1988

Session Law 88-397

Florida Senate & House of Representatives

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<th>Comp./Sim. Bills</th>
<th>Senate Bills</th>
<th>House Bills</th>
</tr>
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### Committee Records

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### Tape Recordings

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<th># Tapes</th>
<th>Location Cite</th>
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### Other Documentation

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August 27, 1987

Mr. Fred McCormack  
Chief-of-Staff  
Office of the Speaker  
420 Capitol Building  
Tallahassee, Florida 32399-1100

Dear Fred,

Enclosed is a copy of the legislation we discussed with the Speaker last month regarding the inequities in Florida Law in reference to American Subcontractors.

A-1 through A-6 is the stop-notice bill authorizing a Lienor (lienors are defined in the statute) to serve upon a construction lender a stop-notice or a bonded stop-notice not later than ninety (90) days from the last furnishing of labor, services and/or materials to improvements. Upon service of an unbonded stop-notice the lender may, if he so chooses, withhold funds from the borrower. If a bonded stop-notice is served upon the lender, however, the lender must withhold sufficient money to cover the claim of the lienor unless the entire job was bonded from the out-set. In the event of a dispute over the claim of the lienor, the contractor or owner can counteract the bonded stop-notice with a similar bond posted with the lender. The effect is to ensure payment even though there is provision for prorated distribution in special circumstances. It is my understanding this statute has been the law of California for some time and apparently successful.
B-1 through B-2 is the bill pertaining to public works bonds. All it does is require the recording of bonds on public improvements just as bonds on private improvements must be recorded after October 1, 1987.

C-1 is the proposed amendment to the Statute of Limitations making it possible for a subcontractor's bond, like a contractor's bond, to effectively limit liability, at least on the payment provisions, to one year.

D-1 is a proposal, the effect of which is to make the mechanic's lien superior to the construction loan. It is modeled after section 429.05 Missouri Statutes. It appears this has been law of Missouri since some time in the nineteenth century. This is the most controversial issue.

E-1 This is the statute requiring mechanic's liens to either be released or transferred to security before a certificate of occupancy is issued.

F-1 The purpose of this bill is to speed up judicial administration of mechanic's liens foreclosures by putting them under existing section 85.011 Florida Statutes for summary procedure.

Any assistance you can provide on this legislation would be greatly appreciated.

Hope to hear from you soon.

Sincerely yours,

E-1

Eric R. Sisser
President

ERS/mu
Enclosure
cc: Ruby Stegeman
John Bennett
Paul Parcell
Robert Fox
Dave Fender
A bill to be entitled
An act relating to mechanics' liens and to stop notices for withholding of funds from construction lenders; providing the procedure for use of stop notices and bonded stop notices; providing for the effect of service of a stop notice; providing for the bond to release construction funds; providing for commencement of actions; providing for consolidation of actions and impleader; providing an effective date.

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

Section 1. Stop Notice to Construction Lender:
Any lienor may serve upon the construction lender a stop notice or bonded stop notice not later than 90 days from the last furnishing of labor, service and/or materials to an improvement.

Section 2. Stop Notice - Contents:
The stop notice, whether bonded or unbonded, must include the following information:
(a) Name and address of the sender.
(b) Name and address of the construction lender.
(c) Name and address of the owner.
(d) Name and address of the contractor.
(e) Name and address of the sender's customer, if different from either the contractor or the owner.
(f) General description of the labor, services and/or materials furnished.
(g) Project description sufficient to identify the project.

(h) Balance unpaid for which claim is made.

Section 3. Stop Notice, - form - a) A stop notice may be in the following form:

STOP NOTICE

To: (Name and Address of Construction Lender)

Re: (Project Description)

The undersigned hereby gives notice of claim against the construction fund for the project described as:

(description of project)

The undersigned furnished (description of labor, services and/or materials furnished) for improvement of said project pursuant to agreement with (sender's customer's name and address).

The owner of the project is: (name and address)

The contractor on the project is: (name and address)

The amount unpaid for which claim is made is $______

Dated: __________

(Name of Sender)
Signature
(Address of Sender)

Section 4. Bonded Stop Notice; Requirement of Bond:

A bonded stop notice shall be accompanied by a bond with good and sufficient surety in a penal sum equal to 1 1/4 times the amount of claim in the stop notice. The bond shall be conditioned that if the construction lender, or owner, or direct contractor shall be the prevailing party in any action brought to enforce the claim under the stop notice, or in any action for
damages resulting from the service of the stop notice, that the claimant will pay all damages and costs that may be awarded in favor of the owner, construction lender, direct contractor, or any of them by reason of the equitable garnishment effected by reason of the stop notice.

Section 5. Bonded Stop Notice; Withholding Funds:

Upon service of a bonded stop notice, the construction lender shall withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advancements out of the construction fund, sufficient money to answer such claim unless a payment bond has been recorded pursuant to s. 713.23, F.S., which is effective for the direct contract under which claim is made.

Section 6. Stop Notice, Unbonded; Withholding Funds:

Upon service of a stop notice (unbonded), the construction lender may withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advancement out of the construction fund, sufficient money to answer such claim unless a payment bond has been recorded pursuant to s. 713.23, F.S., which is effective for the direct contract under which claim is made.

Section 7. Service on Lender:

a. The stop notice must be served on either the main office or the office or branch of the construction lender which administers or holds the construction funds.

b. Effective service: Service of a stop notice or bonded stop notice shall be effective only if the claimant:
(i) timely served a notice to owner if required for the claimant to claim a lien pursuant to s. 713.06, F.S.; and

(ii) timely served his/her stop notice or bonded stop notice.

Section 8. Assignment of Funds; Effect:

No assignment by the owner or contractor of construction loan funds, whether made before or after a stop notice or bonded stop notice is given to a construction lender, shall be held to take priority over the stop notice or bonded stop notice, and such assignment shall have no effect insofar as the rights of claimants who give the stop notice or bonded stop notice are concerned.

Section 9. Pro rata Distribution of Funds:

(a) If the money withheld or required to be withheld pursuant to any bonded stop notice shall be insufficient to pay in full the valid claims of all persons by whom such notices were given, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of all such valid claims. Such pro rata distribution shall be made among the persons entitled to share therein without regard to the order of time in which their respective notices may have been given or their respective actions, if any, commenced.

(b) If the money withheld or required to be withheld pursuant to any stop notice shall be insufficient to pay in full the valid claims of all senders of stop notices, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of all such valid claims.
Such pro rata distribution shall be made among the persons entitled to share therein without regard to the order of time in which their respective notices may have been given or their respective actions, if any, commenced.

Section 10. Falsity of Notice; Effect:
Any person who willfully gives a false stop notice or bonded stop notice or who willfully includes in his/her notice labor, services, equipment, or materials not furnished for the property described in such notice forfeits all right to participate in the pro rata distribution of such money.

Section 11. Bond to cover stop notice:
If the owner, construction lender or any original contractor or subcontractor disputes the correctness or validity of any stop notice or bonded stop notice, he/she may file with the lender upon whom such notice was served a bond executed by good and sufficient sureties in a penal sum equal to 1 1/4 times the amount stated in such notice, conditioned for the payment of any sum not exceeding the penal obligation of the bond which the claimant may recover on the claim, together with the costs of suit in the action, if he/she recovers therein. Upon the filing of such bond, the funds withheld to respond to the stop notice or bonded stop notice shall forthwith be released.

Section 12. Commencement of Actions; Limitations:
An action against the construction lender to enforce payment of the claim stated in the stop notice or bonded stop notice may be commenced at any time after 10 days from the date of the service of the stop notice upon the construction lender.
and shall be commenced not later than 90 days following the expiration of the period within which claims of lien must be recorded as prescribed in s. 713.08, F.S. No such action shall be brought to trial or judgment entered until the expiration of said 90-day period. No money shall be withheld by reason of any such notice longer than the expiration of such 90-day period unless such action is commenced. If no such action is commenced, such notice shall cease to be effective and such moneys shall be paid or delivered to the contractor or other person to whom they are due.

Section 13. **Consolidation of Actions; Impleading:**

Any number of persons who have given stop notices or bonded stop notices may join in the same action and when separate actions are commenced the court first acquiring jurisdiction may consolidate them. Upon the motion of the owner or construction lender the court shall require all claimants to the moneys withheld pursuant to stop notices and bonded stop notices to be impleaded in one action, to the end that the respective rights of all parties may be adjudicated therein.

Section 14. This act shall take effect October 1, 1988.
A bill to be entitled
An act relating to public property and publicly owned buildings; amending s. 255.05 to provide that contractors entering into a formal contract for public work are required to record the bond that they are providing; providing an effective date.

Section 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, 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 to do business in this state as surety. Such bond shall be conditioned that the contractor perform the contract in the time and manner prescribed in the contract and promptly make payments to all persons defined in s. 713.01 whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a certified copy of the contract and bond. The claimant shall have a right of action against the contractor and surety for the amount due him. Such action shall not involve the public authority in any expense. When such work is done for the
state and the contract is for $100,000.00 or less, no payment and performance bond shall be required. At the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a contract which is for $200,000.00 or less may be exempted from executing the payment and performance bond. When such work is done for the state, the director of the Department of General Services may delegate to state agencies the authority to exempt any person entering into such a contract amounting to more than $100,000.00 but less than $200,000.00 from executing the payment and performance bond. In the event such exemption is granted, the officer or officials shall not be personally liable to persons suffering loss because of granting such exemption.
Amend Florida Statutes Chapter 95.11 to read:

95.11 LIMITATIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.--

Actions other than for the recovery of real property shall be commenced as follows:

. . . . .

