

1                               A bill to be entitled  
2       An act relating to construction liens and bonds;  
3       amending s. 255.05, F.S.; requiring that the bond  
4       number be stated on the first page of the bond;  
5       providing that a provision in a payment bond furnished  
6       for a public works contract that limits the effective  
7       duration of the bond is unenforceable; requiring a  
8       contractor, or the contractor's attorney, to serve  
9       rather than mail a notice of contest of claim against  
10      the payment bond; providing additional time for  
11      service when the bond is not recorded; specifying the  
12      duration of the bond; amending s. 713.132, F.S.;  
13      requiring notice of termination to be served on  
14      lienors in privity with the owner; amending s. 713.16,  
15      F.S.; revising requirements for demands for a copy of  
16      a construction contract and a statement of account;  
17      authorizing a lienor to make certain written demands  
18      to an owner for certain written statements; providing  
19      requirements for such written demands; amending s.  
20      713.18, F.S.; providing additional methods by which  
21      certain items may be served; revising provisions  
22      relating to when service of specified items is  
23      effective; specifying requirements for certain written  
24      instruments under certain circumstances; amending s.  
25      713.22, F.S.; requiring that a contractor serve rather  
26      than mail a notice of contest of lien; amending s.  
27      713.23, F.S.; revising the contents of a notice to  
28      contractor; requiring that a contractor serve rather

HB 897

2012

29        than mail a notice of contest of claim against the  
30        payment bond and a notice of bond; clarifying the  
31        attachment of the bond to the notice; specifying the  
32        duration of the bond; clarifying applicability of  
33        certain provisions; providing an effective date.

34  
35        Be It Enacted by the Legislature of the State of Florida:

36  
37        Section 1. Paragraph (a) of subsection (1) and paragraph  
38        (a) of subsection (2) of section 255.05, Florida Statutes, are  
39        amended to read:

40        255.05 Bond of contractor constructing public buildings;  
41        form; action by materialmen.—

42        (1)(a) Any person entering into a formal contract with the  
43        state or any county, city, or political subdivision thereof, or  
44        other public authority or private entity, for the construction  
45        of a public building, for the prosecution and completion of a  
46        public work, or for repairs upon a public building or public  
47        work shall be required, before commencing the work or before  
48        recommencing the work after a default or abandonment, to  
49        execute, deliver to the public owner, and record in the public  
50        records of the county where the improvement is located, a  
51        payment and performance bond with a surety insurer authorized to  
52        do business in this state as surety. A public entity may not  
53        require a contractor to secure a surety bond under this section  
54        from a specific agent or bonding company. The bond must state on  
55        its front page: the name, principal business address, and phone  
56        number of the contractor, the surety, the owner of the property

HB 897

2012

57 being improved, and, if different from the owner, the  
58 contracting public entity; the contract number assigned by the  
59 contracting public entity; the bond number assigned by the  
60 surety; and a description of the project sufficient to identify  
61 it, such as a legal description or the street address of the  
62 property being improved, and a general description of the  
63 improvement. Such bond shall be conditioned upon the  
64 contractor's performance of the construction work in the time  
65 and manner prescribed in the contract and promptly making  
66 payments to all persons defined in s. 713.01 who furnish labor,  
67 services, or materials for the prosecution of the work provided  
68 for in the contract. Any claimant may apply to the governmental  
69 entity having charge of the work for copies of the contract and  
70 bond and shall thereupon be furnished with a certified copy of  
71 the contract and bond. The claimant shall have a right of action  
72 against the contractor and surety for the amount due him or her,  
73 including unpaid finance charges due under the claimant's  
74 contract. Such action shall not involve the public authority in  
75 any expense. When such work is done for the state and the  
76 contract is for \$100,000 or less, no payment and performance  
77 bond shall be required. At the discretion of the official or  
78 board awarding such contract when such work is done for any  
79 county, city, political subdivision, or public authority, any  
80 person entering into such a contract which is for \$200,000 or  
81 less may be exempted from executing the payment and performance  
82 bond. When such work is done for the state, the Secretary of  
83 Management Services may delegate to state agencies the authority  
84 to exempt any person entering into such a contract amounting to

