an explanation of the
520 owner's rights as provided in s. 713.22. The authority that
521 issues the building permit must obtain from the Department of
522 Business and Professional Regulation the statement required by
523 this paragraph and must mail, deliver by electronic mail or
524 other electronic format or facsimile, or personally deliver that
525 statement to the owner or, in a case in which the owner is
526 required to personally appear to obtain the permit, provide that
527 statement to any owner making improvements to real property
528 consisting of a single or multiple family dwelling up to and
529 including four units. However, the failure by the authorities to
530 provide the summary does not subject the issuing authority to
531 liability.

532 (c) In addition to providing the owner with the statement



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533 as required by paragraph (b), inform each applicant who is not
534 the person whose right, title, and interest is subject to
535 attachment that, as a condition to the issuance of a building
536 permit, the applicant must promise in good faith that the
537 statement will be delivered to the person whose property is
538 subject to attachment.

539 (d) Furnish to the applicant two or more copies of a form
540 of notice of commencement conforming with s. 713.13.

541 (e) Require ~~If the direct contract is greater than \$2,500,~~
542 the applicant to shall file with the issuing authority before
543 ~~prior to~~ the first inspection ~~either a certified copy of the~~
544 ~~recorded~~ notice of commencement if the direct contract is
545 greater than \$2,500. For purposes of this paragraph, the term
546 "copy of the notice of commencement" means a certified copy of
547 the recorded notice of commencement, or a notarized statement
548 that the notice of commencement has been filed for recording,
549 along with a copy thereof, or the clerk's office official
550 records identifying information that includes the instrument
551 number for the notice of commencement or the number and page of
552 book where the notice of commencement is recorded, as identified
553 by the clerk.

554 1. In the absence of the filing of a ~~certified~~ copy of the
555 ~~recorded~~ notice of commencement, the issuing authority or a
556 private provider performing inspection services may not perform
557 or approve subsequent inspections until the applicant files by
558 mail, facsimile, hand delivery, or any other means such
559 ~~certified~~ copy with the issuing authority.

560 2. The ~~certified~~ copy of the notice of commencement must
561 contain the name and address of the owner, the name and address



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562 of the contractor, and the location or address of the property
563 being improved. The issuing authority shall verify that the name
564 and address of the owner, the name of the contractor, and the
565 location or address of the property being improved which is
566 contained in the ~~certified~~ copy of the notice of commencement is
567 consistent with the information in the building permit
568 application.

569 3. The issuing authority shall provide the recording
570 information on the ~~certified~~ copy of the ~~recorded~~ notice of
571 commencement to any person upon request.

572 4. This subsection does not require the recording of a
573 notice of commencement before ~~prior to~~ the issuance of a
574 building permit. If a local government requires a separate
575 permit or inspection for installation of temporary electrical
576 service or other temporary utility service, land clearing, or
577 other preliminary site work, such permits may be issued and such
578 inspections may be conducted without providing the issuing
579 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
580 commencement ~~or a notarized statement regarding a recorded~~
581 ~~notice of commencement. This subsection does not apply to a~~
582 ~~direct contract to repair or replace an existing heating or air-~~
583 ~~conditioning system in an amount less than \$7,500.~~

584 (f) ~~(e)~~ Not require that a notice of commencement be
585 recorded as a condition of the application for, or processing or
586 issuance of, a building permit. However, this paragraph does not
587 modify or waive the inspection requirements set forth in this
588 subsection.

589
590 This subsection does not apply to a direct contract to repair or



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591 replace an existing heating or air-conditioning system in an
592 amount less than \$7,500.

593 (3) An issuing authority under subsection (1) is not liable
594 in any civil action for the failure to verify that a certified
595 copy of the recorded notice of commencement, a notarized
596 statement that the notice of commencement has been filed for
597 recording along with a copy thereof, or the clerk's office
598 official records identifying information that includes the
599 instrument number for the notice of commencement or the number
600 and page of book where the notice of commencement is recorded,
601 as identified by the clerk, has been filed in accordance with
602 this section.

603 Section 9. Section 713.18, Florida Statutes, is amended to
604 read:

605 713.18 Manner of serving documents ~~notices and other~~
606 ~~instruments.~~

607 (1) Unless otherwise specifically provided by law, service
608 of any document notices, claims of lien, affidavits,
609 assignments, and other instruments permitted or required under
610 this part, s. 255.05, or s. 337.18, or copies thereof when so
611 permitted or required, ~~unless otherwise specifically provided in~~
612 ~~this part,~~ must be made by one of the following methods:

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

617 (b) By common carrier delivery service or by registered,
618 Global Express Guaranteed, or certified mail to the person to be
619 served, with postage or shipping paid by the sender and with



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620 evidence of delivery, which may be in an electronic format.