(5) WITHIN ONE YEAR.--

. . . . .

(e) An action to enforce any claim against a bond on which the principal is a lienor as defined in s. 713.01 (10)(b) and (c), F.S., and when by the terms of the bond action must be begun within one (1) year of the performance of labor or the delivery of materials and supplies.

Added portions are underlined
A bill to be entitled

An act relating to the priority of mechanics' liens; amending s. 713.07 to provide that such liens shall have priority over any mortgage, loan, encumbrance or other obligation incurred to finance the improvements out of which the lien arises.

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

713.07 Priority of liens. -

* * *

(3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens, but all such liens shall have priority over any encumbrance, mortgage, loan or obligation incurred to pay for or finance the improvements out of which such lien arises.

* * *

(5) This act shall take effect October 1, 1988.
A bill to be entitled
An act relating to construction certificates of occupancy and certificates of completion; providing that the certificate shall not be issued if there is evidence of an unbonded mechanics lien; providing an effective date.

Section 1) No final certificate of occupancy or final certificate of completion shall be issued if there exists a recorded mechanics lien against an improvement for work under a building permit until such lien(s) has been released or transferred to other security.

Section 2) This is not intended to create any duty on the part of the building permit issuing authority to investigate for liens. It is the right and responsibility of any lienor to bring to the attention of the building permit issuing authority the existence of any unresolved mechanics lien.

Section 3) This act shall take effect October 1, 1988.
A bill to be entitled

An action relating to enforcement of statutory liens; adding that all lienors with claims of $100,000 or less may be permitted to use summary action for enforcement of their liens.

85.011 Enforcement by person in privity with the owner. — All liens on real or personal property provided for by part I or part II of Chapter 713 are enforceable by persons in privity with the owners, except when otherwise provided, as follows:

(5) Summary Action —

(a) by a person claiming a lien for labor performed, or claiming a landlord's lien under Section 713.691, or claiming a mechanic's lien under part I in an amount of $100,000.00 or less, filing in the court having jurisdiction of the amount of the lien claimed, a complaint describing the property on which a lien is claimed and stating the facts which authorized or create the lien. Such person is entitled to the summary procedure under s. 51.011.

This action shall take effect October 1, 1988.
# Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>H. P. Travick, Jr.</td>
<td>AGC</td>
<td>P.O. Box 4019, Sarasota, FL</td>
</tr>
<tr>
<td>Rick Sissel</td>
<td>ASA of South Florida</td>
<td>2665 S. Bayshore Dr., Miami, FL</td>
</tr>
<tr>
<td>Larry Lango</td>
<td>American Subcontractors Assn.</td>
<td>290 NW 165 St. PHZ, Miami, FL</td>
</tr>
<tr>
<td>Ronald Cook</td>
<td>Southeastern Ins. Group</td>
<td>20801 Biscayne Blvd. Ste. 401, Miami, FL</td>
</tr>
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**NOTE:** Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

File 2 copies with Clerk

H-22(1976)
SUBCOMMITTEE REPORT
File with Parent Committee
House of Representatives

AS REPORTED TO CLERK

To Chairman, Committee on ______________
Judiciary

Subcommittee on Court Systems, Probate & Consumer Law
Date of meeting ____________

Time ____________
Place ____________

Bill No. PCB JUD 88-3

FINAL ACTION: X FAVORABLE

FAVORABLE WITH __ AMENDMENTS

UNFAVORABLE

VOTE:

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<th>MEMBER</th>
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<td>X</td>
<td>Davis</td>
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<td>X</td>
<td>Diaz-Balart</td>
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<td>Drage</td>
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<td>X</td>
<td>Lawson</td>
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Total Yeas 7

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<tr>
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<td>Webster</td>
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<td>Titone, Chmn.</td>
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Total Nays 0

19 1802

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

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</tr>
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<tr>
<td>Henry P. Trawick, Jr.</td>
<td>AGC</td>
<td>P.O. Box 4019, Sarasota, FL</td>
</tr>
<tr>
<td>Richard Gentry</td>
<td>Florida Home Builders Assn.</td>
<td>P.O. Box 1259, Tall., FL</td>
</tr>
<tr>
<td>Larry Leisy</td>
<td>American Subcontractors Assn.</td>
<td>290 NW 165 St., PH.2. Miami, FL</td>
</tr>
<tr>
<td>Rick Sisser</td>
<td>ASA of Florida</td>
<td>2665 S. Bay Shore Dr., Miami, FL</td>
</tr>
<tr>
<td>Bruce Alexander, Esq.</td>
<td>Assoc. General Contractors</td>
<td>19th Floor, Northbridge Centre</td>
</tr>
<tr>
<td></td>
<td>Fla. East Coast Chapter</td>
<td>515 Flagler Dr. West Palm Beach, FL</td>
</tr>
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</table>

(If additional persons, enter on reverse side and check here __)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee.
Date __________________________

Received by __________________________

H-74(1976)
House of Representatives  
Committee on Judiciary  
Staff Analysis & Economic Impact Statement

Bill #: 88 PCB JUD 03  
Relating to: Mechanic's Liens

Sponsor(s): Committee on Judiciary  
Effective Date: October 1, 1998

I. Summary:

A. Present Situation:

Pursuant to Section 713.23, Florida Statutes, and section 255.05, Florida Statutes, a person may not institute an action against a payment bond issued to a contractor unless suit is brought within one year from the last date on which the person instituting suit furnished labor or materials. There is no specific provision governing a payment bond issued to a subcontractor. Absent a specific provision, a payment bond issued to a subcontractor would appear to be governed by section 95.11(2)(c), Florida Statutes, which permits an action on a written instrument to be brought within five years from the date the cause of action accrued.

Pursuant to section 255.05, Florida Statutes, a person entering into a formal contract with a governmental entity for construction of a public building, for the prosecution and completion of a public work, or for repairs to either a public building or public work, must obtain a payment bond to insure completion of the project in a timely fashion, and payment of subcontractors and materialmen. There is no requirement that the bond be recorded, nor are there any requirements that the bond specify the name of the principal or surety, or that the property be described, although in practice all of these details would be included.

Payment bonds may be required in private projects by the owner. Pursuant to section 713.02, the owner may, but is not required to, post a copy of any bond issued.

Section 713.13, Florida Statutes, requires that an owner of property to be improved record a notice of commencement prior to the commencement of any of the improvements. Generally, the notice of commencement provides information necessary for compliance with the requirements of perfecting mechanic's liens.
The existence of a payment bond need not be shown on the notice of commencement.

Pursuant to section 713.20, Florida Statutes, any lienor, other than a laborer, may waive his lien rights at any time, including waiver prior to the performance of his contract. A partial release of lien may be provided which would generally be drafted to release the lien as to certain services or materials for which payment has been received, regardless of whether the service or material has been provided.

When a payment bond is issued on a private construction project, a lienor may obtain a copy from either the owner, the contractor, or the surety. Damages are provided where a copy is withheld. In accordance with amendments adopted to section 713.23, Florida Statutes, last session, the bond must also be recorded by the surety in the public records and to be posted on the site of the construction project. Notices of nonpayment were also required to be sent by a lienor to the surety each time a payment was not received from the contractor.

Section 713.31(1), Florida Statutes, prohibits the use of fraud or collusion in depriving or attempting to deprive a lienor of his rights under the mechanic’s lien laws of this state, by manipulating the contract price, or by giving false affidavits, releases, invoices, worthless checks, statements, or written instruments permitted or required under the mechanic’s lien statutes. Various equitable remedies are provided, in addition to legal remedies.

Section 713.345, Florida Statutes, created by Chapter 87-74, provides a misdemeanor violation for failure of a person to use sums received by him for the improvement of real property to pay for the services and materials provided for the improvement of that property. A third degree felony is provided for a similar infraction where intent to defraud is proved. Section 713.34, Florida Statutes.

Pursuant to Section 713.347, Florida Statutes, created during the 1987 regular session, funds received by a person for the improvement of real property which are payable to another, must be held in trust, unless exempted.

B. EFFECT OF PROPOSED CHANGES:

This legislation amends various provisions relating to mechanic’s liens, and includes a repeal of the trust provisions of Chapter 87-74, Laws of Florida (1987), now codified as section 713.347, Florida Statutes. A one-year statute of limitations is provided on payment bonds obtained by subcontractors; payment bonds issued to contractors will be required to be recorded either alone or as a part of a notice of commencement; early release of liens is prohibited and a form is provided for partial release of liens; notice requirements relating to nonpayment are simplified; an alternative remedy is provided to lienors attempting to enforce payment by a person who has received funds for payment of their
services; and the provisions relating to the misdemeanor offense for failure to pay such sums are substantially limited.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the legislation amends section 95.11(5), Florida Statutes, by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor, whether for public or private construction projects, must be filed within one year from the last performance of labor or the delivery of materials and supplies.

Section 2 amends section 255.05, Florida Statutes, to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property sufficient to identify it (street address, common name of project, or legal description should suffice).

Section 3 amends section 713.02, Florida Statutes, by deleting the provision which provides that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

Section 4 amends section 713.13, Florida Statutes, to provide that where a payment bond exists, it must be attached to the notice of commencement when recorded.

Section 5 amends section 713.20, Florida Statutes, to prohibit the waiver of lien rights prior to the performance of the labor or services or delivery of the materials. Partial release of lien is provided, as well, only for labor, services, or materials already performed or delivered. A form for the partial release of liens is provided.

