A bill related to construction liens: amending chs. 95 and 713, F.S.; to amend s. 95.11(2) and (5), F.S., as to the statute of limitations for actions on payment bonds; to amend s. 713.08(3) containing the statutory form for a claim of lien to include the separate statement required by F.S. 713.08(1)(c); to amend s. 713.13, F.S. to delete the requirement that the notice of commencement be verified and to clarify the timing of the expiration date of the notice of commencement; to amend s. 713.18, F.S. as to electronic confirmation of delivery through the U.S. Postal Service; to provide an effective date.

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

Section 1. Sections (2) and (5) of Section 95.11, Florida Statutes, are amended to read:

(2) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond~~, which shall be~~ governed by the applicable provisions of ss. [255.05](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0255/Sections/0255.05.html)(10), 337.18(1)d) or ~~and~~ [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html)(1)(e).

(5) WITHIN ONE YEAR.—

(a) An action for specific performance of a contract.

(b) An action to enforce an equitable lien arising from the furnishing of labor, services, or material for the improvement of real property.

(c) An action to enforce rights under the Uniform Commercial Code—Letters of Credit, chapter 675.

(d) An action against any guaranty association and its insured, with the period running from the date of the deadline for filing claims in the order of liquidation.

~~(e)~~ ~~An action to enforce any claim against a payment bond on which the principal is a contractor, subcontractor, or sub-subcontractor as defined in s.~~ [~~713.01~~](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.01.html)~~, for private work as well as public work, from the last furnishing of labor, services, or materials or from the last furnishing of labor, services, or materials by the contractor if the contractor is the principal on a bond on the same construction project, whichever is later.~~

(~~f~~e) Except for actions described in subsection (8), a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. [57.085](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0057/Sections/0057.085.html).

(~~g~~f) Except for actions described in subsection (8), an action brought by or on behalf of a prisoner, as defined in s. [57.085](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0057/Sections/0057.085.html), relating to the conditions of the prisoner’s confinement.

Section 2. Subsection (3) of Section 713.08, Florida Statutes, is amended to read:

(3) The claim of lien shall be sufficient if it is in substantially the following form, and includes the following warning:

WARNING!

THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR TO DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of \_\_\_\_

County of \_\_\_\_

Before me, the undersigned notary public, personally appeared \_\_\_\_, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein \_\_\_\_), whose address is \_\_\_\_; and that in accordance with a contract with \_\_\_\_, lienor furnished labor, services, or materials consisting of \_\_\_\_ on the following described real property in \_\_\_\_ County, Florida:

(Legal description of real property)

owned by \_\_\_\_ of a total value of $\_\_\_\_\_\_ (which amount includes $\_\_\_\_\_ for materials specially fabricated off-site for incorporation in the improvement but not yet incorporated), of which there remains unpaid $\_\_\_\_, and furnished the first of the items on \_\_\_\_,   (year)  , and the last of the items on \_\_\_\_,   (year)  ; and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on \_\_\_\_,   (year)  , by \_\_\_\_; and (if required) that the lienor served copies of the notice on the contractor on \_\_\_\_,   (year)  , by \_\_\_\_ and on the subcontractor, \_\_\_\_, on \_\_\_\_,   (year)  , by \_\_\_\_.

  (Signature)

Sworn to (or affirmed) and subscribed before me this \_\_\_\_ day of \_\_\_\_,   (year)  , by   (name of person making statement)  .

  (Signature of Notary Public - State of Florida)

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

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_

However, the negligent inclusion or omission of any information in the claim of lien which has not prejudiced the owner does not constitute a default that operates to defeat an otherwise valid lien.

Section 3. Sub-subsection (d) of subsection (1) of Section 713.13, Florida Statutes, is amended to read:

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

Permit No.\_\_\_\_     Tax Folio No.\_\_\_\_

NOTICE OF COMMENCEMENT

State of\_\_\_\_

County of\_\_\_\_

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

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

2. General description of improvement:\_\_\_\_.

3. Owner information or Lessee Information if Lessee Contracted for the Improvement:\_\_\_\_.

a. Name and address:\_\_\_\_.

b. Interest in property:\_\_\_\_.

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

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

b. Contractor’s phone number:\_\_\_\_.

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

a. Name and address:\_\_\_\_.

b. Phone number:\_\_\_\_.

c. Amount of bond: $\_\_\_\_.

6. a. Lender:   (name and address)  .

b. Lender’s phone number:\_\_\_\_.

7. a. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section [713.13](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.13.html)(1)(a)7., Florida Statutes:

a. Name and address:\_\_\_\_.

b. Phone numbers of designated persons:\_\_\_\_.

8. a. In addition to himself or herself, Owner designates \_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_ to receive a copy of the Lienor’s Notice as provided in Section [713.13](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.13.html)(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:\_\_\_\_.

9. Expiration date of notice of commencement (the expiration date ~~may not be before completion of construction and final payment to the contractor, but~~ will be 1 year from the date of recording unless a different date is specified)\_\_\_\_.

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

~~Under penalty of perjury, I declare that I have read the foregoing notice of commencement and that the facts stated therein are true to the best of my knowledge and belief.~~

 (Signature of Owner or Lessee or Owner’s or Lessee’s Authorized Officer/Director/Partner/Manager)

  (Signatory’s Title/Office)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_,   (year)  , by   (name of person)   as   (type of authority, . . . e.g. officer, trustee, attorney in fact)   for   (name of party on behalf of whom instrument was executed)  .

  (Signature of Notary Public - State of Florida)

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

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_

Type of Identification Produced\_\_\_\_\_\_\_\_\_\_\_\_

Section 4. Subsection (2) of Section 713.18, Florida Statutes, is amended to read:

(2) Notwithstanding subsection (1), if a notice to owner, a notice to contractor under s. [713.23](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0713/Sections/0713.23.html), or a preliminary notice under s. [255.05](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0255/Sections/0255.05.html) is mailed by registered or certified mail with postage prepaid to the person to be served at any of the addresses set forth in subsection (3) 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:

1. maintains a registered or certified mail log that shows 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; or
2. ~~if the person who served the notice~~ maintains electronic tracking records generated ~~through the use of~~ by the United States Postal Service ~~Confirm service or a similar service~~ containing the postal tracking number, the name and address of the person served, and verification of the date of receipt by the United States Postal Service.

Section 5. This act shall take effect on October 1, 2012.