

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Overdorf offered the following:

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

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraph (a) of subsection (2) of section
6 255.05, Florida Statutes, is amended, and a new subsection (11)
7 is added to that section, to read:

8 255.05 Bond of contractor constructing public buildings;
9 form; action by claimants.-

10 (2)(a)1. If a claimant is no longer furnishing labor,
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

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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. 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), then 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 45 days after the
57 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

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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
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

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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
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

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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.

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

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

149 Section 2. Paragraph (c) of subsection (1) of section
150 337.18, Florida Statutes, is amended, and subsection (6) is
151 added to that section, to read:

152 337.18 Surety bonds for construction or maintenance
153 contracts; requirement with respect to contract award; bond
154 requirements; defaults; damage assessments.-

155 (1)

156 (c) A claimant, except a laborer, who is not in privity
157 with the contractor shall, before commencing or not later than
158 90 days after commencing to furnish labor, materials, or
159 supplies for the prosecution of the work, furnish the contractor
160 with a notice that he or she intends to look to the bond for
161 protection. A claimant who is not in privity with the contractor

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

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

182 Section 3. Subsections (13) through (27) and subsections
183 (28) and (29) of section 713.01, Florida Statutes, are
184 renumbered as subsections (14) through (28) and subsections (30)
185 and (31), respectively, subsections (4), (8), and (12) of that

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186 section are amended, and new subsections (13) and (29) are added
187 to that section, to read:

188 713.01 Definitions.—As used in this part, the term:

189 (4) "Clerk's office" means the office of the clerk of the
190 circuit court of the county, or another office serving as the
191 county recorder as provided by law, in which the real property
192 is located.

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

208 (12) "Final furnishing" means the last date that the
209 lienor furnishes labor, services, or materials. Such date may
210 not be measured by other standards, such as the issuance of a

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211 certificate of occupancy or the issuance of a certificate of
212 final completion, and does not include the correction of
213 deficiencies in the lienor's previously performed work or
214 materials supplied. With respect to rental equipment, the term
215 means the date that the rental equipment was last on the ~~job~~
216 site of the improvement and available for use. With respect to
217 specialty fabricated materials, the term means the date that the
218 last portion of the specialty fabricated materials is delivered
219 to the site of the improvement, or if any portion of the
220 specialty fabricated materials is not delivered to the site of
221 the improvement by no fault of the lienor, the term means 90
222 days after the date the lienor completes the fabrication or 90
223 days before the expiration of the notice of commencement,
224 whichever is earlier.

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

229 (29) "Specialty fabricated materials" means materials
230 designed and fabricated for use in a particular improvement that
231 are not generally suited for or readily adaptable for use in a
232 similar improvement.

233 Section 4. Section 713.011, Florida Statutes, is created
234 to read:

235 713.011 Computation of time.—

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236 (1) In computing any time period for recording a document
237 or filing an action under this part, if the last day of the time
238 period is a Saturday, Sunday, legal holiday, or any day observed
239 as a holiday by the clerk's office, the time period is extended
240 to the end of the next business day. In computing any other time
241 period under this part, if the last day of the time period is a
242 Saturday, Sunday, or legal holiday, the time period is extended
243 to the end of the next business day.

244 (2) If a clerk's office is directed to close by a federal,
245 state, or local governmental order in response to a state of
246 emergency declared under chapter 252, the time periods for
247 recording a document or filing an action with that clerk's
248 office under this part are tolled until the first business day
249 after the clerk's office reopens. For purposes of this
250 subsection, a clerk's office is considered open if it is
251 recording or filing documents submitted electronically.

252 Section 5. Paragraph (b) of subsection (2) of section
253 713.10, Florida Statutes, is amended, and subsection (4) is
254 added to that section, to read:

255 713.10 Extent of liens.—

256 (2)

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

259 1. The lease, or a short form or a memorandum of the lease
260 that contains the specific language in the lease prohibiting

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261 such liability, is recorded in the official records of the
262 county where the premises are located before the recording of a
263 notice of commencement for improvements to the premises and the
264 terms of the lease expressly prohibit such liability; or

265 2. The terms of the lease expressly prohibit such
266 liability, and a notice advising that leases for the rental of
267 premises on a parcel of land prohibit such liability has been
268 recorded in the official records of the county in which the
269 parcel of land is located before the recording of a notice of
270 commencement for improvements to the premises, and the notice
271 includes the following:

272 a. The name of the lessor.