621 (c) By posting on the site of the improvement if service as
622 provided by paragraph (a) or paragraph (b) cannot be
623 accomplished.

624 (2) Notwithstanding subsection (1), service of a notice to
625 owner or a preliminary notice to contractor under this part, s.
626 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
627 of mailing and the requirements for service under this section
628 have been satisfied if all of the following requirements have
629 been met:

630 (a) The notice is mailed by registered, Global Express
631 Guaranteed, or certified mail, with postage prepaid, to the
632 person to be served and addressed as prescribed ~~at any of the~~
633 ~~addresses set forth~~ in subsection (3).~~7~~

634 (b) The notice is mailed within 40 days after the date the
635 lienor first furnishes labor, services, or materials.~~7~~ ~~and~~

636 (c) 1. The person who served the notice maintains a
637 registered or certified mail log that shows the registered or
638 certified mail number issued by the United States Postal
639 Service, the name and address of the person served, and the date
640 stamp of the United States Postal Service confirming the date of
641 mailing; or

642 2. The person who served the notice maintains ~~electronic~~
643 tracking records approved or generated by the United States
644 Postal Service containing the postal tracking number, ~~the name~~
645 ~~and address of the person served~~, and verification of the date
646 of receipt by the United States Postal Service.

647 (3) (a) Notwithstanding subsection (1), service of a
648 document under an instrument pursuant to this section is



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649 effective on the date of mailing or shipping, and the
650 requirements for service under this section have been satisfied,
651 ~~the instrument~~ if the document ~~it~~:

652 1. Is sent to the last address shown in the notice of
653 commencement or any amendment thereto or, in the absence of a
654 notice of commencement, to the last address shown in the
655 building permit application, or to the last known address of the
656 person to be served. ~~;~~ ~~and~~

657 2. Is returned as being "refused," "moved, not
658 forwardable," or "unclaimed," or is otherwise not delivered or
659 deliverable through no fault of the person serving the document
660 ~~item~~.

661 (b) If the address shown in the notice of commencement or
662 any amendment thereto ~~to the notice of commencement~~, or, in the
663 absence of a notice of commencement, in the building permit
664 application, is incomplete for purposes of mailing or delivery,
665 the person serving the document ~~item~~ may complete the address
666 and properly format it according to United States Postal Service
667 addressing standards using information obtained from the
668 property appraiser or another public record without affecting
669 the validity of service under this section.

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

673 Section 10. Section 713.21, Florida Statutes, is amended to
674 read:

675 713.21 Discharge of lien.—A lien properly perfected under
676 this chapter may be discharged, or released in whole or in part,
677 by any of the following methods:



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

685 (2) By the satisfaction or release of the lienor, duly
686 acknowledged and recorded in the clerk's office. The
687 satisfaction or release must include the lienor's notarized
688 signature and set forth the official records' reference numbers
689 and recording date affixed by the recording office on the
690 subject lien. Any person who executes a claim of lien has ~~shall~~
691 ~~have~~ authority to execute a satisfaction or release in the
692 absence of actual notice of lack of authority to any person
693 relying on the same.

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

696 (4) By an order of the circuit court of the county where
697 the property is located, as provided in this subsection. Upon
698 filing a complaint therefor by any interested party the clerk
699 shall issue a summons to the lienor to show cause within 20 days
700 why his or her lien should not be enforced by action or vacated
701 and canceled of record. Upon failure of the lienor to show cause
702 why his or her lien should not be enforced or the lienor's
703 failure to commence such action before the return date of the
704 summons the court shall forthwith order cancellation of the
705 lien.

706 (5) By recording in the clerk's office the original or a



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707 certified copy of a judgment or decree of a court of competent
708 jurisdiction showing a final determination of the action.

709 Section 11. Subsection (2) of section 713.22, Florida
710 Statutes, is amended to read:

711 713.22 Duration of lien.—

712 (2) An owner or the owner's attorney may elect to shorten
713 the time prescribed in subsection (1) within which to commence
714 an action to enforce any claim of lien or claim against a bond
715 or other security under s. 713.23 or s. 713.24 by recording in
716 the clerk's office a notice in substantially the following form:

717

718 NOTICE OF CONTEST OF LIEN

719 To: ...(Name and address of lienor)...

720

721 You are notified that the undersigned contests the claim of lien
722 filed by you on, ...(year)..., and recorded in Book
723, Page, of the public records of County, Florida,
724 and that the time within which you may file suit to enforce your
725 lien is limited to 60 days from the date of service of this
726 notice. This day of, ...(year)....

