

Committee Substitute for House Bill No. 681

An act relating to construction; creating s. 47.025, F.S.; providing that certain venue provisions in a contract for improvement of real property are void; specifying appropriate venue for actions against resident contractors, subcontractors, sub-subcontractors, and materialmen; amending s. 468.621, F.S.; amending certain grounds for disciplinary action against building code administrators and building officials; amending s. 255.05, F.S., relating to payment bonds of contractors constructing public buildings; providing that the time periods required for providing certain notices or bringing certain actions are not determined by the issuance of a certificate of occupancy or a certificate of substantial completion; amending s. 713.06, F.S.; clarifying certain notice requirements with respect to perfecting a lien for labor, services, or materials furnished under contract; amending s. 713.08, F.S.; providing that the time period required for recording a claim of lien is not determined by the issuance of a certificate of occupancy or a certificate of substantial completion; amending s. 713.135, F.S.; clarifying circumstances under which an entity issuing a building permit is subject to disciplinary procedures; providing an exception; amending s. 713.16, F.S.; providing a definition; providing legislative intent; amending s. 713.18, F.S., relating to service of notices and other instruments; amending s. 713.23, F.S.; providing that the time periods required for serving a notice of non-payment or bringing certain actions are not determined by the issuance of a certificate of occupancy or a certificate of substantial completion; providing for the effect of a waiver and release of lien; providing effective dates.

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

Section 1. Section 47.025, Florida Statutes, is created to read:

47.025 Actions against contractors.—Any venue provision in a contract for improvement to real property which requires legal action involving a resident contractor, subcontractor, sub-subcontractor, or materialman, as defined in s. 713.01, to be brought outside this state is void as a matter of public policy. To the extent that the venue provision in the contract is void under this section, any legal action arising out of that contract shall be brought only in this state in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located, unless, after the dispute arises, the parties stipulate to another venue.

Section 2. Paragraph (a) of subsection (2) of section 255.05, Florida Statutes, 1998 Supplement, is amended to read:

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

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to

shorten the prescribed time in this paragraph within which an action to enforce any claim against a payment bond provided pursuant to this section may be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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

DATED on,

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

The claim of any claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service is complete upon mailing.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in accordance with s. 713.18. An action, except for an action exclusively for recovery of retainage, must be instituted against the contractor or the surety on the payment bond or the payment provisions of a combined payment and performance bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies. An action exclusively for recovery of retainage must be instituted against the contractor or the surety within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after the contractor's receipt of final payment (or the payment estimate containing the owner's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the contractor or

surety, whichever comes last. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion.

Section 3. Effective upon becoming a law, subsection (2) of section 713.06, Florida Statutes, 1998 Supplement, is amended to read:

713.06 Liens of persons not in privity; proper payments.—

(2)(a) All lienors under this section, except laborers, as a prerequisite to perfecting a lien under this chapter and recording a claim of lien, must serve a notice on the owner setting forth the lienor's name and address, a description sufficient for identification of the real property, and the nature of the services or materials furnished or to be furnished. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite to perfecting a lien under this chapter and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be served before commencing, or not later than 45 days after commencing, to furnish his or her labor, services, or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit under subparagraph (3)(d)1. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give to the lienor serving the notice any priority over other lienors in the same category; and the failure to serve the notice, or to timely serve it, is a complete defense to enforcement of a lien by any person. The serving of the notice does not dispense with recording the claim of lien. The notice is not a lien, cloud, or encumbrance on the real property nor actual or constructive notice of any of them.

(b) If the owner, in his or her notice of commencement, has designated a person in addition to himself or herself to receive a copy of such lienor's notice, as provided in s. 713.13(1)(b), the lienor shall serve a copy of his or her notice on the person so designated. The failure by the lienor to serve such copy, however, does not invalidate an otherwise valid lien.

(c) The notice ~~may~~ must be in substantially the following form and must include the information and the warning contained in the following form:

WARNING TO OWNER: UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To ...(Owner's name and address)...

The undersigned hereby informs you that he or she has furnished or is furnishing services or materials as follows:

...(General description of services or materials)... for the improvement of the real property identified as ...(property description)... under an order given by.....