HB 897

2012

85 more than \$100,000 but less than \$200,000 from executing the  
86 payment and performance bond. In the event such exemption is  
87 granted, the officer or officials shall not be personally liable  
88 to persons suffering loss because of granting such exemption.  
89 The Department of Management Services shall maintain information  
90 on the number of requests by state agencies for delegation of  
91 authority to waive the bond requirements by agency and project  
92 number and whether any request for delegation was denied and the  
93 justification for the denial. Any provision in a payment bond  
94 furnished for public work contracts as provided by this  
95 subsection which restricts the classes of persons as defined in  
96 s. 713.01 protected by the bond or the venue of any proceeding  
97 relating to such bond, or which limits the effective duration of  
98 the bond, is unenforceable.

99 (2)(a)1. If a claimant is no longer furnishing labor,  
100 services, or materials on a project, a contractor or the  
101 contractor's agent or attorney may elect to shorten the  
102 ~~prescribed time in this paragraph~~ within which an action to  
103 enforce any claim against a payment bond must ~~provided pursuant~~  
104 ~~to this section may~~ be commenced by recording in the clerk's  
105 office a notice in substantially the following form:

106  
107 NOTICE OF CONTEST OF CLAIM  
108 AGAINST PAYMENT BOND  
109

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

111  
112 You are notified that the undersigned contests your notice

HB 897

2012

113 of nonpayment, dated ....., and served on the  
114 undersigned on ....., and that the time within  
115 which you may file suit to enforce your claim is limited to 60  
116 days after the date of service of this notice.

117  
118 DATED on .....

119  
120 Signed: ...(Contractor or Attorney)...

121  
122 The claim of any claimant upon whom such notice is served and  
123 who fails to institute a suit to enforce his or her claim  
124 against the payment bond within 60 days after service of such  
125 notice shall be extinguished automatically. The contractor or  
126 the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the  
127 notice of contest to the claimant at the address shown in the  
128 notice of nonpayment or most recent amendment thereto and shall  
129 certify to such service on the face of such notice and record  
130 the notice. ~~Service is complete upon mailing.~~

131 2. A claimant, except a laborer, who is not in privity  
132 with the contractor must ~~shall~~, before commencing or not later  
133 than 45 days after commencing to furnish labor, services, or  
134 materials for the prosecution of the work, furnish the  
135 contractor with a written notice that he or she intends to look  
136 to the bond for protection. If the payment bond is not recorded  
137 before commencement of construction or a claimant is not  
138 otherwise notified in writing of the existence of the bond, the  
139 time periods for the claimant to serve any required notices or  
140 file suit on the bond shall run from the date the claimant is

HB 897

2012

141 notified in writing of the existence of the bond. A claimant who  
142 is not in privity with the contractor and who has not received  
143 payment for his or her labor, services, or materials shall  
144 deliver to the contractor and to the surety written notice of  
145 the performance of the labor or delivery of the materials or  
146 supplies and of the nonpayment. The notice of nonpayment must  
147 ~~may~~ be served ~~at any time~~ during the progress of the work or  
148 thereafter but may not be served earlier than ~~before~~ 45 days  
149 after the first furnishing of labor, services, or materials or  
150 ~~and not~~ later than 90 days after the final furnishing of the  
151 labor, services, or materials by the claimant or, with respect  
152 to rental equipment, ~~not~~ later than 90 days after the date that  
153 the rental equipment was last on the job site available for use.  
154 Any notice of nonpayment served by a claimant who is not in  
155 privity with the contractor which includes sums for retainage  
156 must specify the portion of the amount claimed for retainage. An  
157 ~~No~~ action for the labor, materials, or supplies may not be  
158 instituted against the contractor or the surety unless both  
159 notices have been given. Notices required or permitted under  
160 this section must ~~may~~ be served in accordance with s. 713.18. A  
161 claimant may not waive in advance his or her right to bring an  
162 action under the bond against the surety. In any action brought  
163 to enforce a claim against a payment bond under this section,  
164 the prevailing party is entitled to recover a reasonable fee for  
165 the services of his or her attorney for trial and appeal or for  
166 arbitration, in an amount to be determined by the court, which  
167 fee must be taxed as part of the prevailing party's costs, as  
168 allowed in equitable actions. The time periods for service of a