273 b. The legal description of the parcel of land to which
274 the notice applies.

275 c. The specific language contained in the various leases
276 prohibiting such liability.

277 d. A statement that all or a majority of the leases
278 entered into for premises on the parcel of land expressly
279 prohibit such liability.

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

282
283 A notice that is consistent with subparagraph 2. effectively
284 prohibits liens for improvements made by a lessee even if other
285 leases for premises on the parcel do not expressly prohibit

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286 liens or if provisions of each lease restricting the application
287 of liens are not identical.

288 (4) The interest of the lessor is not subject to liens for
289 improvements made by the lessee when the lessee is a mobile home
290 owner who is leasing a mobile home lot in a mobile home park
291 from the lessor.

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

294 713.13 Notice of commencement.—

295 (1)(a) Except for an improvement that is exempt under
296 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
297 agent before actually commencing to improve any real property,
298 or recommencing completion of any improvement after default or
299 abandonment, whether or not a project has a payment bond
300 complying with s. 713.23, shall record a notice of commencement
301 in the clerk's office and ~~forthwith~~ post either a certified copy
302 thereof or a notarized statement that the notice of commencement
303 has been filed for recording along with a copy thereof. The
304 notice of commencement shall contain all of the following
305 information:

306 1. A description sufficient for identification of the real
307 property to be improved. The description should include the
308 legal description of the property and also should include the
309 street address and tax folio number of the property if available
310 or, if there is no street address available, such additional

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311 information as will describe the physical location of the real
312 property to be improved.

313 2. A general description of the improvement.

314 3. The name and address of the owner, the owner's interest
315 in the site of the improvement, and the name and address of the
316 fee simple titleholder, if other than such owner. A lessee who
317 contracts for the improvements is an owner as defined under s.
318 713.01 ~~s. 713.01(23)~~ and must be listed as the owner together
319 with a statement that the ownership interest is a leasehold
320 interest.

321 4. The name and address of the contractor.

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

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

326 7. The name and address within the state of a person other
327 than himself or herself who may be designated by the owner as
328 the person upon whom notices or other documents may be served
329 under this part; and service upon the person so designated
330 constitutes service upon the owner.

331 (d) A notice of commencement must be in substantially the
332 following form:

333
334 Permit No..... Tax Folio No.....

335 NOTICE OF COMMENCEMENT

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336 State of....

337 County of....

338

339 The undersigned hereby gives notice that improvement will be
340 made to certain real property, and in accordance with Chapter
341 713, Florida Statutes, the following information is provided in
342 this Notice of Commencement.

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

345 2. General description of improvement:.....

346 3. Owner information or Lessee information if the Lessee
347 contracted for the improvement:

348 a. Name and address:.....

349 b. Interest in property:.....

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

352 4.a. Contractor: ...(name and address)....

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

354 5. Surety (if applicable, a copy of the payment bond is
355 attached):

356 a. Name and address:.....

357 b. Phone number:.....

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

359 6.a. Lender: ...(name and address)....

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

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361 7. Persons within the State of Florida designated by Owner
362 upon whom notices or other documents may be served as provided
363 by Section 713.13(1)(a)7., Florida Statutes:

364 a. Name and address:.....

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

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

369 b. Phone number of person or entity designated by
370 owner:.....

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

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

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

387
388 ... (Signatory's Title/Office)...

389
390 The foregoing instrument was acknowledged before me by means of
391 physical presence or acknowledged before me by means of
392 online notarization, this day of, ... (year) ..., by
393 ... (name of person) ... as ... (type of authority, . . . e.g.
394 officer, trustee, attorney in fact) ... for ... (name of party on
395 behalf of whom instrument was executed)....

396
397 ... (Signature of Notary Public - State of Florida)...