Section 6 amends section 713.23, Florida Statutes, to conform to the requirement of section 4 that a copy of a payment bond be attached to the recorded notice of commencement. The provisions relating to the requirement that a copy be furnished on request to a lienor is deleted, as the copy can now be obtained from the public records. Additionally, the requirement of a separate notice of nonpayment to a surety on each occasion on which payment is not made is deleted. In its place, a lienor, not in privity with the contractor, is required to send a single notice of nonpayment to the contractor and surety within 90 days of last furnishing labor or delivery of materials; a lienor in privity with the contractor need only send the notice to the surety. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is deleted, in conformity with the new requirement that the bond be attached to the notice of commencement when the notice of commencement is recorded.
Section 7 amends section 713.31, Florida Statutes, by deleting the requirement that equitable remedies may only be provided to cure the deprivation, or attempted deprivation, of a lienor's lien rights, when fraud or collusion is involved. As amended, such remedies would be available whenever the defendant has manipulated the contract price, falsifying affidavits, invoices, releases, or other documents, giving worthless checks, or failing to pay to a lienor, without good cause, sums which have been received for payment to such lienor. In essence, the provision deletes only the requirement of separately proving fraudulent motive, as each of the listed items involves some degree of fraudulent conduct. The section has also been amended to require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

Section 8 of this legislation amends section 713.345, Florida Statutes, to provide that the misdemeanor offense for failure to pay over to a lienor sums received for the lienor's performance of services or labor, or delivery of materials, will apply only to "retention funds", and only where there is no dispute as to the entitlement of the lienor to such funds. The provision further requires proof by clear and convincing proof of intent to defraud.

Section 9 repeals section 713.347, Florida Statutes, relating to the requirement that funds received on behalf of a lienor be held in trust for such lienor.

Section 10 provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:
   None
B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

1. Direct Private Sector Costs:
   None

2. Direct Private Sector Benefits:
   This legislation should clarify and simplify the ability of
   lienors to obtain payment for labor, services, and materials
   provided on construction projects.

3. Effects on Competition, Private Enterprise, and Employment
   Markets:
   None

D. FISCAL COMMENTS:
   None

III. LONG RANGE CONSEQUENCES:
   None

IV. COMMENTS:
   None

V. AMENDMENTS:

VI. SIGNATURES:

COMMITTEE ON JUDICIARY:
Prepared by:
Thomas R. Tedcastle

Staff Director:
Richard Hixson
I. SUMMARY:

A. PRESENT SITUATION:

Pursuant to Section 713.23, Florida Statutes, and section 255.05, Florida Statutes, a person may not institute an action against a payment bond issued to a contractor unless suit is brought within one year from the last date on which the person instituting suit furnished labor or materials. There is no specific provision governing a payment bond issued to a subcontractor. Absent a specific provision, a payment bond issued to a subcontractor would appear to be governed by section 95.11(2)(c), Florida Statutes, which permits an action on a written instrument to be brought within five years from the date the cause of action accrued.

Pursuant to section 255.05, Florida Statutes, a person entering into a formal contract with a governmental entity for construction of a public building, for the prosecution and completion of a public work, or for repairs to either a public building or public work, must obtain a payment bond to insure completion of the project in a timely fashion, and payment of subcontractors and materialmen. There is no requirement that the bond be recorded, nor are there any requirements that the bond specify the name of the principal or surety, or that the property be described, although in practice all of these details would be included.

Payment bonds may be required in private projects by the owner. Pursuant to section 713.02, the owner may, but is not required to, post a copy of any bond issued.

Section 713.13, Florida Statutes, requires that an owner of property to be improved record a notice of commencement prior to the commencement of any of the improvements. Generally, the notice of commencement provides information necessary for compliance with the requirements of perfecting mechanic's liens.
The existence of a payment bond need not be shown on the notice of commencement.

Pursuant to section 713.20, Florida Statutes, any lienor, other than a laborer, may waive his lien rights at any time, including waiver prior to the performance of his contract. A partial release of lien may be provided which would generally be drafted to release the lien as to certain services or materials for which payment has been received, regardless of whether the service or material has been provided.

When a payment bond is issued on a private construction project, a lienor may obtain a copy from either the owner, the contractor, or the surety. Damages are provided where a copy is withheld. In accordance with amendments adopted to section 713.23, Florida Statutes, last session, the bond must also be recorded by the surety in the public records and to be posted on the site of the construction project. Notices of nonpayment were also required to be sent by a lienor to the surety each time a payment was not received from the contractor.

Section 713.31(1), Florida Statutes, prohibits the use of fraud or collusion in depriving or attempting to deprive a lienor of his rights under the mechanic's lien laws of this state, by manipulating the contract price, or by giving false affidavits, releases, invoices, worthless checks, statements, or written instruments permitted or required under the mechanic's lien statutes. Various equitable remedies are provided, in addition to legal remedies.

Section 713.345, Florida Statutes, created by Chapter 87-74, provides a misdemeanor violation for failure of a person to use sums received by him for the improvement of real property to pay for the services and materials provided for the improvement of that property. A third degree felony is provided for a similar infraction where intent to defraud is proved. Section 713.34, Florida Statutes.

Pursuant to Section 713.347, Florida Statutes, created during the last regular session, funds received by a person for the improvement of real property which are payable to any other person, other than lienors, are subject to the Florida Statutes. A one-year statute of limitations is provided on payment bonds obtained by subcontractors, payment or a refusal to contractors will be required to be recorded either alone or as a part of a notice of commencement. Early release of liens is prohibited and a form is provided for partial release of liens; notice requirements relating to nonpayment are simplified; an alternative remedy is provided to lienors attempting to enforce payment by a person who has received funds for payment of their
services; and the provisions relating to the misdemeanor offense for failure to pay such sums are substantially limited.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the legislation amends section 95.11(5), Florida Statutes, by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor, whether for public or private construction projects, must be filed within one year from the last performance of labor or the delivery of materials and supplies.

Section 2 amends section 255.05, Florida Statutes, to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property sufficient to identify it (street address, common name of project, or legal description should suffice).

Section 3 amends section 713.02, Florida Statutes, by deleting the provision which provides that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

Section 4 amends section 713.13, Florida Statutes, to provide that where a payment bond exists, it must be attached to the notice of commencement when recorded.

Section 5 amends section 713.20, Florida Statutes, to prohibit the waiver of lien rights prior to the performance of the labor or services or delivery of the materials. Partial release of lien is provided, as well, only for labor, services, or materials already performed or delivered. A form for the partial release of liens is provided.

Section 6 amends section 713.23, Florida Statutes, to conform to the requirement of section 4 that a copy of a payment bond be attached to the recorded notice of commencement. The provisions relating to the requirement that a copy be furnished on request to a lienor is deleted, as the copy can now be obtained from the public records. Additionally, the requirement of a separate notice of nonpayment to a surety on each occasion on which payment is not made is deleted. In its place, a lienor, not in privity with the contractor, is required to send a single notice of nonpayment to the contractor and surety within 90 days of last furnishing labor or delivery of materials; a lienor in privity with the contractor need only send the notice to the surety. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is deleted, in conformity with the new requirement that the bond be attached to the notice of commencement when the notice of commencement is recorded.
Section 7 amends section 713.31, Florida Statutes, by deleting the requirement that equitable remedies may only be provided to cure the deprivation, or attempted deprivation, of a lienor's lien rights, when fraud or collusion is involved. As amended, such remedies would be available whenever the defendant has manipulated the contract price, falsifying affidavits, invoices, releases, or other documents, giving worthless checks, or failing to pay to a lienor, without good cause, sums which have been received for payment to such lienor. In essence, the provision deletes only the requirement of separately proving fraudulent motive, as each of the listed items involves some degree of fraudulent conduct. The section has also been amended to require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

Section 8 of this legislation amends section 713.345, Florida Statutes, to provide that the misdemeanor offense for failure to pay over to a lienor sums received for the lienor's performance of services or labor, or delivery of materials, will apply only to "retention funds", and only where there is no dispute as to the entitlement of the lienor to such funds. The provision further requires proof by clear and convincing proof of intent to defraud.

Section 9 repeals section 713.347, Florida Statutes, relating to the requirement that funds received on behalf of a lienor be held in trust for such lienor.

Section 10 provides an effective date of October 1, 1988.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. **Non-recurring or First Year Start-Up Effects:**

   None

2. **Recurring or Annualized Continuation Effects:**

   None

3. **Long Run Effects Other Than Normal Growth:**

   None

4. **Appropriations Consequences:**

   None
B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None

2. Direct Private Sector Benefits:
   This legislation should clarify and simplify the ability of
   lienors to obtain payment for labor, services, and materials
   provided on construction projects.

3. Effects on Competition, Private Enterprise, and Employment
   Markets:
   None

D. FISCAL COMMENTS:

   None

III. LONG RANGE CONSEQUENCES:

   None

IV. COMMENTS:

   None

V. AMENDMENTS:

VI. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by: Thomas R. Tedcastle

Staff Director: Richard Hixson
I. SUMMARY:

A. Present Situation:

Pursuant to s. 713.23, F.S., and s. 255.05, F.S., a person may not institute an action against a payment bond issued to a contractor unless suit is brought within 1 year from the last date on which the person instituting suit furnished labor or materials. There is no specific provision governing a payment bond issued to a subcontractor.

Pursuant to s. 255.05, F.S., a person entering into a formal contract with a governmental entity for construction of a public building, for the prosecution and completion of a public work, or for repairs to either a public building or public work, must obtain a payment bond to insure the payment of subcontractors and materialmen.

Payment bonds may be required in private projects by the owner. Pursuant to s. 713.02, F.S., the owner may, but is not required to, post a copy of any bond issued.

Section 713.13, F.S., requires that an owner of property to be improved record a notice of commencement prior to the commencement of any of the improvements. Generally, the notice of commencement provides information necessary for compliance with the requirements of perfecting mechanic's liens.