HB 897

2012

169 notice of nonpayment or for bringing an action against a  
170 contractor or a surety shall be measured from the last day of  
171 furnishing labor, services, or materials by the claimant and may  
172 ~~shall~~ not be measured by other standards, such as the issuance  
173 of a certificate of occupancy or the issuance of a certificate  
174 of substantial completion.

175 Section 2. Paragraph (f) of subsection (1) and subsection  
176 (4) of section 713.132, Florida Statutes, are amended to read:

177 713.132 Notice of termination.—

178 (1) An owner may terminate the period of effectiveness of  
179 a notice of commencement by executing, swearing to, and  
180 recording a notice of termination that contains:

181 (f) A statement that the owner has, before recording the  
182 notice of termination, served a copy of the notice of  
183 termination on the contractor and on each lienor who has a  
184 direct contract with the owner or who has served a notice to  
185 owner ~~given notice~~. The owner is not required to serve a copy of  
186 the notice of termination on any lienor who has executed a  
187 waiver and release of lien upon final payment in accordance with  
188 s. 713.20.

189 (4) A notice of termination is effective to terminate the  
190 notice of commencement at the later of 30 days after recording  
191 of the notice of termination or the date stated in the notice of  
192 termination as the date on which the notice of commencement is  
193 terminated, if ~~provided that~~ the notice of termination has been  
194 served pursuant to paragraph (1)(f) on the contractor and on  
195 each lienor who has a direct contract with the owner or who has  
196 served a notice to owner ~~given notice~~.

HB 897

2012

197           Section 3.   Section 713.16, Florida Statutes, is amended to  
198 read:

199           713.16 Demand for copy of contract and statements of  
200 account; form.—

201           (1) A copy of the contract of a lienor or owner and a  
202 statement of the amount due or to become due if fixed or  
203 ascertainable thereon must be furnished by any party thereto,  
204 upon written demand of an owner or a lienor contracting with or  
205 employed by the other party to such contract. If the owner or  
206 lienor refuses or neglects to furnish such copy of the contract  
207 or such statement, or willfully and falsely states the amount  
208 due or to become due if fixed or ascertainable under such  
209 contract, any person who suffers any detriment thereby has a  
210 cause of action against the person refusing or neglecting to  
211 furnish the same or willfully and falsely stating the amount due  
212 or to become due for his or her damages sustained thereby. The  
213 information contained in such copy or statement furnished  
214 pursuant to such written demand is binding upon the owner or  
215 lienor furnishing it unless actual notice of any modification is  
216 given to the person demanding the copy or statement before such  
217 person acts in good faith in reliance on it. The person  
218 demanding such documents must pay for the reproduction thereof;  
219 and, if such person fails or refuses to do so, he or she is  
220 entitled only to inspect such documents at reasonable times and  
221 places.

222           (2) The owner may serve in writing a demand of any lienor  
223 for a written statement under oath of his or her account showing  
224 the nature of the labor or services performed and to be



HB 897

2012

performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to owner served by such lienor and must include a description of the project, including the names of the owner, the contractor, and the lienor's customer, as set forth in the lienor's notice to owner, sufficient for the lienor to properly identify the account in question. The failure or refusal to furnish the statement does not deprive the lienor of his or her lien if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to owner. The failure or refusal to furnish the statement under oath within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person so failing or refusing to furnish such statement of his or her lien. If the owner serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last response to a demand, the failure or refusal to furnish such statement does not deprive the lienor of his or her lien. The negligent inclusion or omission of any information deprives the person of his or her lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor. The failure to furnish a response to a demand for statement of account does not affect the validity of any claim of lien being

HB 897

2012

enforced through a foreclosure case filed prior to the date the demand for statement is received by the lienor.