398
399 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

400
401 Personally Known OR Produced Identification

402
403 Type of Identification Produced.....

404 Section 7. Subsections (1), (3), and (4) of section
405 713.132, Florida Statutes, are amended to read:

406 713.132 Notice of termination.—

407 (1) An owner may terminate the period of effectiveness of
408 a notice of commencement by executing, swearing to, and

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409 recording a notice of termination that contains all of the
410 following:

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

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

415 (c) A statement of the date as of which the notice of
416 commencement is terminated, which date may not be earlier than
417 30 days after the notice of termination is recorded.~~†~~

418 (d) A statement specifying that the notice applies to all
419 the real property subject to the notice of commencement or
420 specifying the portion of such real property to which it
421 applies.~~†~~

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

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

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433 and release of lien upon final payment in accordance with s.
434 713.20.

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

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

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

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

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

473 713.135 Notice of commencement and applicability of lien.-

474 (1) When a ~~any~~ person applies for a building permit, the
475 authority issuing such permit shall:

476 (a) Print on the face of each permit card in no less than
477 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
478 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
479 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
480 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
481 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT

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482 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
483 COMMENCEMENT."

484 (b) Provide the applicant and the owner of the real
485 property upon which improvements are to be constructed with a
486 printed statement stating that the right, title, and interest of
487 the person who has contracted for the improvement may be subject
488 to attachment under the Construction Lien Law. The Department of
489 Business and Professional Regulation shall furnish, for
490 distribution, the statement described in this paragraph, and the
491 statement must be a summary of the Construction Lien Law and
492 must include an explanation of the provisions of the
493 Construction Lien Law relating to the recording, and the posting
494 of copies, of notices of commencement and a statement
495 encouraging the owner to record a notice of commencement and
496 post a copy of the notice of commencement in accordance with s.
497 713.13. The statement must also contain an explanation of the
498 owner's rights if a lienor fails to furnish the owner with a
499 notice as provided in s. 713.06(2) and an explanation of the
500 owner's rights as provided in s. 713.22. The authority that
501 issues the building permit must obtain from the Department of
502 Business and Professional Regulation the statement required by
503 this paragraph and must mail, deliver by electronic mail or
504 other electronic format or facsimile, or personally deliver that
505 statement to the owner or, in a case in which the owner is
506 required to personally appear to obtain the permit, provide that

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507 statement to any owner making improvements to real property
508 consisting of a single or multiple family dwelling up to and
509 including four units. However, the failure by the authorities to
510 provide the summary does not subject the issuing authority to
511 liability.

512 (c) In addition to providing the owner with the statement
513 as required by paragraph (b), inform each applicant who is not
514 the person whose right, title, and interest is subject to
515 attachment that, as a condition to the issuance of a building
516 permit, the applicant must promise in good faith that the
517 statement will be delivered to the person whose property is
518 subject to attachment.

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

521 (e) Require ~~If the direct contract is greater than \$2,500,~~
522 the applicant to shall file with the issuing authority before
523 ~~prior to~~ the first inspection ~~either a certified copy of the~~
524 ~~recorded~~ notice of commencement if the direct contract is
525 greater than \$2,500. For purposes of this paragraph, the term
526 "copy of the notice of commencement" means a certified copy of
527 the recorded notice of commencement, or a notarized statement
528 that the notice of commencement has been filed for recording,
529 along with a copy thereof, or the clerk's office official
530 records identifying information that includes the instrument
531 number for the notice of commencement or the number and page of

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532 book where the notice of commencement is recorded, as identified
533 by the clerk.

534 1. In the absence of the filing of a ~~certified~~ copy of the
535 ~~recorded~~ notice of commencement, the issuing authority or a
536 private provider performing inspection services may not perform
537 or approve subsequent inspections until the applicant files by
538 mail, facsimile, hand delivery, or any other means such
539 ~~certified~~ copy with the issuing authority.

540 2. The ~~certified~~ copy of the notice of commencement must
541 contain the name and address of the owner, the name and address
542 of the contractor, and the location or address of the property
543 being improved. The issuing authority shall verify that the name
544 and address of the owner, the name of the contractor, and the
545 location or address of the property being improved which is
546 contained in the ~~certified~~ copy of the notice of commencement is
547 consistent with the information in the building permit
548 application.