The existence of a payment bond need not be shown on the notice of commencement.

Pursuant to s. 713.20, F.S., any lienor, other than a laborer, may waive his lien rights at any time, including waiver prior to the performance of his contract. A partial release of lien may be provided which would generally be drafted to release the lien as to certain services or materials for which payment has been received, regardless of whether the service or material has been provided.

When a payment bond is issued on a private construction project, a lienor may obtain a copy from either the owner, the contractor, or the surety. Damages are provided where a copy is withheld. In accordance with amendments adopted to s. 713.23, F.S., in 1987, the bond must also be recorded by the surety in the public records and be posted on the site of the construction project. Notices of nonpayment were also required to be sent, by a lienor to the surety, each time a payment was not received from the contractor.

Section 713.31(1), F.S., prohibits the use of fraud or collusion in depriving or attempting to deprive a lienor of his rights under the mechanic's lien laws of this state. In addition, various equitable remedies are provided, as well as legal remedies.
Section 713.345, F.S., provides a misdemeanor violation for failure to use sums received for the improvement of real property to pay for the services and materials provided for the improvement of that property. A third degree felony is provided for a similar infraction where intent to defraud is proved (Section 713.34, F.S.).

Finally, pursuant to s. 713.347, F.S., funds received by a person for the improvement of real property which are payable to another, must be held in trust, unless exempted.

B. Effect of Proposed Changes:

This legislation amends various provisions relating to mechanics' liens. To help in understanding the provisions of this bill, a section-by-section analysis is provided below:

Section 1: This section amends s. 713.23, F.S., and requires a lienor, who is not in privity with the bonded contractor, to send a single notice of nonpayment to the contractor and surety within 90 days of last furnishing labor or materials. A lienor in privity with the contractor need only send notice to the surety. Section 1 also places a requirement upon the contractor, or any person having an interest in the property against which a claim of lien may be asserted, to record any payment bond arising from s. 713.23, F.S.

Section 2: This section amends s. 713.345, F.S., to provide that the misdemeanor offense for failure to pay a lienor sums received for the lienor's performance of services or delivery of materials, will only apply to "retention funds," and only where there is no dispute as to the entitlement of the lienor to such funds. However, a person is not prevented from withholding payment in accordance with the terms of the contract.

Section 3: This section requires contractors or subcontractors who are holding funds in trust for the payments of lienors to apply such funds in accordance with the provisions of s. 713.345, F.S. The provisions of this section would not apply to a contractor when a payment bond has been recorded and is in effect.

Section 4: Provides an effective date of October 1, 1988.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Pursuant to s. 713.23, F.S., and s. 255.05, F.S., a person may not institute an action against a payment bond issued to a contractor unless suit is brought within 1 year from the last date on which the person instituting suit furnished labor or materials. There is no specific provision governing a payment bond issued to a subcontractor.

Pursuant to s. 255.05, F.S., a person entering into a formal contract with a governmental entity for construction of a public building, for the prosecution and completion of a public work, or for repairs to either a public building or public work, must obtain a payment bond to insure the payment of subcontractors and materialmen.

Payment bonds may be required in private projects by the owner. Pursuant to s. 713.02, F.S., the owner may, but is not required to, post a copy of any bond issued.

Section 713.13, F.S., requires that an owner of property to be improved record a notice of commencement prior to the commencement of any of the improvements. Generally, the notice of commencement provides information necessary for compliance with the requirements of perfecting mechanic's liens.

The existence of a payment bond need not be shown on the notice of commencement.

Pursuant to s. 713.20, F.S., any lienor, other than a laborer, may waive his lien rights at any time, including waiver prior to the performance of his contract. A partial release of lien may be provided which would generally be drafted to release the lien as to certain services or materials for which payment has been received, regardless of whether the service or material has been provided.

When a payment bond is issued on a private construction project, a lienor may obtain a copy from either the owner, the contractor, or the surety. Damages are provided where a copy is withheld. In accordance with amendments adopted to s. 713.23, F.S., in 1987, the bond must also be recorded by the surety in the public records and be posted on the site of the construction project. Notices of nonpayment were also required to be sent, by a lienor to the surety, each time a payment was not received from the contractor.

Section 713.31(1), F.S., prohibits the use of fraud or collusion in depriving or attempting to deprive a lienor of his rights under the mechanic's lien laws of this state. In addition, various equitable remedies are provided, as well as legal remedies.
Section 713.345, F.S., provides a misdemeanor violation for failure to use sums received for the improvement of real property to pay for the services and materials provided for the improvement of that property. A third degree felony is provided for a similar infraction where intent to defraud is proved. Section 713.34, F.S.

Finally, pursuant to s. 713.347, F.S., funds received by a person for the improvement of real property which are payable to another, must be held in trust, unless exempted.

B. Effect of Proposed Changes:

This legislation amends various provisions relating to mechanic's liens, and repeals the trust provisions of s. 713.347, F.S. To help in understanding the provisions of this bill, a section-by-section analysis is provided below:

Section 1: The legislation amends s. 95.11, F.S., by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor must be filed within 1 year from the last performance of labor or the delivery of materials and supplies.

Section 2: The bill amends s. 255.05, F.S., to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property.

Section 3: This section amends s. 713.02, F.S., by deleting the requirement that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

Section 4: Amends s. 713.13, F.S., by providing that where a payment bond exists, it must be attached to the notice of commencement when recorded.

Section 5: This section amends s. 713.20, F.S., to prohibit the waiver of lien rights prior to the performance of labor or services or delivery of materials. Partial release of lien is provided, but only for labor, services, or materials already performed or delivered. A form for the partial release of liens is also provided.

Section 6: The bill amends s. 713.23, F.S., to conform it to the new requirements set forth in Section 4 of PCS/SB 361 (see above). The requirement that a copy be furnished on request to a lienor is deleted since the copy can now be obtained from the public records. Additionally, the requirement of a separate notice of nonpayment to a surety on each occasion on which payment is not made is deleted. In its place, a lienor, not in privity with the contractor, is required to send a single notice of nonpayment to the contractor and surety within 90 days of last furnishing labor or delivery of materials. A lienor in privity with the contractor need only send the notice to the surety. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is deleted since the bond would be attached to the notice of commencement when the notice of commencement is recorded.

Section 7: This section amends s. 713.31, F.S., by deleting the requirement that equitable remedies may only be provided to cure the deprivation of a lienor's lien rights, when fraud or collusion is involved. Generally, as amended, such remedies would be available whenever the defendant has engaged in fraudulent behavior. The section has also been amended to
require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

Section 8: This section amends s. 713.345, F.S., to provide that the misdemeanor offense for failure to pay a lienor sums received for the lienor's performance of services, or delivery of materials, will apply only to "retention funds," and only where there is no dispute as to the entitlement of the lienor to such funds. The provision further requires proof by clear and convincing proof of intent to defraud.

Section 9: This section repeals s. 713.347, F.S., which requires that funds received on behalf of a lienor be held in trust for such lienor.

Section 10: Provides an effective date of October 1, 1988.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 361

The committee substitute amends various provisions relating to mechanic's liens, and repeals the trust provisions of s. 713.347, F.S. A section-by-section summary is provided below:

1) The legislation amends s. 95.11, F.S., by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor must be filed within 1 year from the last performance of labor or the delivery of materials and supplies.

2) The bill amends s. 255.05, F.S., to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property.

3) CS for SB 361 amends s. 713.02, F.S., by deleting the requirement that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

4) The bill amends s. 713.13, F.S., by providing that where a payment bond exists, it must be attached to the notice of commencement when recorded.

5) The legislation amends s. 713.20, F.S., to prohibit the waiver of lien rights prior to the performance of labor or services or delivery of materials. Partial release of lien is provided, but only for labor, services, or materials already performed or delivered. A form for the partial release of liens is also provided.

6) The bill amends s. 713.23, F.S., to conform it to the new requirements set forth in Section 4 of CS/SB 361 (see above). The requirement that a copy be furnished on request to a lienor is deleted since the copy can now be obtained from the public records. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is also deleted since the bond would be attached to the notice of commencement when the notice of commencement is recorded.

7) CS for SB 361 amends s. 713.345, F.S., to provide that the misdemeanor offense for failure to pay a lienor sums received for the lienor's performance of services, or delivery of materials, will apply only where there is no dispute as to the entitlement of the lienor to such funds and the failure to pay was intentional and with knowledge.

8) The bill requires that when a person receives payment for constructing or altering permanent improvements to real

Committee on Commerce

Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)
property that such payments must be used to pay the corresponding undisputed contract obligations for labor, services, or materials. If payment for such undisputed obligations are not paid the later of 30 days from the date payment is due for such obligations or 30 days after the payment for such services were received but not properly distributed, the person providing such services may bring a court action by filing a complaint as outlined within the bill. Possible court remedies include: an accounting, temporary injunction, prejudgment attachment and any other available legal or equitable remedy. The legislation also provides for the prevailing party in such an action to be entitled to recover costs, including reasonable attorney’s fees, from a trial or an appeal.

9) The bill repeals s. 713.347, F.S., which requires that funds received on behalf of a lienor be held in trust for such lienor.

10) Provides an effective date of October 1, 1988.
The committee substitute amends various provisions relating to mechanic's liens, and repeals the trust provisions of s. 713.347, F.S. A section-by-section summary is provided below:

1) The legislation amends s. 95.11, F.S., by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor must be filed within 1 year from the last performance of labor or the delivery of materials and supplies.

2) The bill amends s. 255.05, F.S., to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property.

