

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Perez offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (2) of section
 8 255.05, Florida Statutes, is amended to read:

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

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

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17 NOTICE OF CONTEST OF CLAIM
18 AGAINST PAYMENT BOND

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

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

25 DATED on,

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

27 The claim of a claimant upon whom such notice is served and who
28 fails to institute a suit to enforce his or her claim against
29 the payment bond within 60 days after service of such notice is
30 ~~shall be~~ extinguished automatically. The contractor or the
31 contractor's attorney shall serve a copy of the notice of
32 contest to the claimant at the address shown in the notice of
33 nonpayment or most recent amendment thereto and shall certify to
34 such service on the face of the notice and record the notice.

35 2. A claimant, except a laborer, who is not in privity
36 with the contractor shall, before commencing or not later than
37 45 days after commencing to furnish labor, services, or
38 materials for the prosecution of the work, serve ~~furnish~~ the

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39 contractor with a written notice that he or she intends to look
40 to the bond for protection. A claimant who is not in privity
41 with the contractor and who has not received payment for
42 furnishing his or her labor, services, or materials shall serve
43 a written notice of nonpayment on ~~deliver to~~ the contractor and
44 on ~~to~~ the surety ~~written notice of the performance of the labor~~
45 ~~or delivery of the materials or supplies and of the nonpayment.~~
46 The notice of nonpayment shall be under oath and served during
47 the progress of the work or thereafter but may not be served
48 earlier than 45 days after the first furnishing of labor,
49 services, or materials by the claimant or later than 90 days
50 after the final furnishing of the labor, services, or materials
51 by the claimant or, with respect to rental equipment, ~~not~~ later
52 than 90 days after the date that the rental equipment was last
53 on the job site available for use. The notice of nonpayment must
54 state the nature of the labor or services performed; the nature
55 of the labor or services to be performed, if known; the
56 materials furnished; the materials to be furnished, if known;
57 the amount paid on account to date; the amount due; and the
58 amount to become due, if known. All such information given must
59 be current as of the stated date of the notice. Any notice of
60 nonpayment served by a claimant who is not in privity with the
61 contractor which includes sums for retainage must specify the
62 portion of the amount claimed for retainage. An action for the
63 labor, materials, or supplies may not be instituted against the

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64 contractor or the surety unless the notice to the contractor and
65 notice of nonpayment have been served, if required by this
66 section. Notices required or permitted under this section must
67 ~~shall~~ be served in accordance with s. 713.18. A claimant may not
68 waive in advance his or her right to bring an action under the
69 bond against the surety. In any action brought to enforce a
70 claim against a payment bond under this section, the prevailing
71 party is entitled to recover a reasonable fee for the services
72 of his or her attorney for trial and appeal or for arbitration,
73 in an amount to be determined by the court, which fee must be
74 taxed as part of the prevailing party's costs, as allowed in
75 equitable actions. The time periods for service of a notice of
76 nonpayment or for bringing an action against a contractor or a
77 surety shall be measured from the last day of furnishing labor,
78 services, or materials by the claimant and may not be measured
79 by other standards, such as the issuance of a certificate of
80 occupancy or the issuance of a certificate of substantial
81 completion. A claimant who serves a fraudulent notice of
82 nonpayment forfeits his or her rights under the bond. A notice
83 of nonpayment is fraudulent if the claimant has willfully
84 exaggerated the amount due or prepared the notice with such
85 willful and gross negligence as to amount to a willful
86 exaggeration. However, a minor mistake or error in a notice of
87 nonpayment, or a good faith dispute as to the amount due, does
88 not constitute a willful exaggeration that operates to defeat an

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89 otherwise valid claim against the bond. The service of a
90 fraudulent notice of nonpayment is a complete defense to the
91 claimant's claim against the bond, entitling the prevailing
92 party to attorney fees under this subparagraph. The notice of
93 nonpayment under this subparagraph must be in substantially the
94 following form:

95
96 NOTICE OF NONPAYMENT

97
98 To: ...(name of contractor and address)...

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

100 The undersigned claimant notifies you that:

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

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

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

112
113 I declare that I have read the foregoing Notice of Nonpayment

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114 and that the facts stated in it are true to the best of my
115 knowledge and belief

116
117 DATED on,

118
119 ...(signature and address of claimant)...

120
121 STATE OF FLORIDA

122 COUNTY OF

123
124 The foregoing instrument was sworn to (or affirmed) and
125 subscribed before me this.....day of.....(year)...(name of
126 signatory)....

127 (Signature of Notary Public-State of Florida)

128 (Print, Type, or Stamp Commissioned Name of Notary Public)

129
130 Personally Known.....OR Produced Identification.....

131
132 Type of Identification Produced.....

