

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 352

INTRODUCER: Senator Hooper

SUBJECT: Construction Liens

DATE: January 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 352 revises the requirement to file a notice of commencement for the repair or replacement of an existing heating or air-conditioning system. Under the bill, such notices of commencement must be filed only when the direct contract for such work is more than \$15,000. The current exemption for such contracts is capped at \$7,500.

The bill has no fiscal impact on state government. See Section V.

SB 352 is effective July 1, 2022.

II. Present Situation:

Construction Lien Law

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved, and are known as lienors. Mechanisms that address these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S.

While “construction lien” is not defined in the chapter, s. 713.015, F.S., provides that “any direct contract greater than \$2,500 between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units,” must contain a notice that a claim of lien may be filed on their property if the owner fails to pay their contractor, or their contractor or subcontractor fails to pay other persons who work on the property or provide materials and services, even if the owner paid the contractor in full. The

mandatory provision further provides that if a lien is filed, the owner's property could be sold against their will to pay for labor, services, or materials that have been not been paid to a lienor.¹

These mechanisms to ensure payment are especially important when lienors not in privity² with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the construction lien law.

When issuing a building permit for improvement to real property, an issuing authority (i.e., a local government) has certain notice requirements under ch. 713.135, F.S., for permits with a direct contract over \$2,500.

When any person applies for a building permit, the authority issuing the permit is required to:

- Print on the face of each permit card a statement that the owner's failure to record a notice of commencement may result in the owner paying twice for improvements to the property;³
- Provide the applicant and the owner of the real property with:
 - A printed statement that the person who has contracted for the improvement may be subject to attachment under the construction lien law;
 - A statement from the Department of Business and Professional Regulation providing a summary of the Construction Lien Law; and
 - An explanation of the owner's rights if a lienor fails to furnish the owner with a notice to owner;⁴
- Inform each applicant that they must promise in good faith that the statement will be delivered to the person whose property is subject to attachment.⁵

Notice of Commencement

A construction project generally begins with the posting of a "notice of commencement" on the job site and the recording of the notice in the county clerk's office.⁶ The recording of a notice of commencement is meant to give constructive notice to an owner of real property that claims of lien may be recorded against that property, and which liens may take priority, but does not constitute a lien, cloud, or encumbrance on real property.⁷

¹ Section 713.015, F.S, requires the notice to be printed in no less than 12-point, capitalized, boldfaced type on the front page of the contract.

² According to Black's Law Dictionary (10th ed., 2014), the term "privity" is used to indicate a "connection or relationship between two parties, each having a legally recognized interest in the same subject matter," for example a direct contract between the property owner and another person.

³ Section 713.135(1)(a), F.S.

⁴ Section 713.135(1)(b), F.S.

⁵ Section 713.135(1)(c), F.S.

⁶ Section 713.13(1)(a), F.S.

⁷ Section 713.13(3), F.S.

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.⁸ A notice to owner informs the owner of all potential lienors' identity and work performed.⁹ Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property.¹⁰ Upon receipt of a notice to owner, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full.

To protect against a lien by the lienor or having to pay twice for the same work, the notice to owner warns that to avoid a lien and paying twice, the owner must obtain a written release from the lienor every time they pay the contractor.¹¹

A notice of commencement must be recorded in the county clerk's office for any contract greater than \$2,500 before a contractor may begin an improvement to real property or recommence completion of any improvement after default or abandonment.¹² The notice must provide:

- A description of the real property;
- A general description of the improvement;
- Name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than the owner;
- The name and address of the contractor;
- The name and address of the surety on the payment bond, if any, and the amount of the bond;
- The name and address of any person making a loan for the construction of the improvements; and
- The name and address of a designated person upon whom documents may be served if other than the owner.¹³

Liens of materialmen or laborers who are in privity with the owner and who comply with the provisions of ch. 713, F.S., attach and take priority at the time the notice of commencement is recorded.¹⁴

A notice of commencement is not required in direct contracts to repair or replace an existing heating or air-conditioning system in an amount less than \$7,500.¹⁵ This exemption was enacted by the Legislature in 1999 at the amount of \$5,000¹⁶ and subsequently increased to its current amount of \$7,500 in 2006.¹⁷

⁸ Sections 713.06(2), and 713.23(1)(c), F.S. *See also* s. 255.05(2)(a)2., F.S., relating to liens on public property and publicly owned buildings.

⁹ Section 713.06(2)(c), F.S.

¹⁰ *Id.*

¹¹ Section 713.06(2)(c), F.S.

¹² Section 713.13(1)(a), F.S.

¹³ *Id.*

¹⁴ Section 713.07(2), F.S.

¹⁵ Section 713.135(1)(d), F.S.

¹⁶ Chapter 99-386, s. 5, L.O.F.

¹⁷ Chapter 2006-187, s. 2, L.O.F.

In the event a notice of commencement is not filed, a lien attaches and takes priority at the time the claim of lien is recorded.¹⁸ The owner of the improved property is responsible for discharging all liens filed upon the property as outlined in s. 713.21, F.S.

III. Effect of Proposed Changes:

The bill revises the requirement to file a notice of commencement for the repair or replacement of an existing heating or air-conditioning system. Under the bill, such notices of commencement must be filed only when the direct contract for such work is more than \$15,000.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill revises the requirement to file a notice of commencement for the repair or replacement of an existing heating or air-conditioning system. Under the bill, such notices of commencement must be filed only when the direct contract for such work is more than \$15,000.

¹⁸ Section 713.07, F.S. *See* s. 713.08, F.S., relating to the recording of claims of lien.

C. **Government Sector Impact:**

The broader exemption for filing required notices of commencement for the repair or replacement of an existing heating or air-conditioning system may have a minimal impact on the revenues and workload of county clerks of court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.135 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.