3) CS for SB 361 amends s. 713.02, F.S., by deleting the requirement that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

4) The bill amends s. 713.13, F.S., by providing that where a payment bond exists, it must be attached to the notice of commencement when recorded.

5) The legislation amends s. 713.20, F.S., to prohibit the waiver of lien rights prior to the performance of labor or services or delivery of materials. Partial release of lien is provided, but only for labor, services, or materials already performed or delivered. A form for the partial release of liens is also provided.

6) The bill amends s. 713.23, F.S., to conform it to the new requirements set forth in Section 4 of PCS/SB 361 (see above). The requirement that a copy be furnished on request to a lienor is deleted since the copy can now be obtained from the public records. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is also deleted since the bond would be attached to the notice of commencement when the notice of commencement is recorded.

7) CS for SB 361 amends s. 713.11, F.S., by deleting the requirement that equitable remedies may only be provided to cure the deprivation of a lienor's lien rights, when fraud or collusion is involved. Generally, as amended, such remedies would be available whenever the defendant has engaged in fraudulent behavior. The section has also been amended to require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

8) The bill repeals s. 713.347, F.S., which requires that funds received on behalf of a lienor be held in trust for such lienor.

9) Provides an effective date of October 1, 1988.

Committee on Commerce

Staff Director

(File three copies with the Secretary of the Senate)
I. SUMMARY:

A. Present Situation:

Pursuant to s. 713.23, F.S., and s. 255.05, F.S., a person may not institute an action against a payment bond issued to a contractor unless suit is brought within 1 year from the last date on which the person instituting suit furnished labor or materials. There is no specific provision governing a payment bond issued to a subcontractor.

Pursuant to s. 255.05, F.S., a person entering into a formal contract with a governmental entity for construction of a public building, for the prosecution and completion of a public work, or for repairs to either a public building or public work, must obtain a payment bond to insure the payment of subcontractors and materialmen.

Payment bonds may be required in private projects by the owner. Pursuant to s. 713.02, F.S., the owner may, but is not required to, post a copy of any bond issued.

Section 713.13, F.S., requires that an owner of property to be improved record a notice of commencement prior to the commencement of any of the improvements. Generally, the notice of commencement provides information necessary for compliance with the requirements of perfecting mechanic's liens.

The existence of a payment bond need not be shown on the notice of commencement.

Pursuant to s. 713.20, F.S., any lienor, other than a laborer, may waive his lien rights at any time, including waiver prior to the performance of his contract. A partial release of lien may be provided which would generally be drafted to release the lien as to certain services or materials for which payment has been received, regardless of whether the service or material has been provided.

When a payment bond is issued on a private construction project, a lienor may obtain a copy from either the owner, the contractor, or the surety. Damages are provided where a copy is withheld. In accordance with amendments adopted to s. 713.23, F.S., in 1987, the bond must also be recorded by the surety in the public records and be posted on the site of the construction project. Notices of nonpayment were also required to be sent, by a lienor to the surety, each time a payment was not received from the contractor.

Section 713.31(1), F.S., prohibits the use of fraud or collusion in depriving or attempting to deprive a lienor of his rights under the mechanic's lien laws of this state. In addition, various equitable remedies are provided, as well as legal remedies.
Section 713.345, F.S., provides a misdemeanor violation for failure to use sums received for the improvement of real property to pay for the services and materials provided for the improvement of that property. A third degree felony is provided for a similar infraction where intent to defraud is proved. Section 713.34, F.S.

Finally, pursuant to s. 713.347, F.S., funds received by a person for the improvement of real property which are payable to another, must be held in trust, unless exempted.

B. Effect of Proposed Changes:

This legislation amends various provisions relating to mechanic's liens, and repeals the trust provisions of s. 713.347, F.S. To help in understanding the provisions of this bill, a section-by-section analysis is provided below:

Section 1: The legislation amends s. 95.11, F.S., by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor must be filed within 1 year from the last performance of labor or the delivery of materials and supplies.

Section 2: The bill amends s. 255.05, F.S., to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property.

Section 3: This section amends s. 713.02, F.S., by deleting the requirement that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

Section 4: Amends s. 713.13, F.S., by providing that where a payment bond exists, it must be attached to the notice of commencement when recorded.

Section 5: This section amends s. 713.20, F.S., to prohibit the waiver of lien rights prior to the performance of labor or services or delivery of materials. Partial release of lien is provided, but only for labor, services, or materials already performed or delivered. A form for the partial release of liens is also provided.

Section 6: The bill amends s. 713.23, F.S., to conform it to the new requirements set forth in Section 4 of PCS/SB 361 (see above). The requirement that a copy be furnished on request to a lienor is deleted since the copy can now be obtained from the public records. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is also deleted since the bond would be attached to the notice of commencement when the notice of commencement is recorded.

Section 7: This section amends s. 713.31, F.S., by deleting the requirement that equitable remedies may only be provided to cure the deprivation of a lienor's lien rights, when fraud or collusion is involved. Generally, as amended, such remedies would be available whenever the defendant has engaged in fraudulent behavior. The section has also been amended to require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

Section 8: This section amends s. 713.345, F.S., to provide that the misdemeanor offense for failure to pay a lienor sums received for the lienor's performance of services, or delivery
of materials, will apply only to "retention funds," and only where there is no dispute as to the entitlement of the lienor to such funds. The provision further requires proof by clear and convincing proof of intent to defraud.

Section 9: This section repeals s. 713.347, F.S., which requires that funds received on behalf of a lienor be held in trust for such lienor.

Section 10: Provides an effective date of October 1, 1988.

II. ECONOMIC IMPACT AND FISCAL NOTE:
   A. Public:
      None.
   B. Government:
      None.

III. COMMENTS:
      None.

IV. AMENDMENTS:
      None.
A bill to be entitled
An act relating to mechanics' liens; amending
ss. 713.23, 713.345, 713.347, F.S.; revising
the circumstances under which a notice of
nonpayment must be given in order to receive
recovery under a bond; providing clarifying
language; requiring certain interested parties,
rather than a surety, to record certain payment
bonds; providing for the disposition of funds
held in trust by a contractor, subcontractor,
or sub-subcontractor; providing an effective
date.

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

Section 1. Paragraph (e) of subsection (1), and
paragraph (b) of subsection (3) of section 713.23, Florida
Statutes, are amended to read:

713.23 Payment bond.--

(1)

(e) In addition:

1. A lienor who is not in privity with the bonded
contractor shall be required, as a condition precedent to
recovery under the bond, to serve a written notice of
nonpayment to the contractor and the surety within 90 days
after final performance of the labor or the delivery of
materials of the failure to receive any payment which is then
due and owing from the delivery date for any labor, services,
or materials. Failure of a lienor to receive retainage sums
not in excess of 10 percent of the value of labor, services,
and materials furnished by said lienor shall not be considered

CODING: Words stricken are deletions; words underlined are additions.
2. A lienor who is in privity with the bonded contractor shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the surety within 90 days after final performance of the labor or the delivery of materials.

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 has furnished ...(describe labor, services, or materials) for the improvement of the real property identified as ...(property description) owned by ...(owner's name and address) under order given by ..... The last of the labor, services, or materials was furnished on ...., 19...... The amount now due and unpaid is $......

...(Signature and address of lienor)...

(b) A copy of a recorded payment bond under this section, certified by the clerk, shall be posted by the owner of the real property at the site of the construction or improvement before commencement of the construction or improvement. A certified copy of all payment bonds under this

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section shall be recorded by the contractor, or any person having an interest in the property against which a claim of lien may be asserted, surety in the county wherein the construction or improvement to real property is to take place within 45 days after of the date of issuance of the bond. Failure to record the bond voids the exemptions from mechanics' liens under part I of this chapter.

Section 2. Subsection (1) of section 713.345, Florida Statutes, is amended to read:

> 713.345 Moneys received for real property improvements; penalty for misuse.--

>(l)(a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion the proceeds of any such payment to the payment of all amounts then due and owing owed for services and labor which were performed on, or materials which were furnished for, such improvement prior to receipt of the payment. This paragraph does not prevent any person from withholding any portion of a payment in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.

>(b) Any person who fails to comply with the requirements of paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 713.347, Florida Statutes, is amended to read:

> 713.347 Funds to be held in trust.--Any contractor, subcontractor, or sub-subcontractor who receives funds which

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are owed by that person directly to a subcontractor, sub-
subcontractor, materialman, or other lienor under this part
shall hold such funds in trust for such subcontractor, sub-
subcontractor, materialman, or other lienor and shall apply
not-use such funds in accordance with s. 713.345 for-any-other
purpose. This section does not apply when the contractor has
a legal or equitable interest in the property which interest
is attachable under this chapter or when a payment bond, as
provided in s. 713.23, has been duly recorded and is in
effect.

Section 4. This act shall take effect October 1, 1988.

