

## Committee on Banking and Insurance

### **CS/CS/HB 331— Liens and Bonds**

by Regulatory Reform and Economic Development Subcommittee; Civil Justice Subcommittee; and Rep. Overdorf (CS/CS/SB 624 by Rules Committee; Judiciary Committee; and Senators Grall and Perry)

The bill revises several provisions of the Construction Lien Law, which is codified in ch. 713, part I, F.S.

#### *Notice of Termination*

Presently, an owner may record a notice of termination after:

- Completion of the construction project; or
- Work stops on the project and every person who worked on the property has been paid.

Such notice is effective 30 days after the notice of termination is recorded or on the termination date stated in the notice, whichever is later.

The bill provides that, prior to recording a notice of termination, a copy of the notice must be served on each lienor in privity with the owner and on each person who timely served a notice to owner before the recording of the notice of termination. Under the bill, if it is thus served, such notice terminates the notice of commencement 30 days after it is recorded. However, the bill also requires an owner to serve a copy of the notice of termination on any lienor who began work under a notice of commencement before its termination, lacks a direct contract with the owner, and timely serves a notice to owner after the notice of termination is recorded. Under the bill, the notice of termination is effective as to such lienors 30 days after service.

#### *Service Requirements*

The bill provides that documents required by the Construction Lien Law must be served by:

- Actual delivery to the person being served; if a partnership, to one partner; if a corporation, to an officer, director, managing agent, or business agent; or if a limited liability company, to a member or manager;
- Common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, to the person being served with postage or shipping paid by the sender and with evidence of delivery; or
- Posting on the construction site if service cannot be performed by the other two methods.

#### *Other Issues*

The bill:

- Modifies the notice of commencement, notice of termination, and notice of nonpayment forms.

- Allows licensed general or building contractors providing construction or program management services to claim construction liens for such services.
- Authorizes a person intending to make a claim against a payment bond to serve the surety with a copy of the notice of nonpayment, instead of an original document.
- Provides that the methods specified for discharging a lien may also be used to release a lien, in whole or in part. The bill also specifies that, if a satisfaction or release of lien is filed with the clerk's office, the satisfaction or release must include the lienor's notarized signature and the official reference number and recording date affixed by the recording office on the subject lien.
- Increases the amount of the bond required to be deposited or filed with the clerk's office to transfer a lien to a security. Specifically, the bill changes the amount required to the amount demanded in the lien, plus interest at the legal rate for three years, plus \$5,000 (increased from \$1,000) or 25 percent of the amount demanded in the lien, whichever is greater.
- Entitles the prevailing party in an action to enforce a lien transferred to a security to recover reasonable attorney fees.
- Specifies that after a clerk's office records a notice of contest of claim against a payment bond or a notice of contest of lien and a certificate of service for such notice, the clerk must serve a copy of the recorded notice on the lienor and on the owner or the owner's attorney.
- Authorizes a building permit applicant to provide the issuing authority with the clerk's office official records identifying information in lieu of a certified copy of the notice or a notarized statement of filing.
- Provides that, in computing any time period relating to the Construction Lien Law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office or designated as such by the chief judge of the circuit, the time period is extended to the end of the next business day. The bill also provides that if a clerk's office is closed in response to an emergency, the time period for recording a document or filing an action is tolled by the number of days the clerk's office was closed.
- Repeals s. 713.25, F.S., an outdated provision relating to the applicability of ch. 65-456, L.O.F. Section 713.25, F.S., provides that the changes to the Construction Lien Law made by the Legislature in 1965 were not applicable "to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights."
- Modifies the definition of "clerk's office" to include "or another office serving as the county recorder as provided by law, in which the real property is located."
- Defines "finance charge" to mean "a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract."

The bill does not appear to have a fiscal impact on state government, but may increase expenditures for Clerks of the Circuit Court. The bill provides that the Clerks may charge fees as authorized by law for these services, so any increase in expenditures should be offset by these fees.

If approved by the Governor, or allowed to become law without the Governor's signature, these provisions take effect October 1, 2023.

*Vote: Senate 40-0; House 115-0*