

**FLORIDA LEGISLATIVE UPDATE  
SPRING 2007**

**Legislative Update**

The following bills were passed during 2007 regular legislative session that ended on May 4, 2007.

- I. SENATE BILL 2768/HOUSE BILL 1285:** This bill has passed by the both the Senate and the House. It will be sent to the Governor for action. The effective date is July 1, 2007.
1. Section 255.05(1)(a) was amended to requires a payment performance bond for certain contracts with private entities for public works.
  2. Section 255.05(2)(a) was amended to clarify that the preliminary notice required by claimants, who are not privity with the contractor, must be written.
  3. Section 713.01 was amended as follows:
    - a) Provided a definition for “final furnishing” as the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the lienor’s previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.
    - b) Amends the definition of “furnish materials” to include the delivery of rental equipment to the site of improvement as prima facie evidence of the period of the actual use of the rental equipment from the delivery through the time the equipment is last available for use at the site, or 2 business days after the lessor of the rental equipment receives a written notice from the owner or the lessee of the rental equipment to pick up the equipment, whichever occurs first.
  4. Section 713.012 was added to expressly state that all notices, demands, or requests permitted or required under Chapter 713 must be in writing.
  5. Section 713.015 was amended to clarify that the mandatory warning notice for direct contracts between an owner and contractor now applies to direct contracts exceeding \$2,500.00. There are minor changes to the form of the mandatory warning notice. If a contract is written, the notice must be in the contract documents. For written contracts, the notice must be provided in a document referencing the contract. Finally, the failure to provide the written notice does not

bar the enforcement of a lien against a person who has not been adversely affected,

6. Section 713.07 was amended to provide for the recommencement of construction following the termination of the direct contract.
7. Section 713.08 was amended to state that claims of lien may be prepared by the lienor or the lienor's employee or attorney. There were also revisions to the 90 day limitation for recording a lien where the original contract is terminated. (A lien can't be recorded 90 days after termination of contract).
8. Section 713.13 was amended as follows:
  - a) The notice of commencement must include the tax folio number.
  - b) A new warning that must be included on the notice of commencement form regarding improper payments under the lien law. Also provides that the notice of commencement must be recorded and posted on the job site.
  - c) Requiring that the notice of commencement must be notarized, verified and acknowledged.
  - d) Subsections 713.13(5)(a) and 5(b) was created to clarify when a notice of commencement may be amended. In order to change contractors, a new notice of commencement or notice of recommencement must be executed and recorded. The amended notice must also identify the original notice of commencement by book and page number, and must be served on the contractor and all lienors who serve notice before or within 30 days after the amended notice is recorded.
9. Section 713.135 was amended to require that building permits contain a warning regarding the recording of a notice of commencement.
10. Section 713.16 was amended to emphasize that statements of account must be under oath.
11. Section 713.18 was amended to provide procedures for service of notices upon a limited liability company. (Served on members or managers of LLC)
12. Section 713.22 was amended to extend the duration of liens when an amended claim of lien showing a later date of final furnishing is filed.
13. Section 713.31 was amended to provide for the award of attorney's fees and costs in fraudulent lien actions.

**II. SENATE BILL 2376/HOUSE BILL 1489:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The effective date is July 1, 2007.

1. Section 255.05©)(1) was added to provide that the amount of the statutory bond must equal the contract price, except for contracts in excess of \$250 million. For contracts in excess of \$250 million, if the public entity finds that a bond in the amount of the contract is not reasonably available, the public entity may set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.
2. Section 255.0©)(2) adds that for construction-management or design build contracts, the bond may not be conditioned on the performance or payment of non-construction services, if those services are excluded from the amount of bond.
3. Section 255.103 was created to provide a framework for local governments to select construction-management or program-management entities to be responsible for public projects. At the option of the local government, the construction-management or program-management entity may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date, in which case they must provide a statutory bond.

**III. SENATE BILL 988/HOUSE BILL 7103:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The effective date is July 1, 2007.