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF:

—RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

—LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

...(Lienor's Signature)...

...(Lienor's Name)...

...(Lienor's Address)...

Copies to: ...(Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)...

The form may be combined with a notice to contractor given under s. 713.23 or s. 255.05 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR."

(d) A notice to an owner served on a lender must be in writing, must be served in accordance with s. 713.18, and shall be addressed to the persons designated, if any, and to the place and address designated in the notice of

commencement. Any lender who, after receiving a notice provided under this subsection, pays a contractor on behalf of the owner for an improvement shall make proper payments as provided in paragraph (3)(c) as to each such notice received by the lender. The failure of a lender to comply with this paragraph renders the lender liable to the owner for all damages sustained by the owner as a result of that failure. This paragraph does not give any person other than an owner a claim or right of action against a lender for the failure of the lender to comply with this paragraph. Further, this paragraph does not prohibit a lender from disbursing construction funds at any time directly to the owner, in which event the lender has no obligation to make proper payments under this paragraph.

(e) A lienor, in the absence of a recorded notice of commencement, may rely on the information contained in the building permit application to serve the notice prescribed in paragraphs (a), (b), and (c).

(f) If a lienor has substantially complied with the provisions of paragraphs (a), (b), and (c), errors or omissions do not prevent the enforcement of a claim against a person who has not been adversely affected by such omission or error. However, a lienor must strictly comply with the time requirements of paragraph (a).

Section 4. Subsection (5) of section 713.08, Florida Statutes, 1998 Supplement, is amended to read:

713.08 Claim of lien.—

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor; or, with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use; provided if the original contractor defaults or the contract is terminated under s. 713.07(4), no claim for a lien attaching prior to such default shall be recorded after 90 days from the date of such default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. The time period for recording a claim of lien shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.

Section 5. Subsection (1) of section 713.135, Florida Statutes, 1998 Supplement, is amended to read:

713.135 Notice of commencement and applicability of lien.—

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

(a) Print on the face of each permit card in no less than 18-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT."

(b) Provide the applicant and the owner of the real property upon which improvements are to be constructed with a printed statement stating that the right, title, and interest of the person who has contracted for the improvement may be subject to attachment under the Construction Lien Law. The Department of Business and Professional Regulation shall furnish, for distribution, the statement described in this paragraph, and the statement must be a summary of the Construction Lien Law and must include an explanation of the provisions of the Construction Lien Law relating to the recording, and the posting of copies, of notices of commencement and a statement encouraging the owner to record a notice of commencement and post a copy of the notice of commencement thereof in accordance with s. 713.13. However, the failure by the authorities to provide the summary does not subject the issuing authority to liability.

(c) Inform each applicant who is not the person whose right, title, and interest is subject to attachment that, as a condition to the issuance of a building permit, the applicant must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.

(d) Furnish to the applicant two or more copies of a form of notice of commencement conforming with s. 713.13. If the direct contract is greater than \$2,500, the applicant shall file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording, along with a copy thereof. In the absence of the filing of a certified copy of the recorded notice of commencement, the issuing authority shall not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means such certified copy with the issuing authority. The certified copy of the notice of commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing authority shall verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved which is contained in the certified copy of the notice of commencement is consistent with the information in the building permit application. The issuing authority shall provide the recording information on the certified copy of the recorded notice of commencement to any person upon request. This subsection does not require ~~Nothing herein shall be interpreted as requiring or encouraging~~ the recording of a notice of commencement prior to the issuance of a building permit. If a local government requires a separate permit or inspection for installation of temporary electrical service or

other temporary utility service, land clearing, or other preliminary site work, such permits may be issued and such inspections may be conducted without providing the issuing authority with a certified copy of a recorded notice of commencement or a notarized statement regarding a recorded notice of commencement. This subsection does not apply to a direct contract to repair or replace an existing heating or air-conditioning system in an amount less than \$5,000.

Section 6. (1) Upon this act becoming a law, subsection (6) is added to section 713.16, Florida Statutes, to read:

713.16 Demand for copy of contract and statements of account; form.—

(6) For purposes of this section, the term “information” means the nature and quantity of the labor, services, and materials furnished or to be furnished by a lienor and the amount paid, the amount due, and the amount to become due on the lienor’s account. The failure to furnish the statement under oath does not constitute an omission of information and shall deprive the lienor of his or her lien.