133
134 Section 2. Subsection (1) of section 627.756, Florida
135 Statutes, is amended to read:

136 627.756 Bonds for construction contracts; attorney fees in
137 case of suit.-

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138 (1) Section 627.428 applies to suits brought by owners,
139 contractors, subcontractors, laborers, and materialmen against a
140 surety insurer under payment or performance bonds written by the
141 insurer under the laws of this state to indemnify against
142 pecuniary loss by breach of a building or construction contract.
143 Owners, contractors, subcontractors, laborers, and materialmen
144 shall be deemed to be insureds or beneficiaries for the purposes
145 of this section.

146 Section 3. For the purpose of incorporating the amendment
147 made by this act to section 627.756, Florida Statutes, in a
148 reference thereto, Section 627.428, Florida Statutes, is
149 reenacted to read:

150 627.428 Attorney's fee.—

151 (1) Upon the rendition of a judgment or decree by any of
152 the courts of this state against an insurer and in favor of any
153 named or omnibus insured or the named beneficiary under a policy
154 or contract executed by the insurer, the trial court or, in the
155 event of an appeal in which the insured or beneficiary prevails,
156 the appellate court shall adjudge or decree against the insurer
157 and in favor of the insured or beneficiary a reasonable sum as
158 fees or compensation for the insured's or beneficiary's attorney
159 prosecuting the suit in which the recovery is had.

160 (2) As to suits based on claims arising under life
161 insurance policies or annuity contracts, no such attorney's fee
162 shall be allowed if such suit was commenced prior to expiration

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163 of 60 days after proof of the claim was duly filed with the
164 insurer.

165 (3) When so awarded, compensation or fees of the attorney
166 shall be included in the judgment or decree rendered in the
167 case.

168 Section 4. Paragraph (d) of subsection (1) of section
169 713.23, Florida Statutes, is amended to read:

170 713.23 Payment bond.—

171 (1)

172 (d) In addition, a lienor who has not received payment for
173 furnishing his or her labor, services, or materials must ~~is~~
174 required, as a condition precedent to recovery under the bond,
175 to serve a written notice of nonpayment to the contractor and
176 the surety. The notice must be under oath and served during the
177 progress of the work or thereafter, but may not be served before
178 payment of the amount specified in paragraph 1. of the notice is
179 considered past due under the terms of the lienor's contract or
180 not later than 90 days after the final furnishing of labor,
181 services, or materials by the lienor, or, with respect to rental
182 equipment, later than 90 days after the date of the rental
183 equipment was on the job site and available for use. The notice
184 of nonpayment must state the nature of the labor or services
185 performed; the nature of the labor or services to be performed,
186 if known; the materials furnished; the materials to be
187 furnished, if known; the amount paid on account to date; the

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188 amount due; and the amount to become due, if known. All such
189 information given must be current as of the stated date of the
190 notice. A notice of nonpayment that includes sums for retainage
191 must specify the portion of the amount claimed for retainage.
192 The required. A written notice satisfies this condition
193 precedent with respect to the payment described in the notice of
194 nonpayment, including unpaid finance charges due under the
195 lienor's contract, and with respect to any other payments which
196 become due to the lienor after the date of the notice of
197 nonpayment. The time period for serving a ~~written~~ notice of
198 nonpayment shall be measured from the last day of furnishing
199 labor, services, or materials by the lienor and may ~~shall~~ not be
200 measured by other standards, such as the issuance of a
201 certificate of occupancy or the issuance of a certificate of
202 substantial completion. The failure of a lienor to receive
203 retainage sums not in excess of 10 percent of the value of
204 labor, services, or materials furnished by the lienor is not
205 considered a nonpayment requiring the service of the notice
206 provided under this paragraph. If the payment bond is not
207 recorded before commencement of construction, the time period
208 for the lienor to serve a notice of nonpayment may at the option
209 of the lienor be calculated from the date specified in this
210 section or the date the lienor is served a copy of the bond.
211 However, the limitation period for commencement of an action on
212 the payment bond as established in paragraph (e) may not be

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213 expanded. A lienor who serves a fraudulent notice of nonpayment
214 forfeits his or her rights under the bond. A notice of
215 nonpayment is fraudulent if the lienor has willfully exaggerated
216 the amount due or prepared the notice with such willful and
217 gross negligence as to amount to a willful exaggeration.
218 However, a minor mistake or error in a notice of nonpayment, or
219 a good faith dispute as to the amount due, does not constitute a
220 willful exaggeration that operates to defeat an otherwise valid
221 claim against the bond. The service of a fraudulent notice of
222 nonpayment is a complete defense to the lienor's claim against
223 the bond, entitling the prevailing party to attorney fees under
224 s. 713.29. The notice under this paragraph ~~must~~ may be in
225 substantially the following form:

NOTICE OF NONPAYMENT

226
227 To ...(name of contractor and address)...

