

Bill No. CS for SB 1600

Amendment No. ____ Barcode 190728

CHAMBER ACTION

Senate

House

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Senator Argenziano moved the following amendment:

Senate Amendment (with title amendment)

On page 3, between lines 9 and 10,

insert:

Section 2. Paragraph (a) of subsection (1) and subsection (5) of section 255.05, Florida Statutes, are amended to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.--

(1)(a) Any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver to the public owner, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized

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1 to do business in this state as surety. A public entity may
2 not require a contractor to secure a surety bond under this
3 section from a specific agent or bonding company. The bond
4 must state on its front page: the name, principal business
5 address, and phone number of the contractor, the surety, the
6 owner of the property being improved, and, if different from
7 the owner, the contracting public entity; the contract number
8 assigned by the contracting public entity; and a description
9 of the project sufficient to identify it, such as a legal
10 description or the street address of the property being
11 improved, and a general description of the improvement. Such
12 bond shall be conditioned upon the contractor's performance of
13 the construction work in the time and manner prescribed in the
14 contract and promptly making payments to all persons defined
15 in s. 713.01 who furnish labor, services, or materials for the
16 prosecution of the work provided for in the contract. Any
17 claimant may apply to the governmental entity having charge of
18 the work for copies of the contract and bond and shall
19 thereupon be furnished with a certified copy of the contract
20 and bond. The claimant shall have a right of action against
21 the contractor and surety for the amount due him or her,
22 including unpaid finance charges due under the claimant's
23 contract. Such action shall not involve the public authority
24 in any expense. When such work is done for the state and the
25 contract is for \$100,000 or less, no payment and performance
26 bond shall be required. At the discretion of the official or
27 board awarding such contract when such work is done for any
28 county, city, political subdivision, or public authority, any
29 person entering into such a contract which is for \$200,000 or
30 less may be exempted from executing the payment and
31 performance bond. When such work is done for the state, the

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1 Secretary of the Department of Management Services may
2 delegate to state agencies the authority to exempt any person
3 entering into such a contract amounting to more than \$100,000
4 but less than \$200,000 from executing the payment and
5 performance bond. In the event such exemption is granted, the
6 officer or officials shall not be personally liable to persons
7 suffering loss because of granting such exemption. The
8 Department of Management Services shall maintain information
9 on the number of requests by state agencies for delegation of
10 authority to waive the bond requirements by agency and project
11 number and whether any request for delegation was denied and
12 the justification for the denial. Any provision in a bond
13 furnished for public work contracts as provided by this
14 subsection restricting the classes or persons protected by
15 such bond or the venue of any proceeding relating to such bond
16 is unenforceable.

17 (5) In addition to the provisions of chapter 47, any
18 action authorized under this section may be brought in the
19 county in which the public building or public work is being
20 constructed or repaired. ~~This subsection shall not apply to an~~
21 ~~action instituted prior to May 17, 1977.~~

22 Section 3. Section 713.015, Florida Statutes, is
23 amended to read:

24 713.015 Mandatory provisions for direct
25 contracts.--Any direct contract between an owner and a
26 contractor, related to improvements to real property
27 consisting of single or multiple family dwellings up to and
28 including four units, must contain the following provision
29 printed in capital letters no less than the same size
30 ~~18-point, capitalized, boldfaced~~ type used in the body of the
31 contract:

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1
 2 ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS
 3 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR
 4 PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A
 5 RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR
 6 PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR
 7 CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS,
 8 SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE
 9 OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY
 10 MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID
 11 YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR,
 12 YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS
 13 MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST
 14 YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT
 15 YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY.
 16 FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS
 17 RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU
 18 CONSULT AN ATTORNEY.

19 Section 4. Subsection (7) of section 713.02, Florida
 20 Statutes, is amended to read:

21 713.02 Types of lienors and exemptions.--

22 (7) Notwithstanding any other provision of this part,
 23 no lien shall exist in favor of any contractor, subcontractor,
 24 or sub-subcontractor who is unlicensed as provided in s.
 25 489.128 or s. 489.532. Notwithstanding any other provision of
 26 this part, if a contract is rendered unenforceable by an
 27 unlicensed contractor, subcontractor, or sub-subcontractor
 28 pursuant to s. 489.128 or s. 489.532, such unenforceability
 29 shall not affect the rights of any other persons to enforce
 30 contract, lien, or bond remedies and shall not affect the
 31 obligations of a surety that has provided a bond on behalf of

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1 the unlicensed contractor, subcontractor, or
2 sub-subcontractor. It shall not be a defense to any claim on a
3 bond or indemnity agreement that the principal or indemnitor
4 is unlicensed as provided in s. 489.128 or s. 489.532.