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SENATE SUMMARY

Provides that as a condition of recovery under a payment
bond, a lienor must serve the required notice of
nonpayment 90 days after final performance of the labor
or the delivery of materials rather than within 90 days
after failure to receive payment. Requires the
contractor or a person having an interest in the
property, rather than the surety, to record, within 45
days after the date of issuance, a certified copy of all
payment bonds in the county where the construction or
improvement is to take place. Authorizes the withholding
of payment for services, labor, or materials under
certain circumstances. Provides for the disposition of
certain funds held in trust by a contractor,
subcontractor, or sub-subcontractor.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to construction bonds and
liens; amending s. 95.11, F.S.; prescribing a
statute of limitations for an action to enforce
a claim against a payment bond on which the
principal is a subcontractor or a sub-
subcontractor; amending s. 255.05, F.S.;
providing additional requirements with respect
to the payment and performance bond of a
contractor constructing public buildings;
amending s. 713.02, F.S.; deleting requirement,
under the mechanics' liens law, that the owner
post a copy of the payment bond at the
construction site; amending s. 713.13, F.S.;
requiring a copy of the bond to be attached to
the notice of commencement; amending s. 713.20,
F.S.; prohibiting the waiver of a lien in
advance; providing a form for partial release
of a lien; amending s. 713.23, F.S.; revising
provisions relating to payment bonds; requiring
written notice of nonpayment to be given to the
surety in order for certain persons to recover
on payment bonds; deleting requirement that a
copy of a recorded payment bond be posted at
the construction site; amending s. 713.345,
F.S.; revising provisions relating to misuse of
moneys received for real property improvements;
providing penalties; providing legal and
equitable remedies for failure of a person to
properly apply payments received for
improvements to real property; providing

C O D I N G : W o r d s s t r i c k e n a r e d e l e t i o n s ; w o r d s u n d e r l i n e d a r e a d d i t i o n s .
procedures; providing for payment of costs and attorney's fees to prevailing party; repealing s. 8, ch. 87-74, Laws of Florida, appearing as s. 713.347, F.S., relating to funds received by a contractor, subcontractor, or sub-
subcontractor which are required to be held in trust; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (5) of section 95.11, Florida Statutes, to read:

95.11 Limitations other than for the recovery of real property.--Actions other than for recovery of real property shall be commenced as follows:

(5) WITHIN ONE YEAR.--

(e) An action to enforce any claim against a payment bond on which the principal is a subcontractor or sub-
subcontractor as defined in s. 713.01(16) and (17), 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 general contractor if the general contractor is the principal on a bond on the same construction project, whichever is later.

Section 2. Paragraph (a) of subsection (1) of section 255.05, Florida Statutes, is 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, 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
to do business in this state as surety. The bond must state
the name and principal business address of both the principal
and the surety and must contain a description of the project
sufficient to identify it. Such bond shall be conditioned
that the contractor perform the contract in the time and
manner prescribed in the contract and promptly make payments
to all persons defined in s. 713.01 whose claims derive
directly or indirectly from the prosecution of the work
provided for in the contract. Any claimant may apply to the
governmental entity having charge of the work for copies of
the contract and bond and shall thereupon be furnished with a
certified copy of the contract and bond. The claimant shall
have a right of action against the contractor and surety for
the amount due him. Such action shall not involve the public
authority in any expense. When such work is done for the
state and the contract is for $100,000 or less, no payment and
performance bond shall be required. At the discretion of the
official or board awarding such contract when such work is
done for any county, city, political subdivision, or public
authority, any person entering into such a contract which is
for $200,000 or less may be exempted from executing the
payment and performance bond. When such work is done for the
state, the director of the Department of General Services may
delegate to state agencies the authority to exempt any person
entering into such a contract amounting to more than $100,000

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but less than $200,000 from executing the payment and
performance bond. In the event such exemption is granted, the
officer or officials shall not be personally liable to persons
suffering loss because of granting such exemption.

Section 3. Subsection (6) of section 713.02, Florida
Statutes, is amended to read:

713.02 Types of lienors and exemptions.--
(6) In any direct contract the owner may require the
contractor to furnish a payment bond as provided in s. 713.23,
and upon receipt of the bond the owner shall be exempt from
the other provisions of part I as to that direct contract, but
this does not exempt the owner from the lien of the contractor
who furnishes the bond. The-owner-may-post-said-bond-or-a
copy-thereof. If the bond is provided, it shall secure all
liens subsequently accruing under part I as provided in s.
713.23.

Section 4. Paragraph (a) of subsection (1) of section
713.13, Florida Statutes, is amended to read:

713.13 Notice of commencement.--
(1)(a) An owner or his authorized agent before
actually commencing to improve any real property, or
recommencing completion of any improvement after default or
abandonment, whether or not a project has a payment bond
complying with s. 713.23, shall record a notice of
commencement in the clerk's office and forthwith post a
certified copy thereof containing the following information:

1. A description sufficient for identification of the
real property to be improved. The description should include
the legal description of the property and also should include
the street address of the property if available or, if there
is no street address available, such additional information as

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will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner as defined in s. 713.01, his interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond. A copy of the bond must be attached at the time of, or prior to, recordation of the notice of commencement.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself who may be designated by the owner as the person upon whom notices or other documents may be served under part I of this chapter; and service upon the person so designated shall constitute service upon the owner.

Section 5. Subsections (2) and (3) of section 713.20, Florida Statutes, are amended, and subsection (4) is added to said section, to read:

713.20 Waiver or release of liens.--

(2) A right to claim a lien may not be waived in advance. A lien right may be waived only to the extent of labor, services, or materials furnished. Any waiver of a right to claim a lien that is made in advance is unenforceable. Any person other than a laborer may waive his lien under this chapter at any time, either before or after furnishing services or materials; a laborer may waive his lien only to the extent of labor theretofore performed.

CODING: Words stricken are deletions; words underlined are additions.
(3) Any person may at any time waive, release, or satisfy any part of his lien under part I of this chapter, either as to the amount due for labor performed or for services or materials furnished or for labor, services, or materials to be furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

(4) A partial release of lien may be in substantially the following form:

PARTIAL RELEASE OF LIEN

The undersigned lienor, in consideration of value received, hereby releases its lien and right to claim a lien to the extent of $..., or for labor, services, or materials furnished through ...(insert date)..., except ...(list exceptions)... to the following property:

(description of property)

DATED on ......., 19....

(Lienor)

By:

Section 6. Subsections (1) and (3) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.--

(1)(a) The payment bond required to exempt an owner under part I shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract, and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be
conditioned that the contractor shall promptly make payments
for labor, services, and material to all lienors under the
contractor's direct contract. Any form of bond given by a
contractor conditioned to pay for labor, services, and
material used to improve real property shall be deemed to
include the condition of this subsection.

(b) The owner, contractor, or surety shall furnish a
truereplica copy of the bond at the cost of reproduction to any
lienor demanding it. Any person who fails or refuses to
furnish the copy without justifiable cause shall be liable to
the lienor demanding the copy for any damages caused by the
failure or refusal.

(c) If a payment bond is furnished within 10 days
after receipt of a notice to owner, the owner shall give
written notice to the person who serves the notice to owner of
the existence of the payment bond, including the name and
address of the surety and principal under the bond.

(d) Either before beginning or within 45 days after
beginning to furnish labor, materials, or supplies, a lienor
who 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:

CODING: Words stricken are deletions; words underlined are additions.
NOTICE TO CONTRACTOR

To ...(name of contractor)...

The undersigned notifies you that he 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)...

(d) In addition, a lienor, shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety within 90 days of the failure to receive any payment which is then due and owing from the delivery date for any labor, services, or materials. Failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, and materials furnished by said lienor shall not be 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)...

CODING: Words struck are deletions; words underlined are additions.
The undersigned notifies you that he has furnished ...(describe labor, services, or materials) for the improvement of the real property identified as ...(property description) owned by ...(owner's name and address) under order given by .... The last of the labor, services, or materials was furnished on ...., 19..... 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. (f) Any lienor shall have a direct right of action on the bond against the surety. No bond shall contain any provisions restricting the classes of persons protected thereby or the venue of any proceeding. The surety shall not be entitled to the defense of pro tanto discharge as against any lienor because of changes or modifications in the contract to which the surety is not a party; but the liability of the surety shall not be increased beyond the penal sum of the bond.

(3) A payment bond in substantially the following form shall be sufficient:

PAYMENT BOND

CODING: Words strucken are deletions; words underlined are additions.
BY THIS BOND We, ...., as Principal, and ...., a corporation, as Surety, are bound to ...., herein called Owner, in the sum of $.... for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all lienors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated ...., 19...., between Principal and Owner for construction of ...., the contract being made a part of this bond by reference; and

2. Pays Owner all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under paragraph 1. of this bond;

then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or with the changes do not affect Surety's obligation under this bond.

DATED on ...., 19.....

...(Principal).... (SEAL)

...(Surety's name)....

By ............

As Attorney-in-Fact

CODING: Words stricken are deletions; words underlined are additions.
Section 7. Subsection (1) of section 713.345, Florida Statutes, is amended to read:

713.345 Moneys received for real property improvements; penalty for misuse.—

(l)(a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion the proceeds of any such payment to the payment of all amounts then due and owing owed for services and labor which were performed on, or materials which were furnished for, such improvement prior to receipt of the payment. This paragraph does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.

(b) Any person who knowingly and intentionally fails to comply with the requirements of paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Payment on construction contracts.—
(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.

(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days after the date the labor, services, or materials were furnished and payment for such labor, services, or materials became due, or within 30 days after the date payment for such labor, services, or materials is received, whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).

(3) Any person providing labor, services, or materials for improvements to real property may file a verified complaint alleging:

(a) The existence of a contract, as defined in s. 713.01(1), to improve real property.

(b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract.

(c) The amount of the contract price.

(d) The amount, if any, paid pursuant to the contract.

(e) The amount that remains unpaid pursuant to the contract, and the amount thereof that is undisputed.

(f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days after the date the labor or services were accepted or the materials were received.

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(g) That the person against whom the complaint was filed has received payment on account of the labor, services, or materials described in the complaint more than 30 days prior to the date the complaint was filed.

(4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials is entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:

(a) An accounting of the use of any such payment from the person who received such payment.

(b) A temporary injunction against the person who received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.

(c) Prejudgment attachment against the person who received the payment, in accordance with each of the requirements of chapter 76.