549 3. The issuing authority shall provide the recording
550 information on the ~~certified~~ copy of the ~~recorded~~ notice of
551 commencement to any person upon request.

552 4. This subsection does not require the recording of a
553 notice of commencement before ~~prior to~~ the issuance of a
554 building permit. If a local government requires a separate
555 permit or inspection for installation of temporary electrical
556 service or other temporary utility service, land clearing, or

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557 other preliminary site work, such permits may be issued and such
558 inspections may be conducted without providing the issuing
559 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
560 commencement ~~or a notarized statement regarding a recorded~~
561 ~~notice of commencement. This subsection does not apply to a~~
562 ~~direct contract to repair or replace an existing heating or air-~~
563 ~~conditioning system in an amount less than \$7,500.~~

564 (f)-(e) Not require that a notice of commencement be
565 recorded as a condition of the application for, or processing or
566 issuance of, a building permit. However, this paragraph does not
567 modify or waive the inspection requirements set forth in this
568 subsection.

569
570 This subsection does not apply to a direct contract to repair or
571 replace an existing heating or air-conditioning system in an
572 amount less than \$15,000.

573 (3) An issuing authority under subsection (1) is not
574 liable in any civil action for the failure to verify that a
575 certified copy of the recorded notice of commencement, a
576 notarized statement that the notice of commencement has been
577 filed for recording along with a copy thereof, or the clerk's
578 office official records identifying information that includes
579 the instrument number for the notice of commencement or the
580 number and page of book where the notice of commencement is

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581 recorded, as identified by the clerk, has been filed in
582 accordance with this section.

583 Section 9. Section 713.18, Florida Statutes, is amended to
584 read:

585 713.18 Manner of serving documents ~~notices and other~~
586 ~~instruments.~~-

587 (1) Unless otherwise specifically provided by law, service
588 of any document ~~notices, claims of lien, affidavits,~~
589 ~~assignments, and other instruments~~ permitted or required under
590 this part, s. 255.05, or s. 337.18, or copies thereof when so
591 permitted or required, ~~unless otherwise specifically provided in~~
592 ~~this part,~~ must be made by one of the following methods:

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

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

601 (c) By posting on the site of the improvement if service
602 as provided by paragraph (a) or paragraph (b) cannot be
603 accomplished.

604 (2) Notwithstanding subsection (1), service of a notice to
605 owner or a preliminary notice to contractor under this part, s.

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606 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
607 of mailing and the requirements for service under this section
608 have been satisfied if all of the following requirements have
609 been met:

610 (a) The notice is mailed by registered, Global Express
611 Guaranteed, or certified mail, with postage prepaid, to the
612 person to be served and addressed as prescribed ~~at any of the~~
613 ~~addresses set forth~~ in subsection (3). ~~†~~

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

616 (c)1. The person who served the notice maintains a
617 registered or certified mail log that shows the registered or
618 certified mail number issued by the United States Postal
619 Service, the name and address of the person served, and the date
620 stamp of the United States Postal Service confirming the date of
621 mailing; or

622 2. The person who served the notice maintains ~~electronic~~
623 tracking records approved or generated by the United States
624 Postal Service containing the postal tracking number, ~~the name~~
625 ~~and address of the person served~~, and verification of the date
626 of receipt by the United States Postal Service.

627 (3)(a) Notwithstanding subsection (1), service of a
628 document under an instrument pursuant to this section is
629 effective on the date of mailing or shipping, and the

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630 requirements for service under this section have been satisfied,
631 ~~the instrument~~ if the document ~~it~~:

632 1. Is sent to the last address shown in the notice of
633 commencement or any amendment thereto or, in the absence of a
634 notice of commencement, to the last address shown in the
635 building permit application, or to the last known address of the
636 person to be served. ~~;~~ and

637 2. Is returned as being "refused," "moved, not
638 forwardable," or "unclaimed," or is otherwise not delivered or
639 deliverable through no fault of the person serving the document
640 ~~item~~.

