

1                   A bill to be entitled  
2           An act relating to construction bonds; amending s.  
3           255.05, F.S.; requiring a notice of nonpayment to be  
4           verified; providing notice of nonpayment requirements;  
5           requiring a claimant to attach certain documents to a  
6           notice of nonpayment; providing that a claimant who  
7           serves a fraudulent notice of nonpayment shall be  
8           deprived of his or her rights under a bond; requiring  
9           a notice of nonpayment to be in a prescribed form;  
10          amending s. 627.756, F.S.; providing that a provision  
11          relating to attorney fees applies to certain suits  
12          brought by contractors; deeming contractors to be  
13          insureds or beneficiaries for certain purposes;  
14          republishing s. 627.428, F.S., relating to attorney  
15          fees; amending s. 713.23, F.S.; requiring a lienor to  
16          serve a verified notice of nonpayment to specified  
17          entities during a certain period; providing notice of  
18          nonpayment requirements; requiring a lienor to attach  
19          certain documents to a notice of nonpayment; providing  
20          that a lienor who serves a fraudulent notice of  
21          nonpayment is deprived of his or her rights under the  
22          bond; requiring a notice of nonpayment to be in a  
23          prescribed form; amending s. 713.245, F.S.; providing  
24          that a contractor may record a notice identifying a  
25          project bond as a conditional payment bond before

26 project commencement in order for the duty of a surety  
 27 to pay lienors to be coextensive with the contractor's  
 28 duty to pay in certain circumstances; providing that  
 29 failure to list or record a bond as a conditional  
 30 payment bond does not convert such a bond into a  
 31 common law bond or a bond furnished under a specified  
 32 provision; providing applicability; providing an  
 33 effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Paragraph (a) of subsection (2) of section  
 38 255.05, Florida Statutes, is amended to read:

39 255.05 Bond of contractor constructing public buildings;  
 40 form; action by claimants.—

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

47 NOTICE OF CONTEST OF CLAIM

48 AGAINST PAYMENT BOND

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

50 You are notified that the undersigned contests your notice

51 of nonpayment, dated ....., ....., and served on the  
 52 undersigned on ....., ....., and that the time within  
 53 which you may file suit to enforce your claim is limited to 60  
 54 days after the date of service of this notice.

55 DATED on ....., .....

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

57

58 The claim of a claimant upon whom such notice is served and who  
 59 fails to institute a suit to enforce his or her claim against  
 60 the payment bond within 60 days after service of such notice  
 61 shall be extinguished automatically. The contractor or the  
 62 contractor's attorney shall serve a copy of the notice of  
 63 contest to the claimant at the address shown in the notice of  
 64 nonpayment or most recent amendment thereto and shall certify to  
 65 such service on the face of the notice and record the notice.

66 2. A claimant, except a laborer, who is not in privity  
 67 with the contractor shall, before commencing or not later than  
 68 45 days after commencing to furnish labor, services, or  
 69 materials for the prosecution of the work, serve ~~furnish~~ the  
 70 contractor with a written notice that he or she intends to look  
 71 to the bond for protection. A claimant who is not in privity  
 72 with the contractor and who has not received payment for  
 73 furnishing his or her labor, services, or materials shall serve  
 74 a written notice of nonpayment ~~deliver~~ to the contractor and to  
 75 the surety ~~written notice of the performance of the labor or~~