5 Section 5. Subsection (3) of section 713.04, Florida
6 Statutes, is amended, and subsection (4) is added to that
7 section, to read:

8 713.04 Subdivision improvements.--

9 (3) The owner shall not pay any money on account of a
10 direct contract before actual furnishing of labor and services
11 or materials for subdivision improvements. Any such ~~The~~
12 payment not complying with such requirement shall not qualify
13 as a proper payment under this chapter ~~section~~.

14 (4) The owner shall make final payment on account of a
15 direct contract only after the contractor complies with s.
16 713.06(3)(d). Any such payment not complying with such
17 requirement shall not qualify as a proper payment under this
18 chapter.

19 Section 6. Paragraph (c) of subsection (4) of section
20 713.08, Florida Statutes, is amended to read:

21 713.08 Claim of lien.--

22 (4)

23 (c) The claim of lien shall be served on the owner.

24 Failure to serve any claim of lien in the manner provided in
25 s. 713.18 before recording or within 15 days after recording
26 shall render the claim of lien voidable to the extent that the
27 failure or delay is shown to have been prejudicial to any
28 person entitled to rely on the service.

29 Section 7. Paragraph (e) of subsection (1) of section
30 713.13, Florida Statutes, is amended to read:

31 713.13 Notice of commencement.--

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1 (1)
2 (e) A copy of any bond must be attached at the time of
3 recordation of the notice of commencement. The failure to
4 attach a copy of the bond to the notice of commencement when
5 the notice is recorded negates the exemption provided in s.
6 713.02(6). However, if such a bond exists but is not recorded,
7 the bond may be used as a transfer bond pursuant to s. 713.24.
8 The bond shall be deemed a transfer bond under s. 713.24 for
9 all purposes at the time of recordation of the notice of bond
10 and the clerk's mailing as provided in s. 713.23(2). The
11 notice requirements of s. 713.23 apply to any claim against
12 the bond; however, the time limits for serving the notice
13 shall run from the latter of the time specified in s. 713.23
14 or the date the notice of bond is served on the lienor.

15 Section 8. Paragraph (b) of subsection (1) and
16 subsection (4) of section 713.135, Florida Statutes, are
17 amended, and paragraph (e) is added to subsection (1) of that
18 section, to read:

19 713.135 Notice of commencement and applicability of
20 lien.--

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

23 (b) Provide the applicant and the owner of the real
24 property upon which improvements are to be constructed with a
25 printed statement stating that the right, title, and interest
26 of the person who has contracted for the improvement may be
27 subject to attachment under the Construction Lien Law. The
28 Department of Business and Professional Regulation shall
29 furnish, for distribution, the statement described in this
30 paragraph, and the statement must be a summary of the
31 Construction Lien Law and must include an explanation of the

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1 provisions of the Construction Lien Law relating to the
2 recording, and the posting of copies, of notices of
3 commencement and a statement encouraging the owner to record a
4 notice of commencement and post a copy of the notice of
5 commencement in accordance with s. 713.13. The statement must
6 also contain an explanation of the owner's rights if a lienor
7 fails to furnish the owner with a notice as provided in s.
8 713.06(2) and an explanation of the owner's rights as provided
9 in s. 713.22. The authority that issues the building permit
10 must obtain from the Department of Business and Professional
11 Regulation the statement required by this paragraph and must
12 mail, deliver by electronic mail or other electronic format or
13 facsimile, or personally deliver that statement to the owner
14 or, in the case in which the owner is required to personally
15 appear to obtain the permit, provide that statement to any
16 owner making improvements to real property consisting of a
17 single or multiple family dwelling up to and including four
18 units. However, the failure by the authorities to provide the
19 summary does not subject the issuing authority to liability.

20 (e) Nothing in this subsection shall be construed to
21 require a notice of commencement to be recorded as a condition
22 to the issuance of a building permit.

23 (4) The several boards of county commissioners,
24 municipal councils, or other similar bodies may by ordinance
25 or resolution establish reasonable fees for furnishing copies
26 of the forms and the printed statement provided in paragraphs
27 (1)(b) and paragraph (1)(d) in an amount not to exceed \$5 to
28 be paid by the applicant for each permit in addition to all
29 other costs of the permit; however, no forms or statement need
30 be furnished, mailed, or otherwise provided to, nor may such
31 additional fee be obtained from, applicants for permits in

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1 those cases in which the owner of a legal or equitable
2 interest (including that of ownership of stock of a corporate
3 landowner) of the real property to be improved is engaged in
4 the business of construction of buildings for sale to others
5 and intends to make the improvements authorized by the permit
6 on the property and upon completion will offer the improved
7 real property for sale.