727

728 Signed: ...(Owner or Attorney)...

729

730 The lien of any lienor upon whom such recorded notice is served
731 and who fails to institute a suit to enforce his or her lien
732 within 60 days after service of such recorded notice shall be
733 extinguished automatically. The clerk shall serve, in accordance
734 with s. 713.18, a copy of the recorded notice of contest to the
735 lien claimant at the address shown in the claim of lien or most



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736 recent amendment thereto and shall certify to such service and
737 the date of service on the face of the notice and record the
738 notice.

739 Section 12. Paragraphs (d) and (e) of subsection (1) of
740 section 713.23, Florida Statutes, are amended to read:

741 713.23 Payment bond.—

742 (1)

743 (d) In addition, a lienor who has not received payment for
744 furnishing his or her labor, services, or materials must, as a
745 condition precedent to recovery under the bond, serve a written
746 notice of nonpayment on ~~to~~ the contractor and a copy of the
747 notice on the surety. The notice must be under oath and served
748 during the progress of the work or thereafter, but may not be
749 served later than 90 days after the final furnishing of labor,
750 services, or materials by the lienor, or, with respect to rental
751 equipment, later than 90 days after the date the rental
752 equipment was on the ~~job~~ site of the improvement and available
753 for use. A notice of nonpayment that includes sums for retainage
754 must specify the portion of the amount claimed for retainage.
755 The required notice satisfies this condition precedent with
756 respect to the payment described in the notice of nonpayment,
757 including unpaid finance charges due under the lienor's
758 contract, and with respect to any other payments which become
759 due to the lienor after the date of the notice of nonpayment.
760 The time period for serving a notice of nonpayment is ~~shall be~~
761 measured from the last day of furnishing labor, services, or
762 materials by the lienor and may not be measured by other
763 standards, such as the issuance of a certificate of occupancy or
764 the issuance of a certificate of substantial completion. The



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765 failure of a lienor to receive retainage sums not in excess of
766 10 percent of the value of labor, services, or materials
767 furnished by the lienor is not considered a nonpayment requiring
768 the service of the notice provided under this paragraph. If the
769 payment bond is not recorded before commencement of
770 construction, the time period for the lienor to serve a notice
771 of nonpayment may, at the option of the lienor, be calculated
772 from the date specified in this section or the date the lienor
773 is served a copy of the bond. However, the limitation period for
774 commencement of an action on the payment bond as established in
775 paragraph (e) may not be expanded. The negligent inclusion or
776 omission of any information in the notice of nonpayment that has
777 not prejudiced the contractor or surety does not constitute a
778 default that operates to defeat an otherwise valid bond claim. A
779 lienor who serves a fraudulent notice of nonpayment forfeits his
780 or her rights under the bond. A notice of nonpayment is
781 fraudulent if the lienor has willfully exaggerated the amount
782 unpaid, willfully included a claim for work not performed or
783 materials not furnished for the subject improvement, or prepared
784 the notice with such willful and gross negligence as to amount
785 to a willful exaggeration. However, a minor mistake or error in
786 a notice of nonpayment, or a good faith dispute as to the amount
787 unpaid, does not constitute a willful exaggeration that operates
788 to defeat an otherwise valid claim against the bond. The service
789 of a fraudulent notice of nonpayment is a complete defense to
790 the lienor's claim against the bond. The notice under this
791 paragraph must include the following information, current as of
792 the date of the notice, and must be in substantially the
793 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)...



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STATE OF FLORIDA
COUNTY OF.....

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

...(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.....

(e) An action for the labor, ~~or~~ materials, or supplies may
not be instituted or prosecuted against the contractor or surety
unless both notices have been given, if required by this
section. An action may not be instituted or prosecuted against
the contractor or against the surety on the bond under this
section after 1 year from the performance of the labor or
completion of delivery of the materials and supplies. The time
period for bringing an action against the contractor or surety
on the bond is ~~shall be~~ measured from the last day of furnishing
labor, services, or materials by the lienor. The time period may
not be measured by other standards, such as the issuance of a
certificate of occupancy or the issuance of a certificate of
substantial completion. A contractor or the contractor's
attorney may elect to shorten the time within which an action to



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852 enforce any claim against a payment bond provided under this
853 section or s. 713.245 must be commenced at any time after a
854 notice of nonpayment, if required, has been served for the claim
855 by recording in the clerk's office a notice in substantially the
856 following form:

857
858 NOTICE OF CONTEST OF CLAIM
859 AGAINST PAYMENT BOND

860
861 To: ...(Name and address of lienor)...