76 | ~~delivery of the materials or supplies and of the nonpayment.~~ The  
 77 | notice of nonpayment shall be verified in accordance with s.  
 78 | 92.525 and served during the progress of the work or thereafter  
 79 | but may not be served earlier than 45 days after the first  
 80 | furnishing of labor, services, or materials by the claimant or  
 81 | later than 90 days after the final furnishing of the labor,  
 82 | services, or materials by the claimant or, with respect to  
 83 | rental equipment, ~~not~~ later than 90 days after the date that the  
 84 | rental equipment was last on the job site available for use. The  
 85 | notice of nonpayment shall state, as of the date of the notice,  
 86 | the nature of the labor or services performed; the nature of the  
 87 | labor or services to be performed, if known; the materials  
 88 | furnished; the materials to be furnished, if known; the amount  
 89 | paid on account to date; the amount due; and the amount to  
 90 | become due, if known. Any notice of nonpayment served by a  
 91 | claimant who is not in privity with the contractor which  
 92 | includes sums for retainage must specify the portion of the  
 93 | amount claimed for retainage. The claimant shall also include,  
 94 | as attachments to the notice of nonpayment, copies of the  
 95 | following documents to substantiate the amount claimed as unpaid  
 96 | in the notice, if such documents exist: the claimant's contract  
 97 | or purchase order and any amendments or change orders directed  
 98 | thereto; invoices, pay requests, bills of lading, delivery  
 99 | receipts, or similar documents, as applicable; and a statement  
 100 | of account reflecting all payments requested and received for

101 the labor, services, or materials. An action for the labor,  
102 materials, or supplies may not be instituted against the  
103 contractor or the surety unless the notice to the contractor and  
104 notice of nonpayment have been served, if required by this  
105 section. Notices required or permitted under this section shall  
106 be served in accordance with s. 713.18. A claimant may not waive  
107 in advance his or her right to bring an action under the bond  
108 against the surety. In any action brought to enforce a claim  
109 against a payment bond under this section, the prevailing party  
110 is entitled to recover a reasonable fee for the services of his  
111 or her attorney for trial and appeal or for arbitration, in an  
112 amount to be determined by the court, which fee must be taxed as  
113 part of the prevailing party's costs, as allowed in equitable  
114 actions. The time periods for service of a notice of nonpayment  
115 or for bringing an action against a contractor or a surety shall  
116 be measured from the last day of furnishing labor, services, or  
117 materials by the claimant and may not be measured by other  
118 standards, such as the issuance of a certificate of occupancy or  
119 the issuance of a certificate of substantial completion. A  
120 claimant who serves a fraudulent notice of nonpayment shall be  
121 deprived of his or her rights under the bond. A notice of  
122 nonpayment is fraudulent if the claimant has willfully  
123 exaggerated the amount due, willfully included a claim for work  
124 not performed or materials not furnished for the subject  
125 improvement, or prepared the notice with such willful and gross

126 negligence as to amount to a willful exaggeration. However, a  
127 minor mistake or error in a notice of nonpayment, or a good  
128 faith dispute as to the amount due, does not constitute a  
129 willful exaggeration that operates to defeat an otherwise valid  
130 claim against the bond. The service of a fraudulent notice of  
131 nonpayment is a complete defense to the claimant's claim against  
132 the bond, entitling the prevailing party to attorney fees under  
133 this subparagraph. The notice of nonpayment under this  
134 subparagraph must be in substantially the following form:

135  
136 NOTICE OF NONPAYMENT

137  
138 To:...(name of contractor and address)...

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

140 The undersigned claimant notifies you that:

141 1. Claimant has furnished ...(describe labor, services, or  
142 materials)... for the improvement of the real property  
143 identified as ...(property description).... The corresponding  
144 amount now due and unpaid is \$ ....

145 2. Claimant has been paid on account to date the amount of  
146 \$ ... for previously furnishing ...(describe labor, service, or  
147 materials)... for this improvement.

148 3. Claimant expects to furnish ...(describe labor,  
149 service, or materials)... for this improvement in the future (if  
150 known), and the corresponding amount expected to become due is \$

151 ... (if known).

152

153 Under penalties of perjury, I declare that I have read the  
 154 foregoing Notice of Nonpayment and that the facts stated in it  
 155 are true.