641 (b) If the address shown in the notice of commencement or
642 any amendment thereto ~~to the notice of commencement~~, or, in the
643 absence of a notice of commencement, in the building permit
644 application, is incomplete for purposes of mailing or delivery,
645 the person serving the document ~~item~~ may complete the address
646 and properly format it according to United States Postal Service
647 addressing standards using information obtained from the
648 property appraiser or another public record without affecting
649 the validity of service under this section.

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

653 Section 10. Section 713.21, Florida Statutes, is amended
654 to read:

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655 713.21 Discharge of lien.—A lien properly perfected under
656 this chapter may be discharged, or released in whole or in part,
657 by any of the following methods:

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

665 (2) By the satisfaction or release of the lienor, duly
666 acknowledged and recorded in the clerk's office. The
667 satisfaction or release must include the lienor's notarized
668 signature and set forth the official records' reference numbers
669 and recording date affixed by the recording office on the
670 subject lien. Any person who executes a claim of lien has ~~shall~~
671 ~~have~~ authority to execute a satisfaction or release in the
672 absence of actual notice of lack of authority to any person
673 relying on the same.

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

676 (4) By an order of the circuit court of the county where
677 the property is located, as provided in this subsection. Upon
678 filing a complaint therefor by any interested party the clerk
679 shall issue a summons to the lienor to show cause within 20 days

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680 why his or her lien should not be enforced by action or vacated
681 and canceled of record. Upon failure of the lienor to show cause
682 why his or her lien should not be enforced or the lienor's
683 failure to commence such action before the return date of the
684 summons the court shall forthwith order cancellation of the
685 lien.

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

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

691 713.22 Duration of lien.—

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

697 NOTICE OF CONTEST OF LIEN

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

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

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

The lien of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her lien within 60 days after service of such notice shall be extinguished automatically. The clerk shall serve, in accordance with s. 713.18, a copy of the notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment thereto and shall certify to such service and the date of service on the face of the notice and record the notice. After the clerk records the notice with the certificate of service, the clerk must serve a copy of such notice to the lienor and to the owner or the owner's attorney in accordance with s. 713.18.

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

713.23 Payment bond.—

(1)

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

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730 equipment was on the ~~job~~ site of the improvement and available
731 for use. A notice of nonpayment that includes sums for retainage
732 must specify the portion of the amount claimed for retainage.
733 The required notice satisfies this condition precedent with
734 respect to the payment described in the notice of nonpayment,
735 including unpaid finance charges due under the lienor's
736 contract, and with respect to any other payments which become
737 due to the lienor after the date of the notice of nonpayment.
738 The time period for serving a notice of nonpayment is ~~shall be~~
739 measured from the last day of furnishing labor, services, or
740 materials by the lienor and may not be measured by other
741 standards, such as the issuance of a certificate of occupancy or
742 the issuance of a certificate of substantial completion. The
743 failure of a lienor to receive retainage sums not in excess of
744 10 percent of the value of labor, services, or materials
745 furnished by the lienor is not considered a nonpayment requiring
746 the service of the notice provided under this paragraph. If the
747 payment bond is not recorded before commencement of
748 construction, the time period for the lienor to serve a notice
749 of nonpayment may, at the option of the lienor, be calculated
750 from the date specified in this section or the date the lienor
751 is served a copy of the bond. However, the limitation period for
752 commencement of an action on the payment bond as established in
753 paragraph (e) may not be expanded. The negligent inclusion or
754 omission of any information in the notice of nonpayment that has

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755 not prejudiced the contractor or surety does not constitute a
756 default that operates to defeat an otherwise valid bond claim. A
757 lienor who serves a fraudulent notice of nonpayment forfeits his
758 or her rights under the bond. A notice of nonpayment is
759 fraudulent if the lienor has willfully exaggerated the amount
760 unpaid, willfully included a claim for work not performed or
761 materials not furnished for the subject improvement, or prepared
762 the notice with such willful and gross negligence as to amount
763 to a willful exaggeration. However, a minor mistake or error in
764 a notice of nonpayment, or a good faith dispute as to the amount
765 unpaid, does not constitute a willful exaggeration that operates
766 to defeat an otherwise valid claim against the bond. The service
767 of a fraudulent notice of nonpayment is a complete defense to
768 the lienor's claim against the bond. The notice under this
769 paragraph must include the following information, current as of
770 the date of the notice, and must be in substantially the
771 following form:

772
773 NOTICE OF NONPAYMENT

774
775 To ...(name of contractor and address)...