(d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.

(5) The remedies specified in subsection (4) must be granted without regard to any other remedy at law and without regard to whether or not irreparable damage has occurred or will occur.

(6) The remedies specified in subsection (4) do not apply:

(a) To the extent of a bona fide dispute regarding any portion of the contract price.

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(b) In the event the plaintiff has committed a material breach of the contract which would relieve the defendant from the obligations under the contract.

(7) The prevailing party in any proceeding under this section is entitled to recover costs, including a reasonable attorney's fee, at trial and on appeal.

Section 9. Section 8 of chapter 87-74, Laws of Florida, appearing as section 713.347, Florida Statutes, is hereby repealed.

Section 10. This act shall take effect October 1, 1988.

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The committee substitute amends various provisions relating to mechanic's liens, and repeals the trust provisions of s. 713.347, F.S. A section-by-section summary is provided below:

1) The legislation amends s. 95.11, F.S., by providing that an action brought on a payment bond obtained by a subcontractor or sub-subcontractor must be filed within 1 year from the last performance of labor or the delivery of materials and supplies.

2) The bill amends s. 255.05, F.S., to provide that a payment bond obtained by a contractor on a public project must be delivered to the public entity and recorded in the public records. Additionally, the bond must state the name of the principal (contractor) and the surety, and must contain a description of the property.

3) CS for SB 361 amends s. 713.02, F.S., by deleting the requirement that an owner "may" post a copy of a payment bond on the construction site. Under section 4 of this legislation, the bond is required to be recorded and attached to the notice of commencement, which must be posted on the construction site.

4) The bill amends s. 713.13, F.S., by providing that where a payment bond exists, it must be attached to the notice of commencement when recorded.

5) The legislation amends s. 713.20, F.S., to prohibit the waiver of lien rights prior to the performance of labor or services or delivery of materials. Partial release of lien is provided, but only for labor, services, or materials already performed or delivered. A form for the partial release of liens is also provided.

6) The bill amends s. 713.23, F.S., to conform it to the new requirements set forth in Section 4 of PCS/SB 361 (see above). The requirement that a copy be furnished on request to a lienor is deleted since the copy can now be obtained from the public records. Recording and posting of the bond, separate from the recording and posting of the notice of commencement, is also deleted since the bond would be attached to the notice of commencement when the notice of commencement is recorded.

7) CS for SB 361 amends s. 713.31, F.S., by deleting the requirement that equitable remedies may only be provided to cure the deprivation of a lienor's lien rights, when fraud or collusion is involved. Generally, as amended, such remedies would be available whenever the defendant has engaged in fraudulent behavior. The section has also been amended to require the filing of a verified complaint and the providing of notice prior to the court's determination to provide the equitable remedies.

8) The bill repeals s. 713.347, F.S., which requires that funds received on behalf of a lienor be held in trust for such lienor.

9) Provides an effective date of October 1, 1988.
A bill to be entitled

An act relating to mechanics' liens; amending
s. 95.11, F.S.; providing for the statute of
limitations on recovery of real property with
respect to certain action to enforce a claim
against certain payment bonds; amending s.
255.05, F.S.; providing additional requirements
with respect to the payment and performance
bond of a contractor constructing public
buildings; amending s. 713.02, F.S.; revising
language with respect to payment bonds under
the mechanics' lien law; amending s. 713.13,
F.S.; requiring a true copy of the bond to be
attached to the notice of commencement;
amending s. 713.20, F.S.; prohibiting the
waiver of lien rights in advance; providing a
form for partial release of a lien; amending s.
713.23, F.S.; revising language with respect to
payment bonds; requiring written notice of
nonpayment to surety for certain persons to
recover on payment bonds; amending s. 713 345,
F.S.; revising language with respect to
penalties concerning violations for moneys
received for real property improvements;
creating s. 489.128, F.S.; providing legal and
equitable remedies for failure of a person to
properly apply payments received for
improvements to real property; providing
procedures; providing for payment of costs and
attorney's fees to the prevailing party;
repealing s. 713.347, F.S., relating to funds

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to be held in trust; providing an effective
date.

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

Section 1. Paragraph (e) is added to subsection (5) of
section 95.11, Florida Statutes, to read:

95.11 Limitations other than for the recovery of real
property.--Actions other than for recovery of real property
shall be commenced as follows:

(5) WITHIN ONE YEAR.--

(e) An action to enforce any claim against a payment
bond on which the principal is a subcontractor or sub-
subcontractor as defined in s. 713.01(16) and (17), 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 general contractor, if
the general contractor is the principal on a bond on the same
construction project, whichever is later.

Section 2. Paragraph (a) of subsection (1) of section
255.05, Florida Statutes, is 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, to
execute, deliver to the public owner, and record in the public
records of the county where the improvement is located, a

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payment and performance bond with a surety insurer authorized
to do business in this state as surety. The bond shall state
the name and principal business address of both the principal
and the surety. It shall contain a description of the project
sufficient to identify it. Such bond shall be conditioned
that the contractor perform the contract in the time and
manner prescribed in the contract and promptly make payments
to all persons defined in s. 713.01 whose claims derive
directly or indirectly from the prosecution of the work
provided for in the contract. Any claimant may apply to the
governmental entity having charge of the work for copies of
the contract and bond and shall thereupon be furnished with a
certified copy of the contract and bond. The claimant shall
have a right of action against the contractor and surety for
the amount due him. Such action shall not involve the public
authority in any expense. When such work is done for the
state and the contract is for $100,000 or less, no payment and
performance bond shall be required. At the discretion of the
official or board awarding such contract when such work is
done for any county, city, political subdivision, or public
authority, any person entering into such a contract which is
for $200,000 or less may be exempted from executing the
payment and performance bond. When such work is done for the
state, the director of the Department of General Services may
delegate to state agencies the authority to exempt any person
entering into such a contract amounting to more than $100,000
but less than $200,000 from executing the payment and
performance bond. In the event such exemption is granted, the
officer or officials shall not be personally liable to persons
suffering loss because of granting such exemption.

CODING: Words stricken are deletions; words underlined are additions.
Section 3. Subsection (6) of section 713.02, Florida Statutes, is amended to read:

713.02 Types of lienors and exemptions.—

(6) In any direct contract the owner may require the contractor to furnish a payment bond as provided in s. 713.23, and upon receipt of the bond the owner shall be exempt from the other provisions of part I as to that direct contract, but this does not exempt the owner from the lien of the contractor who furnishes the bond. The owner may post said bond or a copy thereof. If the bond is provided, it shall secure all liens subsequently accruing under part I as provided in s. 713.23.

Section 4. Paragraph (a) of subsection (1) of section 713.13, Florida Statutes, is amended to read:

713.13 Notice of commencement.—

(1)(a) An owner or his authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post a certified copy thereof containing the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

CODING: Words struck are deletions; words underlined are additions.
3. The name and address of the owner as defined in s. 713.01, his interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond. A copy of the bond shall be attached at the time of, or prior to, recordation of the notice of commencement.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself who may be designated by the owner as the person upon whom notices or other documents may be served under part I of this chapter; and service upon the person so designated shall constitute service upon the owner.

Section 5. Subsections (2) and (3) of section 713.20, Florida Statutes, are amended, and subsection (4) is added to said section, to read:

713.20 Waiver or release of liens.--

(2) Lien rights may not be waived in advance. Lien rights may only be waived to the extent of labor, services, or materials performed. Any waiver of lien rights in advance is unenforceable. Any person other than a laborer may waive his lien under this chapter at any time, either before or after furnishing services or materials; a laborer may waive his lien only to the extent of labor theretofore performed.

(3) Any person may at any time waive, release or satisfy any part of his lien under part I of this chapter, either as to the amount due for labor performed, or for labor, services, or materials furnished or for labor, services, or

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materials furnished through a certain date subject to exceptions specified at the time of release or-to-be furnished, or as to any part or parcel of the real property.

(4) A partial release of lien may be in substantially the following form:

PARTIAL RELEASE OF LIEN

The undersigned lienor, in consideration of value received, hereby releases its lien and right to claim a lien to the extent of $ or for labor, services, or materials furnished through (insert date), except (list exceptions) to the following property:

(description of property)

DATED on __________, 19__

_______________________
(Lienor)

By:

Section 6. Subsections (1) and (3) of section 713.23, Florida Statutes, are amended to read:

713.23 Payment bond.--

(1)(a) The payment bond required to exempt an owner under part I shall be furnished by the contractor in at least the amount of the original contract price before commencing the construction of the improvement under the direct contract and a copy of the bond shall be attached to the notice of commencement when the notice of commencement is recorded. The bond shall be executed as surety by a surety insurer authorized to do business in this state and shall be conditioned that the contractor shall promptly make payments for labor, services, and material to all lienors under the

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contractor's direct contract. Any form of bond given by a
contractor conditioned to pay for labor, services, and
material used to improve real property shall be deemed to
include the condition of this subsection.

(b) The owner, contractor, or surety shall furnish a
ttrue copy of the bond at the cost of reproduction to any
lienor demanding it. Any person who fails or refuses to
furnish the copy without justifiable cause shall be liable to
the lienor demanding the copy for any damages caused by the
refusal or failure.

(c) If a payment bond is furnished within 10 days
after receipt of a notice to owner, the owner shall give
written notice to the person who serves the notice to owner of
the existence of the payment bond, including the name and
address of the surety and principal under the bond.

(d) Either before beginning or within 45 days after
beginning to furnish labor, materials, or supplies, a lienor
who 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:

NOTICE TO CONTRACTOR

CODING: Words stricken are deletions; words underlined are additions.
To ... (name of contractor) ...