156

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

158 Section 2. Subsection (1) of section 627.756, Florida  
 159 Statutes, is amended to read:

160 627.756 Bonds for construction contracts; attorney fees in  
 161 case of suit.—

162 (1) Section 627.428 applies to suits brought by owners,  
 163 contractors, subcontractors, laborers, and materialmen against a  
 164 surety insurer under payment or performance bonds written by the  
 165 insurer under the laws of this state to indemnify against  
 166 pecuniary loss by breach of a building or construction contract.  
 167 Owners, contractors, subcontractors, laborers, and materialmen  
 168 shall be deemed to be insureds or beneficiaries for the purposes  
 169 of this section.

170 Section 3. Section 627.428, Florida Statutes, is  
 171 republished to read:

172 627.428 Attorney's fee.—

173 (1) Upon the rendition of a judgment or decree by any of  
 174 the courts of this state against an insurer and in favor of any  
 175 named or omnibus insured or the named beneficiary under a policy

176 or contract executed by the insurer, the trial court or, in the  
 177 event of an appeal in which the insured or beneficiary prevails,  
 178 the appellate court shall adjudge or decree against the insurer  
 179 and in favor of the insured or beneficiary a reasonable sum as  
 180 fees or compensation for the insured's or beneficiary's attorney  
 181 prosecuting the suit in which the recovery is had.

182 (2) As to suits based on claims arising under life  
 183 insurance policies or annuity contracts, no such attorney's fee  
 184 shall be allowed if such suit was commenced prior to expiration  
 185 of 60 days after proof of the claim was duly filed with the  
 186 insurer.

187 (3) When so awarded, compensation or fees of the attorney  
 188 shall be included in the judgment or decree rendered in the  
 189 case.

190 Section 4. Paragraph (d) of subsection (1) of section  
 191 713.23, Florida Statutes, is amended to read:

192 713.23 Payment bond.—

193 (1)

194 (d) In addition, a lienor who has not received payment for  
 195 furnishing his or her labor, services, or materials must ~~is~~  
 196 required, as a condition precedent to recovery under the bond,  
 197 ~~to~~ serve a written notice of nonpayment to the contractor and  
 198 the surety. The notice must be verified in accordance with s.  
 199 92.525 and must be served during the progress of the work or  
 200 thereafter, but may not be served earlier than 45 days after the



201 first furnishing of labor, services, or materials by the lienor  
202 or ~~not~~ later than 90 days after the final furnishing of labor,  
203 services, or materials by the lienor or, with respect to rental  
204 equipment, later than 90 days after the date the rental  
205 equipment was on the job site and available for use. The notice  
206 of nonpayment must state, as of the date of the notice, the  
207 nature of the labor or services performed; the nature of the  
208 labor or services to be performed, if known; the materials  
209 furnished; the materials to be furnished, if known; the amount  
210 paid on account to date; the amount due; and the amount to  
211 become due, if known. A notice of nonpayment that includes sums  
212 for retainage must specify the portion of the amount claimed for  
213 retainage. The lienor must also include, as attachments to the  
214 notice of nonpayment, copies of the following documents to  
215 substantiate the amount claimed as unpaid in the notice, if such  
216 documents exist: the lienor's contract or purchase order and any  
217 amendments or change orders directed thereto; invoices, pay  
218 requests, bills of lading, delivery receipts, or similar  
219 documents, as applicable; and a statement of account reflecting  
220 all payments requested and received for the labor, services, or  
221 materials. The required. ~~A written~~ notice satisfies this  
222 condition precedent with respect to the payment described in the  
223 notice of nonpayment, including unpaid finance charges due under  
224 the lienor's contract, and with respect to any other payments  
225 which become due to the lienor after the date of the notice of

