

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671 Liens on Real Property

SPONSOR(S): Wood

TIED BILLS: None **IDEN./SIM. BILLS:** SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Cary	Bond
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Generally, liens against real property are not effective unless subsequent purchasers have notice of the lien. Notice can be actual notice or constructive notice. The filing of a lien in the county recorder's office provides constructive notice.

Some local governments elect not to record all liens in the county recorder's office. An appellate court decision upheld the validity of such an unrecorded lien relating to special assessment liens.

This bill renders ineffective against creditors and subsequent purchasers any government lien if it has not been properly recorded and provides requirements for such liens to be considered properly recorded.

This bill does not appear to have an impact on state revenues or expenditures. This bill may have a minimal indeterminate cost to those local governments that choose to record liens against real property.

This bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A lien is a charge on property for payment of some debt, obligation or duty.¹ Florida is a "notice" state, where a subsequent mortgagee of real property for value and without notice (actual and constructive) of a prior mortgage or the said real property will prevail against the prior mortgagee.² Furthermore, Florida is a "lien theory" state, where a mortgage is a specific lien on a property.³ As a notice state and a lien theory state, liens are generally afforded precedence based on whether subsequent purchasers had notice of the lien. Notice can be either actual or constructive, unless statutes specifically require the filing of certain liens.⁴ The act of recording an instrument in accordance with s. 695.01, F.S., constitutes constructive notice of a prior encumbrance on the property which is the subject of the instrument.⁵

State⁶ and local⁷ governments are authorized to impose liens on real property for improvements, services, fines or penalties. In some cases, the lien is legally effective even if it is not recorded in the public records of the county in which the real property is located.⁸ This is known as a "hidden lien" because it is not readily determinable by searching the official records maintained by the clerk or county recorder related to the property.

Effect of Proposed Changes

This bill amends s. 695.01, F.S., to render ineffective against creditors or subsequent purchasers any lien against real property by a governmental entity unless the entity records the lien in the official records of the county in which the property is located. The bill requires such a notice of lien to contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 amends s. 695.01, F.S., relating to recording conveyances.

Section 2 provides an effective date of July 1, 2012.

¹ *Black's Law Dictionary*, 5th Ed., at 832.

² *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So.3d 796 at 799, (Fla 5th DCA 2010). *See also* s. 695.01, F.S.

³ Section 697.02, F.S.

⁴ "Actual notice" is defined as "notice expressly and actually given, and brought home to the party directly," while "constructive notice" is defined by as "information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it." *Black's Law Dictionary*, 5th Ed., at 957-8.

⁵ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So.2d 844 at 845 (Fla. 2nd DCA 1993).

⁶ *See, e.g.*, s. 589.13, F.S., which allows the state Division of Forestry or other governmental authority, to file a lien in the public records where the agency and the landowner enter into an agreement for the improvement of land.

⁷ *See, e.g.*, s. 162.09(3), F.S., which allows local governments to file a lien in the public records upon valid order imposing a code enforcement fine; and s. 170.09, F.S., which provides for a superior priority of liens for special assessments.

⁸ *See Dade County v. Certain Lands*, 247 So.2d 787 (Fla. 3rd DCA 1971).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill renders ineffective any liens against real property as to creditors or subsequent purchasers unless such lien is recorded. This bill will only affect local government expenditures if the local government elects to attempt to enforce the liens and they either:

- Do not include the recording cost in the lien; or
- Include the recording cost, but are unable to collect on the lien.

Local governments that already record all liens will not be impacted by this bill.

Because of the nature of hidden liens, it is impossible to estimate how many local governments do not record all liens, or how many additional liens will be filed as a result of this bill. The fee to record most single-page liens is \$10. The fee is set by statute in s. 28.24, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Purchasers of real property will no longer be liable for hidden liens. This bill may have a positive, indeterminate impact on the private sector to the extent that the sale and purchase of real property will not be encumbered by hidden liens. This bill will have a positive indeterminate fiscal impact benefitting companies conducting real estate closings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.