(2) The amendment to this section is remedial in nature. The amendment is consistent with the plain meaning and the original intent of s. 319 of chapter 94-119, Laws of Florida. Accordingly, it is the intent of the Legislature that the amendment to this section shall become effective immediately upon becoming law, and shall apply retroactively to May 4, 1994.

Section 7. Section 713.18, Florida Statutes, 1998 Supplement, is amended to read:

713.18 Manner of serving notices and other instruments.—

(1) Service of notices, claims of lien, affidavits, assignments, and other instruments permitted or required under this part, or copies thereof when so permitted or required, unless otherwise specifically provided in this part, must be made by one of the following methods:

(a) By actual delivery to the person to be served; or, if a partnership, to one of the partners; or, if a corporation, to an officer, director, managing agent, or business agent thereof.

(b) By mailing the same, postage prepaid, by registered or certified mail to the person to be served at her or his last known address and evidence of delivery. If a notice to owner or a notice to contractor under s. 713.23 is mailed pursuant to this paragraph within 40 days after the date the lienor first furnishes labor, services, or materials, service of that notice is effective as of the date of mailing if the person who served the notice maintains a registered or certified mail log that shows the date the notice was served, the registered or certified mail number issued by the United States Postal Service, the name and address of the person served, and the date stamp of the United States Postal Service confirming the date of mailing. If an instrument served pursuant to this paragraph to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit

application is not received, but is returned by the United States Postal Service as being “refused,” “moved, not forwardable,” or “unclaimed,” or is otherwise not delivered or deliverable through no fault of the person serving the item, then service is effective as of the date of mailing.

(c) If neither of the foregoing methods can be accomplished, by posting on the premises.

(2) If the real property is owned by more than one person, a lienor may serve any notices or other papers under this part on any one of such owners, and such notice is deemed notice to all owners.

(3) Service of notices or copies thereof, permitted or required under this part, may be made by facsimile transmission when the person being served has listed that person’s facsimile phone number in the Notice of Commencement. The lienor’s facsimile confirmation sheet with the correct facsimile phone number shall be proof of the date and time the notice was served.

Section 8. Paragraphs (d) and (e) of subsection (1) of section 713.23, Florida Statutes, 1998 Supplement, are amended, and subsection (5) is added to said section, to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor is required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety not later than 90 days after the final furnishing of labor, services, or materials by the lienor. A written notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a written notice of nonpayment shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. The notice under this paragraph may be in substantially the following form:

NOTICE OF NONPAYMENT

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

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

The undersigned notifies you that he or she has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The amount now due and unpaid is \$.....

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

(e) No action for the labor or materials or supplies may be instituted or prosecuted against the contractor or surety unless both notices have been

given. No action shall be instituted or prosecuted against the contractor or against the surety on the bond under this section after 1 year from the performance of the labor or completion of delivery of the materials and supplies. The time period for bringing an action against the contractor or surety on the bond shall be measured from the last day of furnishing labor, services, or materials by the lienor and shall not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A contractor or the contractor's agent or attorney may elect to shorten the prescribed time within which an action to enforce any claim against a payment bond provided pursuant to this section or s. 713.245 may be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

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

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

DATED on,

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

The claim of any lienor upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice shall be extinguished automatically. The clerk shall mail a copy of the notice of contest to the lienor at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of such notice and record the notice. Service is complete upon mailing.

(5) A waiver and release of lien pursuant to s. 713.20 given by a lienor shall constitute a waiver and release in a like amount of the lienor's right to make a claim against a payment bond under this section.

Section 9. Paragraph (g) of subsection (1) of section 468.621, Florida Statutes, 1998 Supplement, is amended to read:

468.621 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(g) Failing to properly enforce applicable building codes by committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property ~~by failure to properly enforce applicable building codes.~~

Section 10. Except as otherwise provided herein, this act shall take effect October 1, 1999.

Approved by the Governor June 18, 1999.

Filed in Office Secretary of State June 18, 1999.