226 nonpayment. The time period for serving a ~~written~~ notice of  
227 nonpayment shall be measured from the last day of furnishing  
228 labor, services, or materials by the lienor and shall 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 substantial completion. The failure of a lienor to receive  
232 retainage sums not in excess of 10 percent of the value of  
233 labor, services, or materials furnished by the lienor is not  
234 considered a nonpayment requiring the service of the notice  
235 provided under this paragraph. If the payment bond is not  
236 recorded before commencement of construction, the time period  
237 for the lienor to serve a notice of nonpayment may at the option  
238 of the lienor be calculated from the date specified in this  
239 section or the date the lienor is served a copy of the bond.  
240 However, the limitation period for commencement of an action on  
241 the payment bond as established in paragraph (e) may not be  
242 expanded. A lienor who serves a fraudulent notice of nonpayment  
243 shall be deprived of his or her rights under the bond. A notice  
244 of nonpayment is fraudulent if the lienor has willfully  
245 exaggerated the amount due, willfully included a claim for work  
246 not performed or materials not furnished for the subject  
247 improvement, or prepared the notice with such willful and gross  
248 negligence as to amount to a willful exaggeration. However, a  
249 minor mistake or error in a notice of nonpayment, or a good  
250 faith dispute as to the amount due, does not constitute a

251 willful exaggeration that operates to defeat an otherwise valid  
 252 claim against the bond. The service of a fraudulent notice of  
 253 nonpayment is a complete defense to the lienor's claim against  
 254 the bond, entitling the prevailing party to attorney fees under  
 255 s. 713.29. The notice under this paragraph must ~~may~~ be in  
 256 substantially the following form:

257 NOTICE OF NONPAYMENT

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

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

260 The undersigned lienor notifies you that:

261 1. Lienor ~~he or she~~ has furnished ... (describe labor,  
 262 services, or materials) ... for the improvement of the real  
 263 property identified as ... (property description) .... The  
 264 corresponding amount now due and unpaid is \$.....

265 2. Lienor has been paid on account to date the amount of \$  
 266 ... for previously furnishing ... (describe labor, services, or  
 267 materials) ... for this improvement.

268 3. Lienor expects to furnish ... (describe labor, service,  
 269 or materials) ... for this improvement in the future (if known),  
 270 and the corresponding amount expected to become due is \$ ... (if  
 271 known).

272  
 273 Under penalties of perjury, I declare that I have read the  
 274 foregoing Notice of Nonpayment and that the facts stated in it  
 275 are true.

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

277 Section 5. Subsection (1) of section 713.245, Florida  
 278 Statutes, is amended to read:

279 713.245 Conditional payment bond.—

280 (1) Notwithstanding any provisions of ss. 713.23 and  
 281 713.24 to the contrary, if the contractor's written contractual  
 282 obligation to pay lienors is expressly conditioned upon and  
 283 limited to the payments made by the owner to the contractor, the  
 284 duty of the surety to pay lienors will be coextensive with the  
 285 duty of the contractor to pay, if the following provisions are  
 286 complied with:

287 (a) The bond is listed in the notice of commencement for  
 288 the project as a conditional payment bond and is recorded  
 289 together with the notice of commencement for the project before  
 290 ~~prior to~~ commencement of the project, or the contractor records  
 291 a notice identifying the bond for the project as a conditional  
 292 payment bond, with the bond attached, before commencement of the  
 293 project. Failure to comply with this paragraph does not convert  
 294 a conditional payment bond into a common law bond or into a bond  
 295 furnished under s. 713.23.

296 (b) The words "conditional payment bond" are contained in  
 297 the title of the bond at the top of the front page.

298 (c) The bond contains on the front page, in at least 10-  
 299 point type, the statement: THIS BOND ONLY COVERS CLAIMS OF  
 300 SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND LABORERS TO

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301 THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE LABOR, SERVICES,  
302 OR MATERIALS PROVIDED BY SUCH PERSONS. THIS BOND DOES NOT  
303 PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR FILING A CLAIM OF  
304 LIEN ON THIS PROJECT.

305 Section 6. The amendments made by this act to ss. 627.756  
306 and 713.245, Florida Statutes, apply only to payment or  
307 performance bonds issued on or after October 1, 2018.

308 Section 7. This act shall take effect October 1, 2018.