8 Section 9. Subsection (4) of section 713.24, Florida
9 Statutes, is amended to read:

10 713.24 Transfer of liens to security.--

11 (4) If a proceeding to enforce a transferred lien is
12 not commenced within the time specified in s. 713.22 or if it
13 appears that the transferred lien has been satisfied of
14 record, the clerk shall return said security upon request of
15 the person depositing or filing the same, or the insurer. If a
16 proceeding to enforce a lien is commenced in a court of
17 competent jurisdiction within the time specified in s. 713.22
18 and, subsequent to the expiration of the proceeding, the lien
19 is transferred pursuant to s. 713.24, an action commenced to
20 recover against the security shall be deemed to have been
21 brought as of the date of filing the action to enforce the
22 lien.

23 Section 10. Paragraph (b) of subsection (1) of section
24 713.345, Florida Statutes, is amended to read:

25 713.345 Moneys received for real property
26 improvements; penalty for misapplication.--

27 (1)

28 (b) Any person who knowingly and intentionally fails
29 to comply with paragraph (a) is guilty of misapplication of
30 construction funds, punishable as follows:

31 1. If the amount of payments misapplied has an

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1 aggregate value of \$100,000 or more, the violator is guilty of
2 a felony of the first degree, punishable as provided in s.
3 775.082, s. 775.083, or s. 775.084.

4 2. If the amount of payments misapplied has an
5 aggregate value of ~~\$20,000 or more~~ but less than \$100,000, the
6 violator is guilty of a felony of the second degree,
7 punishable as provided in s. 775.082, s. 775.083, or s.
8 775.084.

9 ~~3. If the amount of payments misapplied has an~~
10 ~~aggregate value of less than \$20,000, the violator is guilty~~
11 ~~of a felony of the third degree, punishable as provided in s.~~
12 ~~775.082, s. 775.083, or s. 775.084.~~

13 Section 11. Subsection (1) of section 713.3471,
14 Florida Statutes, is amended to read:

15 713.3471 Lender responsibilities with construction
16 loans.--

17 (1) Prior to a lender making the first any loan
18 disbursement on any construction loan secured by residential
19 property directly to the owner, which for purposes of this
20 section means an individual owner only, or jointly to the
21 owner and any other party, the lender shall give the following
22 written notice to the owner borrowers in bold type larger than
23 any other type on the page:

24
25 WARNING!

26
27 YOUR LENDER IS MAKING A LOAN DISBURSEMENT
28 DIRECTLY TO YOU AS THE OWNER ~~BORROWER~~, OR
29 JOINTLY TO YOU AND ANOTHER PARTY. TO PROTECT
30 YOURSELF FROM HAVING TO PAY TWICE FOR THE SAME
31 LABOR, SERVICES, OR MATERIALS USED IN MAKING

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1 THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT
 2 YOU REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN
 3 RELEASES FROM EACH LIENOR WHO HAS SENT YOU A
 4 NOTICE TO OWNER EACH TIME YOU MAKE A PAYMENT TO
 5 YOUR CONTRACTOR.

6
 7 (Redesignate subsequent sections.)

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 9
 10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 1, line 9, after the semicolon,

13
 14 insert:

15 amending s. 255.05, F.S.; making certain
 16 restrictions in bonds issued for public works
 17 projects unenforceable; deleting obsolete
 18 language; amending s. 713.015, F.S.; revising a
 19 direct contract provision requirement; amending
 20 s. 713.02, F.S.; protecting the rights of
 21 certain persons to enforce certain contract,
 22 lien, or bond remedies or contractual
 23 obligations under certain circumstances;
 24 precluding certain defenses; amending s.
 25 713.04, F.S.; revising certain final payment
 26 requirements; amending s. 713.08, F.S.;
 27 requiring a claim of lien to be served on an
 28 owner; amending s. 713.13, F.S.; clarifying use
 29 of a payment bond as a transfer bond; amending
 30 s. 713.135, F.S., revising certain notice of
 31 commencement and applicability of lien

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1 requirements for certain authorities issuing
2 building permits; amending s. 713.24, F.S.;
3 preserving certain lien rights when filing a
4 transfer bond after commencing certain lien
5 enforcement proceedings; amending s. 713.345,
6 F.S.; increasing certain criminal penalties for
7 misapplication of construction funds; amending
8 s. 713.3471, F.S.; revising a notice
9 requirement concerning the disbursement of
10 payments on construction loans; requiring that
11 the notice be provided to the owner; providing
12 an effective date.

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