776
777 ...(name of surety and address)...

778
779 The undersigned lienor notifies you that:

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

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

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

792
793 I declare that I have read the foregoing Notice of Nonpayment
794 and that the facts stated in it are true to the best of my
795 knowledge and belief.

796
797 DATED on,

798
799 ...(signature and address of lienor)...

800
801 STATE OF FLORIDA
802 COUNTY OF.....

803

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

808 ...(Signature of Notary Public - State of Florida)...
809 ...(Print, Type, or Stamp Commissioned Name of Notary
810 Public)...

811
812 Personally Known OR Produced Identification

813
814 Type of Identification Produced

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

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

834 NOTICE OF CONTEST OF CLAIM
835 AGAINST PAYMENT BOND

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

837 You are notified that the undersigned contests your notice
838 of nonpayment, dated,, and served on the undersigned
839 on,, and that the time within which you may file suit
840 to enforce your claim is limited to 60 days after ~~from~~ the date
841 of service of this notice.

842 DATED on,

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

844 The claim of any lienor upon whom the notice is served and who
845 fails to institute a suit to enforce his or her claim against
846 the payment bond within 60 days after service of the notice
847 shall be extinguished automatically. The contractor or the
848 contractor's attorney shall serve a copy of the notice of
849 contest to the lienor at the address shown in the notice of
850 nonpayment or most recent amendment thereto and shall certify to
851 such service on the face of the notice and record the notice.

852 Section 13. Subsections (1) and (3) of section 713.24,
853 Florida Statutes, are amended to read:

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854 713.24 Transfer of liens to security.—
855 (1) Any lien claimed under this part may be transferred,
856 by any person having an interest in the real property upon which
857 the lien is imposed or the contract under which the lien is
858 claimed, from such real property to other security by either:
859 (a) Depositing in the clerk's office a sum of money, or
860 (b) Filing in the clerk's office a bond executed as surety
861 by a surety insurer licensed to do business in this state,
862
863 either to be in an amount equal to the amount demanded in such
864 claim of lien, plus interest thereon at the legal rate for 3
865 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
866 in the claim of lien, whichever is greater, to apply on any
867 attorney ~~attorney's~~ fees and court costs that may be taxed in
868 any proceeding to enforce said lien. Such deposit or bond shall
869 be conditioned to pay any judgment or decree which may be
870 rendered for the satisfaction of the lien for which such claim
871 of lien was recorded. Upon making such deposit or filing such
872 bond, the clerk shall make and record a certificate which must
873 include a copy of the deposit or bond used to transfer, showing
874 the transfer of the lien from the real property to the security
875 and shall mail a copy thereof together with a copy of the
876 deposit or bond used to transfer by registered or certified mail
877 to the lienor named in the claim of lien so transferred, at the
878 address stated therein. Upon filing the certificate of transfer,

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879 the real property shall thereupon be released from the lien
880 claimed, and such lien shall be transferred to said security. In
881 the absence of allegations of privity between the lienor and the
882 owner, and subject to any order of the court increasing the
883 amount required for the lien transfer deposit or bond, no other
884 judgment or decree to pay money may be entered by the court
885 against the owner. The clerk is ~~shall be~~ entitled to a service
886 charge for making and serving the certificate, in the amount of
887 up to \$20, from which the clerk shall remit \$5 to the Department
888 of Revenue for deposit into the General Revenue Fund. If the
889 transaction involves the transfer of multiple liens, an
890 additional charge of up to \$10 for each additional lien shall be
891 charged, from which the clerk shall remit \$2.50 to the
892 Department of Revenue for deposit into the General Revenue Fund.
893 For recording the certificate and approving the bond, the clerk
894 shall receive her or his usual statutory service charges as
895 prescribed in s. 28.24. Any number of liens may be transferred
896 to one such security.