(3) A request for sworn statement of account must be in substantially the following form:

REQUEST FOR SWORN STATEMENT OF ACCOUNT

WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT, SIGNED UNDER OATH, WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL RESULT IN THE LOSS OF YOUR LIEN.

To: ...(Lienor's name and address)...

The undersigned hereby demands a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement for the improvement of real property identified as ...(property description)....

...(name of contractor)...

...(name of the lienor's customer, as specified in the lienor's Notice to Owner, if such notice has been served)....

...(signature and address of owner)...

...(date of request for sworn statement of account)...

HB 897

2012

(4) When a contractor has furnished a payment bond pursuant to s. 713.23, he or she may, when an owner makes any payment to the contractor or directly to a lienor, serve a written demand on any other lienor for a written statement under oath of his or her account showing the nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. Any such demand to a lienor must be served on the lienor at the address and to the attention of any person who is designated to receive the demand in the notice to contractor served by such lienor. The demand must include a description of the project, the names of the owner, the contractor, and the lienor's customer, as specified in the lienor's notice to contractor, sufficient for the lienor to properly identify the account in question. The failure or refusal to furnish the statement does not deprive the lienor of his or her rights under the bond if the demand is not served at the address of the lienor or directed to the attention of the person designated to receive the demand in the notice to contractor. The failure to furnish the statement within 30 days after the demand, or the furnishing of a false or fraudulent statement, deprives the person who fails to furnish the statement, or who furnishes the false or fraudulent statement, of his or her rights under the bond. If the contractor serves more than one demand for statement of account on a lienor and none of the information regarding the account has changed since the lienor's last

HB 897

2012

309 response to a demand, the failure or refusal to furnish such  
310 statement does not deprive the lienor of his or her rights under  
311 the bond. The negligent inclusion or omission of any information  
312 deprives the person of his or her rights under the bond to the  
313 extent the contractor can demonstrate prejudice from such act or  
314 omission by the lienor. The failure to furnish a response to a  
315 demand for statement of account does not affect the validity of  
316 any claim on the bond being enforced in a lawsuit filed prior to  
317 the date the demand for statement of account is received by the  
318 lienor.

319 (5) (a) Any lienor ~~who has recorded a claim of lien~~ may  
320 make written demand on the owner for a written statement under  
321 oath showing:

322 1. The amount of the direct contract under which the lien  
323 was recorded;

324 2. The dates and amounts paid or to be paid by or on  
325 behalf of the owner for all improvements described in the direct  
326 contract;

327 3. The reasonable estimated costs of completing the direct  
328 contract under which the lien was claimed pursuant to the scope  
329 of the direct contract; and

330 4. If known, the actual cost of completion.

331 (b) Any owner who does not provide the statement within 30  
332 days after demand, or who provides a false or fraudulent  
333 statement, is not a prevailing party for purposes of an award of  
334 attorney ~~attorney's~~ fees under s. 713.29. The written demand  
335 must include the following warning in conspicuous type in  
336 substantially the following form:

HB 897

2012

337  
338 WARNING: YOUR FAILURE TO FURNISH THE REQUESTED STATEMENT  
339 WITHIN 30 DAYS OR THE FURNISHING OF A FALSE STATEMENT WILL  
340 RESULT IN THE LOSS OF YOUR RIGHT TO RECOVER ATTORNEY FEES IN ANY  
341 ACTION TO ENFORCE THE CLAIM OF LIEN OF THE PERSON REQUESTING  
342 THIS STATEMENT.  
343

344 (6) Any written demand served on the owner must include a  
345 description of the project, the names of the contractor and the  
346 lienor's customer, as specified in the lienor's notice to owner,  
347 sufficient for the owner to properly identify the project in  
348 question.

349 (7)~~(6)~~ For purposes of this section, the term  
350 "information" means the nature and quantity of the labor,  
351 services, and materials furnished or to be furnished by a lienor  
352 and the amount paid, the amount due, and the amount to become  
353 due on the lienor's account.

354 Section 4. Section 713.18, Florida Statutes, is amended to  
355 read:

356 713.18 Manner of serving notices and other instruments.—

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

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

HB 897

2012

limited liability company, to a member or manager.

