

STORAGE NAME: h0889.rpp

DATE: March 23, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 889

RELATING TO: Liens

SPONSOR(S): Representative Sublette

STATUTE(S) AFFECTED: Amends sections 255.05, 713.06, 713.132, and 713.135, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 889 provides claimants against surety bonds on public improvement contracts a claim for unpaid finance charges and changes the time period for giving notices on public improvement contracts. With respect to private construction projects, the bill requires service of notices to the owner, as opposed to the current requirement of mailing. It also deletes the provision for an owner to record a notice of termination of a notice of commencement if construction ceases before completion.

The bill takes effect October 1, 1997.

This bill is not expected to have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 255.05, Florida Statutes, requires all building contractors who contract with the state or a political subdivision for public improvements to provide a performance and payment bond before commencing work on the project. Any person providing materials, labor, or services under the improvement contract who does not receive proper payment has a claim against the bond for the amount due.

The section requires claimants not in privity with the contractor, other than laborers, to give notice to the contractor that he or she intends to look to the bond for protection. The notice must be given within 45 days after beginning to furnish labor, materials, or supplies.

A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies is required to deliver to the contractor and the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. This notice must be given within 90 days after performance of the labor or after complete delivery of the materials or supplies, or with respect to rental equipment, within 90 days after the date that the rental equipment was last on the job site available for use.

Section 713.02, Florida Statutes, provides that any improvement for which the direct contract price is \$2,500 or less is exempt from the construction lien law other than the lien rights of a lienor in privity.

Section 713.06, Florida Statutes, requires that lienors not in privity serve a Notice to Owner on the owner. If the notice of commencement designates another person to receive a copy of the Notice to Owner, the lienor not in privity must mail a copy of the Notice to Owner to the person designated. A Notice to Owner served on a lender must be in writing and delivered to the lender by certified mail, return receipt requested.

Section 713.13(5), Florida Statutes, provides that unless otherwise provided in the notice of commencement or in a new or amended notice of commencement, a notice of commencement is effective for 1 year after the date of recording.

Section 713.132, Florida Statutes, provides that an owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination. The owner may not record a notice of termination except after completion of construction or after construction ceases before completion and all lienors have been paid in full or pro rata in accordance with section 713.06(4), Florida Statutes. A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated. Section 713.07(4), Florida Statutes, provides that if construction ceases before completion and the owner desires to recommence construction, he may pay all lienors in full or pro rata in accordance with section 713.06(4), Florida Statutes, prior to recommencement in which event all liens for the recommenced construction will take priority from the recommencement. However, if a prior lienor records a claim of lien within the 30-day

period after the recording of the intention to recommence, then the prior lienor will retain priority over subsequent lienors.

Section 713.135, Florida Statutes, provides that when any person applies for a building permit, the issuing authority must furnish to the applicant two or more copies of a form notice of commencement. The applicant must file with the issuing authority prior to the first inspection either a certified copy of the recorded notice of commencement or a notarized statement that the notice of commencement has been filed for recording.

Section 713.18, Florida Statutes, provides that service of notices, claims of lien, affidavits, assignments, and other instruments must be made by either actual delivery to the person to be served or by mailing the same, postage prepaid, by registered or certified mail to the person to be served at his last known address with evidence of delivery. If an instrument served by this method to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application is not received, but is returned by the United States Postal Service as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item, then service is effective as of the date of mailing. If neither of the foregoing methods can be accomplished, then service may be by posting on the premises.

B. EFFECT OF PROPOSED CHANGES:

HB 889 amends section 255.05, Florida Statutes, to allow claimants against public construction bonds to claim unpaid finance charges due under the claimant's contract.

The bill allows a claimant not in privity with a contractor to give notice to the contractor of furnishing labor, services, or materials before commencing to furnish such labor, services, or materials, but not later than 45 days after commencement. Current law provides for this notice within 45 days after beginning to furnish labor, materials, or supplies.

The bill allows a claimant not in privity with a contractor to give notice of nonpayment at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor, services, or materials, or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. Current law provides for this notice within 90 days after performance, or within 90 days after the rental equipment was last on the job site and available for use.

The bill amends section 713.06, Florida Statutes, to require that if an owner, on the notice of commencement, designates another person to receive a copy of the notice to owner, the copy must be served on the designated person, not mailed to him or her. A notice to owner which is served on a lender must be served in accordance with section 713.18, Florida Statutes, instead of being sent by certified mail. Section 713.18, Florida Statutes, permits either actual delivery to the lender or delivery by certified mail. If neither of the foregoing methods can be accomplished, section 713.18(1)(c), Florida Statutes, provides that notice may be by posting on the premises. Service may also be made by facsimile transmission when the person being served has listed a facsimile number in the notice of commencement.

The bill amends section 713.132, Florida Statutes, by deleting the provision for recording a notice of termination of a notice of commencement after construction ceases before completion. Section 713.07(4), Florida Statutes, provides for priority of liens, and deals with the situation where construction ceases before completion and the owner desires to recommence construction.

The bill amends section 713.135, Florida Statutes, to provide that a notice of commencement need be filed only when the direct contract is greater than \$2,500. This comports with section 713.02, Florida Statutes, which provides that any improvement for which the direct contract price is \$2,500 or less is exempt from the construction lien law other than the lien rights of a lienor in privity.

The bill takes effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill permits claimants to seek unpaid finance charges due under contract on public projects, from the contractor or bond surety. This may have some impact on private bonding agreements, and ultimately on construction costs.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill will permit claimants to recover unpaid finance charges due under their contract, against the contractor or surety. In addition, the bill expands the time for contractors to give notice of their intent to look to the bond for protection, and increases the number of methods of providing notice of commencement.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminant.

2. Recurring Effects:

Indeterminant.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminant.

2. Recurring Effects:

Indeterminant.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There may be an increase in the cost of bonds since unpaid finance charges are specifically permitted by the bill, and may be claimed against the contractor and surety.

2. Direct Private Sector Benefits:

Claimants should be able to make full recovery for services and materials provided including unpaid finance charges.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

Section 713.135(1)(d), Florida Statutes, as amended by the bill, could be interpreted to mean that an owner/contractor is not required to file a notice of commencement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

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