862 You are notified that the undersigned contests your notice
863 of nonpayment, dated,, and served on the undersigned
864 on,, and that the time within which you may file suit
865 to enforce your claim is limited to 60 days after ~~from~~ the date
866 of service of this notice.

867
868 DATED on,

869
870 Signed: ...(Contractor or Attorney)...

871
872 The claim of any lienor upon whom the notice is served and who
873 fails to institute a suit to enforce his or her claim against
874 the payment bond within 60 days after service of the notice
875 shall be extinguished automatically. The contractor or the
876 contractor's attorney shall serve a copy of the notice of
877 contest to the lienor at the address shown in the notice of
878 nonpayment or most recent amendment thereto and shall certify to
879 such service on the face of the notice and record the notice.

880 Section 13. Subsections (1) and (3) of section 713.24,



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881 Florida Statutes, are amended to read:
882 713.24 Transfer of liens to security.—
883 (1) Any lien claimed under this part may be transferred, by
884 any person having an interest in the real property upon which
885 the lien is imposed or the contract under which the lien is
886 claimed, from such real property to other security by either:
887 (a) Depositing in the clerk's office a sum of money, or
888 (b) Filing in the clerk's office a bond executed as surety
889 by a surety insurer licensed to do business in this state,
890
891 either to be in an amount equal to the amount demanded in such
892 claim of lien, plus interest thereon at the legal rate for 3
893 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
894 in the claim of lien, whichever is greater, to apply on any
895 attorney ~~attorney's~~ fees and court costs that may be taxed in
896 any proceeding to enforce said lien. Such deposit or bond shall
897 be conditioned to pay any judgment or decree which may be
898 rendered for the satisfaction of the lien for which such claim
899 of lien was recorded. Upon making such deposit or filing such
900 bond, the clerk shall make and record a certificate, which must
901 include a copy of the deposit or bond used to transfer, showing
902 the transfer of the lien from the real property to the security
903 and shall mail a copy thereof together with a copy of the
904 deposit or bond used to transfer by registered or certified mail
905 to the lienor named in the claim of lien so transferred, at the
906 address stated therein. Upon filing the certificate of transfer,
907 the real property shall thereupon be released from the lien
908 claimed, and such lien shall be transferred to said security. In
909 the absence of allegations of privity between the lienor and the



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910 owner, and subject to any order of the court increasing the
911 amount required for the lien transfer deposit or bond, no other
912 judgment or decree to pay money may be entered by the court
913 against the owner. The clerk is ~~shall be~~ entitled to a service
914 charge for making and serving the certificate, in the amount of
915 up to \$20, from which the clerk shall remit \$5 to the Department
916 of Revenue for deposit into the General Revenue Fund. If the
917 transaction involves the transfer of multiple liens, an
918 additional charge of up to \$10 for each additional lien shall be
919 charged, from which the clerk shall remit \$2.50 to the
920 Department of Revenue for deposit into the General Revenue Fund.
921 For recording the certificate and approving the bond, the clerk
922 shall receive her or his usual statutory service charges as
923 prescribed in s. 28.24. Any number of liens may be transferred
924 to one such security.

925 (3) Any party having an interest in such security or the
926 property from which the lien was transferred may at any time,
927 and any number of times, file a complaint in chancery in the
928 circuit court of the county where such security is deposited, or
929 file a motion in a pending action to enforce a lien, for an
930 order to require additional security, reduction of security,
931 change or substitution of sureties, payment of discharge
932 thereof, or any other matter affecting said security. If the
933 court finds that the amount of the deposit or bond in excess of
934 the amount claimed in the claim of lien is insufficient to pay
935 the lienor's attorney ~~attorney's~~ fees and court costs incurred
936 in the action to enforce the lien, the court must increase the
937 amount of the cash deposit or lien transfer bond. Nothing in
938 this section shall be construed to vest exclusive jurisdiction



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939 in the circuit courts over transfer bond claims for nonpayment
940 of an amount within the monetary jurisdiction of the county
941 courts.

942 Section 14. Section 713.25, Florida Statutes, is repealed.

943 Section 15. Section 713.29, Florida Statutes, is amended to
944 read:

945 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
946 enforce a lien, including a lien that has been transferred to
947 security, or to enforce a claim against a bond under this part,
948 the prevailing party is entitled to recover a reasonable fee for
949 the services of her or his attorney for trial and appeal or for
950 arbitration, in an amount to be determined by the court, which
951 fee must be taxed as part of the prevailing party's costs, as
952 allowed in equitable actions.