(b) By sending the service ~~same~~ by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and prepaid, or by overnight or second-day delivery with evidence of delivery, which may be in an electronic format.

(c) ~~If the method specified in paragraph (a) or paragraph (b) cannot be accomplished,~~ By posting on the site of the improvement if service as provided by paragraph (a) or paragraph (b) cannot be accomplished ~~premises.~~

(2) Notwithstanding subsection (1), service of ~~if~~ a notice to owner, a notice to contractor under s. 713.23, s. 337.18, or ~~a preliminary notice under s. 255.05 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:~~

(a) The notice is mailed by registered, Global Express Guaranteed, or certified mail, with postage prepaid, to the person to be served at any of the addresses set forth in subsection (3);

(b) The notice is mailed within 40 days after the date the lienor first furnishes labor, services, or materials; and

(c) 1. The person who served the notice 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

HB 897

2012

stamp of the United States Postal Service confirming the date of mailing; or ~~if~~

2. The person who served the notice maintains electronic tracking records generated through use of 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.

(3) (a) Service of ~~If~~ an instrument ~~served~~ pursuant to this section is effective on the date of mailing if the instrument:

1. Is sent 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, or to the last known address of the person to be served; ~~and, is not received, but~~

2. Is returned 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 on the date the instrument was sent.~~

(b) If the address shown in the notice of commencement or any amendment to the notice of commencement, or, in the absence of a notice of commencement, in the building permit application, is incomplete for purposes of mailing or delivery, the person serving the item may complete the address and properly format it according to United States Postal Service addressing standards using information obtained from the property appraiser or another public record or directory without affecting the validity of service under this section.

HB 897

2012

421           (4) A notice served by a lienor on one owner or one  
422 partner of a partnership owning the real property ~~If the real~~  
423 ~~property is owned by more than one person or a partnership, a~~  
424 ~~lienor may serve any notices or other papers under this part on~~  
425 ~~any one of such owners or partners, and such notice is deemed~~  
426 ~~notice to all owners and partners.~~

427           Section 5. Section 713.22, Florida Statutes, is amended to  
428 read:

429           713.22 Duration of lien.—

430           (1) A ~~No~~ lien provided by this part does not ~~shall~~  
431 continue for a longer period than 1 year after the claim of lien  
432 has been recorded or 1 year after the recording of an amended  
433 claim of lien that shows a later date of final furnishing of  
434 labor, services, or materials, unless within that time an action  
435 to enforce the lien is commenced in a court of competent  
436 jurisdiction. A lien that has been continued beyond the 1-year  
437 period ~~The continuation of the lien effected by the commencement~~  
438 ~~of an~~ the action is ~~shall~~ not enforceable ~~be good~~ against  
439 creditors or subsequent purchasers for a valuable consideration  
440 and without notice, unless a notice of lis pendens is recorded.

441           (2) An owner or the owner's ~~agent or~~ attorney may elect to  
442 shorten the time prescribed in subsection (1) within which to  
443 commence an action to enforce any claim of lien or claim against  
444 a bond or other security under s. 713.23 or s. 713.24 by  
445 recording in the clerk's office a notice in substantially the  
446 following form:

447  
448                                   NOTICE OF CONTEST OF LIEN



HB 897

2012

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

You are notified that the undersigned contests the claim of lien filed by you on ....., ...(year)...., and recorded in .... Book ....., Page ....., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 60 days from the date of service of this notice. This .... day of ....., ...(year)....

Signed: ...(Owner or Attorney)...

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

Section 6. Paragraphs (c), (e), and (f) of subsection (1) and subsections (2) and (4) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.—

(1)

(c) ~~Either~~ Before beginning or within 45 days after beginning to furnish labor, materials, or supplies, a lienor who

HB 897

2012

is not in privity with the contractor, except a laborer, shall serve the contractor with notice in writing that the lienor will look to the contractor's bond for protection on the work. If a notice of commencement is not recorded, or a reference to the bond is not given in the notice of commencement, and in either case if the lienor not in privity with the contractor is not otherwise notified in writing of the existence of the bond, the lienor not in privity with the contractor shall have 45 days from the date the lienor is notified of the existence of the bond within which to serve the notice. The notice may be in substantially the following form and may be combined with a notice to owner given under s. 713.06 and, if so, may be entitled "NOTICE TO OWNER/NOTICE TO CONTRACTOR":

NOTICE TO CONTRACTOR

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

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 ...(lienor's customer)....