The undersigned notifies you that he 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) ...

(d) ... In addition, A lienor not in privity with the bonded contractor shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the contractor and the surety within 90 days after last furnishing of the labor or the delivery of materials of the failure to receive any payment which is then due and owing from the delivery date for any labor, services, or materials. Failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, and materials furnished by said lienor shall not be considered a nonpayment requiring the service of the notice provided under this paragraph.

2. A lienor in privity with the bonded contractor shall be required, as a condition precedent to recovery under the bond, to serve a written notice of nonpayment to the surety within 90 days after last furnishing of the labor or delivery of materials.

3. The notice under this paragraph may be in substantially the following form:

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NOTICE OF NONPAYMENT

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

The undersigned notifies you that he has furnished
...(describe labor, services, or materials)...
for the improvement of the real property identified as ...(property
description)...
owned by ...(owner's name and address)...
under order given by ..... The last of the labor, services,
or materials was furnished on ...., 19..... The amount now
due and unpaid is $.....

...(Signature and address of lienor)...

[e]+f] 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.

[f]+g] Any lienor shall have a direct right of action
on the bond against the surety. No bond shall contain any
provisions restricting the classes of persons protected
thereby or the venue of any proceeding. The surety shall not
be entitled to the defense of pro tanto discharge as against
any lienor because of changes or modifications in the contract
to which the surety is not a party; but the liability of the

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surety shall not be increased beyond the penal sum of the bond.

(3) A payment bond in substantially the following form shall be sufficient:

PAYMENT BOND

BY THIS BOND we, ...., as Principal, and ...., a corporation, as Surety, are bound to ...., herein called Owner, in the sum of $.... for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Promptly makes payments to all liensors supplying labor, material, and supplies used directly or indirectly by Principal in the prosecution of the work provided in the contract dated ...., 19...., between Principal and Owner for construction of ...., the contract being made a part of this bond by reference; and

2. Pays Owner all loss, damage, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of default by Principal under paragraph 1. of this bond;

then this bond is void; otherwise, it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with formalities connected with the contract or with the changes do not affect Surety's obligation under this bond.

DATED on ...., 19.....

...(Principal)... (SEAL)

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...(Surety's name)...  

By .............  
As Attorney-in-Fact

Section 7. Subsection (1) of section 713.345, Florida Statutes, is amended to read:

713.345 Moneys received for real property improvements; penalty for misuse.--  

(1)(a) A person, firm, or corporation, or an agent, officer, or employee thereof, who receives any payment on account of improving real property must apply such portion the proceeds of any such payment to the payment of all amounts then due and owing owed for services and labor which were performed on, or materials which were furnished for, such improvement prior to receipt of the payment. This paragraph does not prevent any person from withholding a payment or any part thereof in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.
(b) Any person who knowingly and intentionally fails to comply with the requirements of paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. Section 489.128, Florida Statues, is created to read:

489.128 Payment on construction contracts.--
(1) Any person who receives a payment for constructing or altering permanent improvements to real property shall pay, in accordance with the contract terms, the undisputed contract obligations for labor, services, or materials provided on account of such improvements.
(2) The failure to pay any undisputed obligations for such labor, services, or materials within 30 days of the date the labor, services, or materials are furnished and payment for such labor, services, or materials is due, or within 30 days of the date payment for such labor, services, or materials is received, whichever last occurs, shall entitle any person providing such labor, services, or materials to the procedures specified in subsection (3) and the remedies provided in subsection (4).
(3) Any person providing labor, services, or materials for improvements to real property may file a verified complaint alleging:
(a) The existence of a contract, as defined in s. 713.011(1), to improve real property;
(b) A description of the labor, services, or materials provided and alleging that the labor, services, or materials were provided in accordance with the contract;
(c) The amount of the contract price.

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(d) The amount, if any, paid pursuant to the contract.

(e) The amount which remains unpaid pursuant to the contract, and the amount thereof which is undisputed.

(f) That the undisputed amount has remained due and payable pursuant to the contract for more than 30 days from the date the labor or services were accepted or the materials were received.

(g) That the person against whom the complaint has been filed has received payment on account of the labor, services, or materials described in the complaint more than 30 days prior to the date the complaint is filed.

(4) After service of the complaint, the court shall conduct an evidentiary hearing on the complaint, upon not less than 15 days' written notice. The person providing labor, services, or materials shall be entitled to the following remedies to the extent of the undisputed amount due for labor or services performed or materials supplied, and upon proof of each allegation in the complaint:

(a) An accounting of the use of any such payment from the person who has received such payment.

(b) A temporary injunction against the person who has received the payment, subject to the bond requirements specified in the Florida Rules of Civil Procedure.

(c) Prejudgment attachment against the person who has received the payment, in accordance with each of the requirements of chapter 76.

(d) Such other legal or equitable remedies as may be appropriate in accordance with the requirements of the law.

(5) The remedies specified in subsection (4) shall be granted without regard to any other remedy at law and without
regard to whether or not irreparable damage has or will occur.

   (6) The remedies specified in subsection (4) do not
apply to the extent of a bona fide dispute regarding any
portion of the contract price.

   (7) The remedies specified in subsection (4) do not
apply in the event the plaintiff has committed a material
breach of the contract which would relieve the defendant from
the obligations under the contract.

   (8) The prevailing party in any proceeding under this
section is entitled to recover costs, including a reasonable
attorneys' fee, at trial and on appeal.

Section 9. Section 713.347, Florida Statutes, as
created by chapter 87-74, Laws of Florida, is hereby repealed.

Section 10. This act shall take effect October 1, 1988.

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HOUSE SUMMARY

Provides a one-year statute of limitations on an action to enforce any claim against a payment bond upon which the principal is a subcontractor or sub-subcontractor under the mechanics’ lien law, for private work as well as public work. Requires additional action by the contractor constructing a public building with respect to the required payment and performance bond.

Revises the mechanics’ lien law to:
1. Require a copy of the bond be attached to the notice of commencement.
2. Prohibit the waiver of lien rights in advance.
3. Provide a form for a partial release of lien.
4. Revise language regarding payment bonds to conform to the act and to provide that a lienor in privity with a bonded contractor shall be required to serve written notice of nonpayment to the surety to recover.
5. Revise language with respect to penalties for violations concerning moneys received for real property improvements.
6. Provide for payment on construction contracts.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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A bill to be entitled
An act relating to contracting; amending s.
489.129, F.S.; providing an additional basis of
financial mismanagement; providing for an
expedited procedure in cases involving
financial mismanagement; repealing s. 713.347,
F.S., relating to a contractor holding in trust
funds owed to a lienor; providing an effective
date.

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

Section 1. Paragraph (h) of subsection (1) of section
489.129, Florida Statutes, is amended, subsection (3) is
renumbered as subsection (4), and a new subsection (3) is
added to said section, to read:

489.129 Disciplinary proceedings.--

(1) The board may revoke, suspend, or deny the
issuance or renewal of the certificate or registration of a
contractor and impose an administrative fine not to exceed
$5,000, place a contractor on probation, or reprimand or
censure a contractor if the contractor, or if the business
entity or any general partner, officer, director, trustee, or
member of a business entity for which the contractor is a
qualifying agent, is found guilty of any of the following
acts:

(h) Financial mismanagement or misconduct in the
practice of contracting that causes financial harm to a
customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property
of a contractor's customer for supplies or services ordered by

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1. The contractor for the customer's job; the contractor has
2. received funds from the customer to pay for the supplies or
3. services; and the contractor has not had the liens removed
4. from the property, by payment or by bond, within 30 days after
5. the date of such liens.

2. The contractor has abandoned a customer's job and
the percentage of completion is less than the percentage of
the total contract price paid to the contractor as of the time
of abandonment, unless the contractor is entitled to retain
such funds under the terms of the contract or refunds the
excess funds within 30 days after the date the job is
abandoned.

3. The contractor's job has been completed, and it is
shown that the customer has had to pay more for the contracted
job than the original contract price, as adjusted for
subsequent change orders, unless such increase in cost was the
result of circumstances beyond the control of the contractor,
was the result of circumstances caused by the customer, or was
otherwise permitted by the terms of the contract between the
contractor and the customer.

4. A contractor or subcontractor demonstrates a
pattern of unreasonably failing to timely pay persons who
supply labor or materials after such contractor or
subcontractor receives payment on account of the labor or
materials supplied. A pattern of unreasonably failing to
timely pay obligations is established if three or more persons
execute a written statement, under oath, demonstrating that
they supplied labor or materials of a value in excess of $500
each, that the contractor or subcontractor has been paid on
account of such labor or services, that the obligation has
been due and payable for more than 60 days, and that there is

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no justiciable issue of law or fact regarding the payments
being due.

(3) In any case involving an allegation of a violation
of this part on the basis of financial mismanagement or
misconduct, the board shall develop a procedure to adjudicate
the complaint within 180 days of the date such complaint is
received by the board. The plan may provide for a fee to be
paid by the person making the complaint to pay the additional
cost of the expedited procedure. In the event the board
determines that such a violation of this part has occurred,
the contractor shall be required to reimburse the person who
has paid the filing fee.

Section 2. Section 713.347, Florida Statutes, as
created by chapter 87-74, Laws of Florida, is hereby repealed.

Section 3. This act shall take effect upon becoming a
law.

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HOUSE SUMMARY

Provides, as a basis for a finding of financial
mismanagement by a contractor, a pattern of unreasonably
failing to timely pay lienors, and provides for expedited
procedure in financial mismanagement cases.

Repeals a provision relating to a contractor's duty to
hold funds in trust for a lienor.

See bill for details.