897 (3) Any party having an interest in such security or the
898 property from which the lien was transferred may at any time,
899 and any number of times, file a complaint in chancery in the
900 circuit court of the county where such security is deposited, or
901 file a motion in a pending action to enforce a lien, for an
902 order to require additional security, reduction of security,
903 change or substitution of sureties, payment of discharge

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904 thereof, or any other matter affecting said security. If the
 905 court finds that the amount of the deposit or bond in excess of
 906 the amount claimed in the claim of lien is insufficient to pay
 907 the lienor's ~~attorney~~ attorney's fees and court costs incurred
 908 in the action to enforce the lien, the court must increase the
 909 amount of the cash deposit or lien transfer bond. Nothing in
 910 this section shall be construed to vest exclusive jurisdiction
 911 in the circuit courts over transfer bond claims for nonpayment
 912 of an amount within the monetary jurisdiction of the county
 913 courts.

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

915 Section 15. Section 713.29, Florida Statutes, is amended
916 to read:

917 713.29 ~~Attorney~~ Attorney's fees.—In any action brought to
 918 enforce a lien, including a lien that has been transferred to
 919 security, or to enforce a claim against a bond under this part,
 920 the prevailing party is entitled to recover a reasonable fee for
 921 the services of her or his attorney for trial and appeal or for
 922 arbitration, in an amount to be determined by the court, which
 923 fee must be taxed as part of the prevailing party's costs, as
 924 allowed in equitable actions.

925 Section 16. This act shall take effect July 1, 2022.

926
927 -----

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

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929 Remove everything before the enacting clause and insert:
930 A bill to be entitled
931 An act relating to construction liens and bonds;
932 amending s. 255.05, F.S.; revising when a notice of
933 contest of claim against a payment bond must be
934 served; requiring that a copy of a notice of
935 nonpayment be served on the surety; revising the
936 process for notarizing a notice of nonpayment;
937 requiring service of documents to be made in a
938 specified manner; conforming provisions to changes
939 made by the act; making technical changes; amending s.
940 337.18, F.S.; requiring service of documents to be
941 made in a specified manner; conforming provisions to
942 changes made by the act; amending s. 713.01, F.S.;
943 revising and providing definitions; creating s.
944 713.011, F.S.; providing for the computation of time
945 when certain time periods fall on specified days or
946 during a declared state of emergency; specifying when
947 a clerk's office is considered open; amending s.
948 713.10, F.S.; revising the extent of certain liens;
949 amending s. 713.13, F.S.; conforming a cross-
950 reference; revising the process for notarizing a
951 notice of commencement; amending s. 713.132, F.S.;
952 revising requirements for a notice of termination;
953 revising when an owner may record a notice of

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954 termination; specifying when a notice of termination
955 terminates the notice of commencement; amending s.
956 713.135, F.S.; providing a definition; providing
957 applicability; making technical changes; providing
958 that an issuing authority is not liable for failing to
959 verify that specified information has been filed;
960 amending s. 713.18, F.S.; requiring service of
961 documents relating to construction bonds to be made in
962 a specified manner; making technical changes; amending
963 s. 713.21, F.S.; authorizing the full or partial
964 release of a lien under specified conditions; amending
965 s. 713.22, F.S.; requiring the clerk to serve a copy
966 of a notice of contest of lien on certain persons
967 after it has been recorded; amending s. 713.23, F.S.;
968 requiring that a copy of a notice of nonpayment be
969 served on the surety; revising the process for
970 notarizing a notice of nonpayment under a payment
971 bond; amending s. 713.24, F.S.; revising the amount
972 required in addition to the deposit or bond that
973 applies toward attorney fees and costs; requiring the
974 clerk to make a copy of the deposit or bond used to
975 transfer a lien to other security and mail it to the
976 lienor; repealing s. 713.25, F.S., relating to
977 applicability of ch. 65-456; amending s. 713.29, F.S.;
978 authorizing attorney fees in actions to enforce a lien

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979 | that has been transferred to security; providing an
980 | effective date.

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