This notice is to inform you that the undersigned intends to look to the contractor's bond to secure payment for the

HB 897

2012

furnishing of materials or services for the improvement of the  
real property.

...(name of lienor)...

...(signature of lienor or lienor's representative)...

...(date)...

...(lienor's address)...

~~The undersigned notifies you that he or she has furnished or is  
furnishing ...(services or materials)... for the improvement of  
the real property identified as ...(property description)...  
owned by ...(owner's name and address)... under an order given  
by .... and that the undersigned will look to the contractor's  
bond for protection on the work.~~

~~...(Lienor's signature and address)...~~

(e) An ~~No~~ action for the labor or materials or supplies  
may not be instituted or prosecuted against the contractor or  
surety unless both notices have been given, if required by this  
section. An ~~No~~ action may not ~~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. The time period may  
~~and shall~~ not be measured by other standards, such as the

HB 897

2012

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 under this section or s. 713.245 must ~~may~~ be commenced at any time after a notice of nonpayment, if required, has been served for the claim 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 the 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 the notice shall be extinguished automatically. The contractor or the contractor's attorney ~~clerk~~ shall serve ~~mail~~ a copy of the

HB 897

2012

561 notice of contest to the lienor at the address shown in the  
562 notice of nonpayment or most recent amendment thereto and shall  
563 certify to such service on the face of the notice and record the  
564 notice. ~~Service is complete upon mailing.~~

565 (f) Any lienor has a direct right of action on the bond  
566 against the surety. Any provision in a payment bond which  
567 restricts ~~A bond must not contain any provisions restricting the~~  
568 classes of persons defined in s. 713.01 who are protected by the  
569 payment bond, restricts thereby or the venue of any proceeding  
570 relating to such payment bond, or limits the effective duration  
571 of the payment bond is unenforceable. The surety is not entitled  
572 to the defense of pro tanto discharge as against any lienor  
573 because of changes or modifications in the contract to which the  
574 surety is not a party; but the liability of the surety may not  
575 be increased beyond the penal sum of the bond. A lienor may not  
576 waive in advance his or her right to bring an action under the  
577 bond against the surety.

578 (2) The bond shall secure every lien under the direct  
579 contract accruing subsequent to its execution and delivery,  
580 except that of the contractor. Every claim of lien, except that  
581 of the contractor, filed subsequent to execution and delivery of  
582 the bond shall be transferred to it with the same effect as  
583 liens transferred under s. 713.24. Record notice of the transfer  
584 shall be effected by the contractor, or any person having an  
585 interest in the property against which the claim of lien has  
586 been asserted, by recording in the clerk's office a notice, with  
587 the bond attached, in substantially the following form:  
588

HB 897

2012

## NOTICE OF BOND

To ... (Name and Address of Lienor) ...

You are notified that the claim of lien filed by you on .....,  
....., and recorded in Official Records Book .... at page .... of  
the public records of .... County, Florida, is secured by a  
bond, a copy being attached.

Signed: ... (Name of person recording notice) ...

The notice shall be verified. The person recording the notice of  
bond ~~clerk~~ shall serve mail a copy of the notice along with a  
copy of the bond to the lienor at the address shown in the claim  
of lien, or the most recent amendment to it; shall certify to  
the service on the face of the notice; and shall record the  
notice. ~~The clerk shall receive the same fee as prescribed in s.~~  
~~713.24(1) for certifying to a transfer of lien.~~

(4) The provisions of s. 713.24(3) ~~shall~~ apply to bonds  
under this section except where those provisions conflict with  
this section.

Section 7. This act shall take effect October 1, 2012.