1. This bill makes revisions to the Jessica Lunsford Act that was originally passed in 2005 amended as follows:
  - a) The Act previously contained a vague “moral turpitude” standard that excluded a worker from school premises. This bill sets forth a specific list of violent or sexual crimes that would exclude a contractor employee from working on school grounds when students are present.
  - b) Any contractor personnel who are under the direct supervision of a person who has complied with the fingerprinting and background screening requirements are now exempt from fingerprinting and background screening.
  - c) Exempts from fingerprinting and background screening: (1) a contractor working at a site fenced off from the rest of the school grounds; and (2) a contractor who makes brief visits to school grounds to provide pick-up or delivery services.

- d) Criminal history checks are required at least once every five (5) years. The fee for the background check can be no more than 30% in excess of the actual cost of the FDLE/FBI criminal history check for screened contractor employees. The results of the initial criminal history check must be made available to all school districts via a secure FDLE website. Once notified of an individual's prior screening, a school district must rely upon the information provided through the FDLE website, at no additional charge to contractor or employee.

**IV. SENATE BILL 1624/HOUSE BILL 843:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The effective date is October 1, 2007.

- 1. This bill makes revisions to Section 255.0517 which permits a public entity's use of an owner-controlled insurance program ("OCIP") on a public construction project as follows:
  - a) The OCIP must maintain insurance coverage with respect to completed operations for a term that is reasonably commercially available, but for no less than 10 years. The current law specifies a period of 5 years.
  - b) The revised definition of "specified contracted work site" applies to a single continuous system.
  - c) Creates definition of "capital infrastructure improvement program". A capital infrastructure improvement program must be for a single public service, system, or facility that cannot be combined with another project unless specified conditions are met. Also clarifies when such a program at multiple work sites meets the \$75 million threshold to be eligible for OCIP.
  - d) States that contractors and subcontractors working under an OCIP are not required to individually satisfy eligibility requirements for large deductible workers' compensation rating plans. These contractors and subcontractors may combine their payrolls under the OCIP for workers' compensation coverage as long as the minimum deductible for the construction project is \$100,000 or more and the standard premium is \$500,000 or more.

**V. SENATE BILL 1748/HOUSE BILL 701:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The effective date is July 1, 2007.

- 1. Section 667.442 was created to prohibit a person, such as a contractor, from rejecting a workers' compensation insurance policy issued by a self-insurance fund protected by the Florida Workers' Compensation Insurance Guaranty

Association, based upon the self-insurance fund not being rated by a nationally recognized insurance rating service.

**VI. SENATE BILL 404/HOUSE BILL 727:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The effective date is July 1, 2007.

1. Section 468.609 was amended to include additional requirements for a person to take the examination for certification as a building code inspector or plans examiner. Various amendments were made in Section 468.617, 468.621, and 468.627 pertaining to the regulation of building code inspectors and plans examiners.
2. Section 489.115 governing contractor licensing was amended as follows:
  - a) The bill requires applicants for initial issuance of a contractor certificate or registration to submit to a statewide criminal history records check through FDLE. The board may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights.
  - b) The bill also provides that CILB rules regarding financial stability may include requirements for net work, cash, and bonding of no more than \$20,000 for Division I contractors. Fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

**VII. SENATE BILL 2836/HOUSE BILL 589:** This bill has been passed by both the Senate and the House. It will be sent to the Governor for action. The act shall take effect upon becoming law.

1. This bill makes a number of revisions regarding regulation under the Florida Building Commission ("Commission") and the Florida Building Code ("Code"). Most notable Section 553.775 now permits any substantially affected person, contractor, or designer, or a group representing a substantially affected person, contractor, or designer, to seek a binding interpretation of the Code. The current law only provides for a process by which the Commission itself may review a local building official's interpretation of the Code.
2. The bill also makes a number of changes to Section 553.791 which authorizes the use of private providers to conduct building plan reviews and inspections as follows:
  - a) States that the written contract for a private provider to conduct building code inspection services may be executed by the fee owner's contractor

upon written authorization of the fee owner.

- b) Provides that changing the private provider's authorized representative as named in the permit application does not require a revision of the permit, and the building code enforcement agency may not charge a fee for making the change.
- c) Requires a deficiency notice to be posted at the job site by the private provider, duly authorized representative, or the building department official whenever a non-complying item related to the building code or the permitted documents is found. The item must be re-inspected after any corrections are made.