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

229 The undersigned notifies you that:

230 1. The lienor ~~he or she~~ has furnished ...(describe labor,
231 services, or materials)... for the improvement of the real
232 property identified as ...(property description).... The
233 corresponding amount now due and unpaid is \$.....

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234 2. The lienor has been paid on account to date the amount
235 of \$.... for previously furnishing ...(describe labor, services,
236 or materials)...for this improvement.

237 3. The lienor expects to furnish ...(describe labor,
238 service, or materials)...for this improvement in the future (if
239 known), and the corresponding amount expected to become due is
240 \$.... (if known).

241
242 I declare that I have read the foregoing Notice of Nonpayment
243 and that the facts stated in it are true to the best of my
244 knowledge and belief

245
246 DATED on,

247
248 ...(signature and address of lienor)...

249
250 STATE OF FLORIDA
251 COUNTY OF

252
253 The foregoing instrument was sworn to (or affirmed) and
254 subscribed before me this.....day of.....(year)...(name of
255 signatory)....

256 (Signature of Notary Public-State of Florida)
257 (Print, Type, or Stamp Commissioned Name of Notary Public)

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259 | Personally Known.....OR Produced Identification.....

260

261 | Type of Identification Produced.....

262

263 | Section 5. Subsection (1) of section 713.245, Florida
264 | Statutes, is amended to read:

265 | 713.245 Conditional payment bond.—

266 | (1) Notwithstanding any provisions of ss. 713.23 and
267 | 713.24 to the contrary, if the contractor's written contractual
268 | obligation to pay lienors is expressly conditioned upon and
269 | limited to the payments made by the owner to the contractor, the
270 | duty of the surety to pay lienors will be coextensive with the
271 | duty of the contractor to pay, if the following provisions are
272 | complied with:

273 | (a) The bond is listed in the notice of commencement for
274 | the project as a conditional payment bond and is recorded
275 | together with the notice of commencement for the project before
276 | ~~prior to~~ commencement of the project, or the contractor records
277 | a notice identifying the bond for the project as a conditional
278 | payment bond, with the bond attached, before commencement of the
279 | project. Failure to comply with this paragraph does not convert
280 | a conditional payment bond into a common law bond or into a bond
281 | furnished under s. 713.23.

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

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284 (c) The bond contains on the front page, capitalized and
285 in at least 10-point type, the statement: "THIS BOND ONLY COVERS
286 CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND
287 LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE
288 LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS
289 BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR
290 FILING A CLAIM OF LIEN ON THIS PROJECT."

291 Section 6. The amendments made by this act to ss. 627.756
292 and 713.245, Florida Statutes, apply only to payment or
293 performance bonds issued on or after October 1, 2019.

294 Section 7. This act shall take effect October 1, 2019.

295
296

297 -----

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

299 Remove everything before the enacting clause and insert:

300 An act relating to construction bonds; amending
301 s. 255.05, F.S.; requiring a notice of nonpayment to
302 be under oath; requiring the notice to contain certain
303 statements; specifying that claimant who serves a
304 fraudulent notice of nonpayment forfeits his or her
305 rights under a bond; providing that the service of a
306 fraudulent notice of nonpayment is a complete defense
307 to the claimant's claim against the bond and entitles
308 the prevailing party to attorney fees; requiring a

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309 notice of nonpayment to be in a prescribed form;
310 amending s. 627.756, F.S.; providing that a provision
311 relating to attorney fees applies to certain suits
312 brought by contractors; deeming contractors to be
313 insureds or beneficiaries in relation to bonds for
314 construction contracts; reenacting s. 627.428, F.S.,
315 relating to attorney fees; amending s. 713.23, F.S.;
316 requiring a lienor to serve a notice of nonpayment
317 under oath to specified entities during a certain
318 period of time; requiring a notice of nonpayment to
319 contain certain statements; specifying that a lienor
320 who serves a fraudulent notice of nonpayment forfeits
321 his or her rights under the bond; providing that the
322 service of a fraudulent notice of nonpayment is a
323 complete defense to the lienor's claim against the
324 bond and entitles the prevailing party to attorney
325 fees; requiring a notice of nonpayment to be in a
326 prescribed form; amending s. 713.245, F.S.; providing
327 that a contractor may record a notice identifying a
328 project bond as a conditional payment bond before
329 project commencement to make the duty of a surety to
330 pay lienors coextensive with the contractor's duty to
331 pay; providing that failure to list or record a bond
332 as a conditional payment bond does not convert such a
333 bond into a common law bond or a bond furnished under

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1247 (2019)

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334 | a specified provision; revising the statement that
335 | must be included on a conditional payment bond;
336 | providing applicability; providing an effective date.