

STORAGE NAME: h0681a.brc

DATE: March 14, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 681

RELATING TO: Construction Liens and Bonds

SPONSOR(S): Representative Merchant

COMPANION BILL(S): SB 1206(s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
 - (2) REAL PROPERTY AND PROBATE
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Several amendments adopted by the Business Regulation and Consumer Affairs Committee are traveling with the bill. One amendment deletes the provision which provides that the Notice to Owner required under current law may differ as to format as long as it provides the required information and substantially follows a proscribed statutory form. The amendment replaces that change with a provision that states that certain information must be part of the notice, but that adherence to a particular form set forth in the statutes is something the notice may do, rather than must do.

This bill makes several changes to the Construction Lien Law. The purpose of the law is to give those who supply labor, service, or materials in the construction of a home or building a special legal remedy in the event they are not paid. The law also gives the property owner a method to avoid paying twice for improvements, should non-paid subcontractors or material suppliers seek to recover lost money.

Two recent court cases interpreting current law have resulted in decisions which this bill seeks to reverse. The bill: (1) clarifies the time period in which a claim must be brought under the lien law, and (2) clarifies that the Notice to Owner required under current law may differ as to format as long as it provides the required information and "substantially" follows a proscribed statutory form.

The bill has no significant fiscal impact on state or local governments, or private industry.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

General information on construction lien law:

Part I of chapter 713, F.S., establishes Florida's Construction Lien Law. The purpose of the law is to give those who make the improvements to land a special legal remedy in the event they are not paid for those improvements. An improvement to land can be made by providing labor, services, or materials. The lien law is based on the premise that improvements to real property enhance the value of the property on a permanent basis. The property itself is therefore treated as a possible source of payment to those providing improvements. The lien law also gives the property owner a method to avoid paying twice for improvements.

There are essentially two sides to the construction process: (1) those persons providing the improvements, and (2) the owner of the property who receives the benefits of the improvements. The Construction Lien Law is intended to contain a rational and fair method for balancing the right of both sides.

This method is based on the concept that a person who improves land should be paid. However, this right to payment should not be at the unfair expense of the land owner who, in good faith, pays for improvements without knowledge that some people remained unpaid for their labor, services or materials. To achieve this balance, the lien law places obligations on all parties in the construction process.

Stated simply, the Construction Lien Law requires that the owner protect those persons that the owner knows are on the job. Obviously, the owner knows the contractor is on the job, because the owner has a contract with that person. However, under normal circumstances, the owner may not know who else is on the job. Typical examples of a person on the job without direct contact with owner are subcontractors and material suppliers. The lien law requires these parties to give the owner formal notice that they are on the job.

Once a subcontractor or material supplier has given the owner notice, the owner is required to see to it that that person is paid. If the owner does not protect him, the owner's land may be subjected to the lien law, and the owner may end up paying twice for the improvements.

Thus, the lien law provides protection to all players involved with a construction project. Contractors, subcontractors, sub-subcontractors and material suppliers have protection against nonpayment for their goods or services. And, not least important, owners can get protection from paying more than they agreed to pay for the project.

See section-by-section portion of analysis for current situation, regarding specific changes.

B. EFFECT OF PROPOSED CHANGES:

See section-by-section portion of analysis for effect of proposed changes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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(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?

No.

(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:

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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?

No.

4. Individual Freedom:

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

No.

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. STATUTE(S) AFFECTED:

Sections 255.05, 713.06, 713.08, 713.135, 718.18, and 713.23, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Sections 1, 3 and 6. Amend ss. 255.05, 713.08, and 713.23 F.S., to clarify the method of calculating the beginning of the maximum time frames for the service of lien or claim against the bond company.

Current Situation:

Current law contains several requirements that certain notifications or claims must be filed within a certain time period. Specifically, there is a requirement that a claimant must supply the contractor with any notice of non-payment for his services or supplies "within 90 days after the final furnishing of the labor, services, or materials." There is also a requirement that a subsequent action against the contractor for nonpayment must be instituted "within one year after the performance of the labor or completion of the delivery of the materials or supplies." Finally, current law requires that a claim of lien against the property must be recorded not later than 90 days "after the final furnishing" of the labor, services, or materials.

In 1996, a ruling of the Fifth District Court of Appeal in *Federal Insurance Company v. Excel of Orlando, Inc.*, held that the one-year limitations period for action against a surety bond begins to run when the architect issued his Certificate of Substantial Completion, despite the fact that the subcontractor did subsequent (minor) work.

The Certificate of Substantial Completion is a document that is commonly called for in a commercial contract (there is no statutory requirement for its existence), and is issued by the architect, to the property owner. In this case, the court's decision had the effect of denying the subcontractor the ability to access the bond to recover payment for the unpaid services he had performed.

Effect of Proposed Changes:

The bill clarifies that the time periods for service of a claim of lien against the property, or for service of notice of nonpayment and bringing suit to enforce a bond claim, are calculated according to the statutory requirements (i.e, when labor performance or delivery of materials are complete or final), and should not be determined simply by the issuance of a Certificate of Substantial Completion.

Section 2. Amends s. 713.06(2)(c), F.S., to clarify the extent to which the Notice to Owner must adhere to the form set forth in statute.

Current Situation:

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Currently, the lien law provides that the Notice to Owner (supplied to the owner of the property by subcontractors and material suppliers, and used to notify the owner that his property may be subject to lien if the owner does not take care they are paid) must be in "substantially" the form set forth in statute.

Effect of Proposed Changes:

The bill provides that a Notice to Owner may differ as to format and include additional information, as long as it provides the required information, and otherwise "substantially" follows the statutory form.

Section 4. Amends s. 713.135, F.S., to provide an additional ground for discipline against a building official.

Current Situation:

Currently, the building department/official is required to verify that a certified copy of the recorded Notice of Commencement has been properly filed, but it is not explicitly provided that failure to do so is grounds for discipline against the building official.

Effect of Proposed Changes:

The bill provides that the failure of an issuing authority (the building official) to comply with the statutory requirements to obtain a certified copy of a Notice of Commencement prior to performing inspections on a construction project is grounds for discipline by the Building Code Administrators and Inspectors Board.

Section 5. Amends s. 713.18, F.S., to clarify service of a notice to owner, and allowable method of transmission.

Current Situation:

Currently, the manner of serving notices and other instruments required under the Construction Lien Law is established in ch. 713, F.S.

Effect of Proposed Changes:

The bill clarifies that the provisions regarding service of a notice to an owner for furnishing labor, services or materials, also applies to preliminary notices on bonded projects. It also provides that service may be made by overnight or second day mail delivery.

Section 7. Provides that the bill shall take effect October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring 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:

None.

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

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

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.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Business Regulation and Consumer Affairs Committee adopted four amendments:

- #1 Deletes the provision in the bill which proposes to clarify that the Notice to Owner required under current law may differ in format, as long as it provides the required information and substantially follows a proscribed statutory form. The amendment replaces that change with a provision that states that certain required information must be part of the notice, but that adherence to a particular form set forth in the statutes is something the notice may do, rather than must do.
- #2 Provides that the Notice of Commencement may be combined with the Notice to Contractor required under s. 713.23, F.S., to streamline the process.
- #3 Provides that a building administrator or building inspector who fails to enforce the notice of commencement requirements may be disciplined for such failure.
- #4 Creates an exemption to current Notice of Commencement requirements for replacement of heating and air conditioning systems in an amount less than \$5,000.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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