953 Section 16. Paragraph (b) of subsection (2) and paragraph
954 (e) of subsection (5) of section 95.11, Florida Statutes, are
955 amended to read:

956 95.11 Limitations other than for the recovery of real
957 property.—Actions other than for recovery of real property shall
958 be commenced as follows:

959 (2) WITHIN FIVE YEARS.—

960 (b) A legal or equitable action on a contract, obligation,
961 or liability founded on a written instrument, except for an
962 action to enforce a claim against a payment bond, which shall be
963 governed by the applicable provisions of paragraph (5) (e), s.
964 255.05(9) ~~s. 255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), and
965 except for an action for a deficiency judgment governed by
966 paragraph (5) (h).

967 (5) WITHIN ONE YEAR.—



968 (e) Except for actions governed by s. 255.05(9) ~~s.~~
969 ~~255.05(10)~~, s. 337.18(1), or s. 713.23(1)(e), an action to
970 enforce any claim against a payment bond on which the principal
971 is a contractor, subcontractor, or sub-subcontractor as defined
972 in s. 713.01, for private work as well as public work, from the
973 last furnishing of labor, services, or materials or from the
974 last furnishing of labor, services, or materials by the
975 contractor if the contractor is the principal on a bond on the
976 same construction project, whichever is later.

977 Section 17. This act shall take effect July 1, 2022.

978
979 ===== T I T L E A M E N D M E N T =====

980 And the title is amended as follows:

981 Delete everything before the enacting clause
982 and insert:

983 A bill to be entitled
984 An act relating to liens and bonds; amending s.
985 255.05, F.S.; revising when a notice of contest of
986 claim against a payment bond and a notice of
987 nonpayment must be served; requiring that a copy of a
988 notice of nonpayment be served on the surety; revising
989 the process for notarizing a notice of nonpayment;
990 removing the authority for a contractor to file an
991 alternative form of security rather than a bond;
992 requiring service of documents to be made in a
993 specified manner; conforming provisions to changes
994 made by the act; making technical changes; amending s.
995 337.18, F.S.; revising when a notice of nonpayment may
996 be served; requiring service of documents to be made



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997 in a specified manner; conforming provisions to
998 changes made by the act; amending s. 713.01, F.S.;
999 revising and defining terms; creating s. 713.011,
1000 F.S.; providing for the computation of time for
1001 recording a document or filing an action when certain
1002 time periods fall on specified days or during a
1003 declared state of emergency; providing that certain
1004 orders constitute a state of emergency; specifying
1005 when a clerk's office is considered closed; amending
1006 s. 713.10, F.S.; revising the extent of certain liens;
1007 amending s. 713.13, F.S.; conforming a cross-
1008 reference; revising the process for notarizing a
1009 notice of commencement; amending s. 713.132, F.S.;
1010 revising requirements for a notice of termination;
1011 revising when an owner may record a notice of
1012 termination; specifying when a notice of termination
1013 terminates the notice of commencement; amending s.
1014 713.135, F.S.; defining the term "copy of the notice
1015 of commencement"; providing applicability; making
1016 technical changes; providing that an issuing authority
1017 is not liable for failing to verify that specified
1018 information has been filed; amending s. 713.18, F.S.;
1019 requiring service of documents relating to
1020 construction bonds to be made in a specified manner;
1021 making technical changes; amending s. 713.21, F.S.;
1022 authorizing the full or partial release of a lien
1023 under specified conditions; amending s. 713.22, F.S.;
1024 revising the information required in a notice of
1025 contest of lien; amending s. 713.23, F.S.; requiring



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1026 that a copy of a notice of nonpayment be served on the
1027 surety; revising the process for notarizing a notice
1028 of nonpayment under a payment bond; amending s.
1029 713.24, F.S.; revising the amount required in addition
1030 to the deposit or bond that applies toward attorney
1031 fees and costs; requiring the clerk to make a copy of
1032 the deposit or bond used to transfer a lien to other
1033 security and mail it to the lienor; repealing s.
1034 713.25, F.S., relating to applicability of ch. 65-456;
1035 amending s. 713.29, F.S.; authorizing attorney fees in
1036 actions to enforce a lien that has been transferred to
1037 security; amending s. 95.11, F.S.; conforming a cross-
1038 reference; providing an effective date.