

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 263 Notice of Commencement Requirements

SPONSOR(S): Judiciary Committee and Regulatory Reform Subcommittee, Bell and others

TIED BILLS: IDEN./SIM. BILLS: SB 352

FINAL HOUSE FLOOR ACTION: 113 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/CS/HB 263 passed the House on March 4, 2022, as SB 352.

Before a construction project begins, a property owner or his or her authorized agent typically must file a signed notice of commencement with the clerk of court for the county where the property is located. The notice, which must be substantially similar to a statutorily-authorized form and contain specified information, signifies that a construction project is beginning. It also determines construction lien priority, provides details necessary for those not in direct contract ("privity") with the property owner to secure their lien rights by serving a notice to owner, and helps protect property owners from having to pay twice for the same work or materials.

The notice of commencement must also be posted on the property and, where a building permit is required, filed with the issuing authority before the first inspection. If a building permit applicant does not properly file the notice of commencement, the issuing authority cannot perform or approve any inspections until the notice is filed. The issuing authority must also verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved provided in the notice is consistent with the information contained in the building permit application.

Current law exempts from the notice of commencement requirement a direct contract valued at \$2,500 or less and a direct contract for the repair or replacement of an existing heating or air-conditioning ("HVAC") system in an amount less than \$7,500.

The bill increases the HVAC exception limit from \$7,500 to \$15,000, meaning that a notice of commencement would not be required for a direct contract for HVAC system repair or replacement for less than \$15,000.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida law ensures that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien¹ on the property, provided the person complies with statutory procedures.² These procedures require sending various written notices, demands, and other instruments to the homeowner, contractor, subcontractor, lender, and building officials, including a:³

- Notice of Commencement;
- Notice to Owner;
- Claim of Lien;
- Notice of Termination;
- Waiver or Release of Lien;
- Notice of Contest of Lien;
- Contractor's Final Payment Affidavit; and
- Demands of Written Statement of Account.

Notice of Commencement

Before a construction project begins, a property owner or his or her authorized agent typically must file a signed notice of commencement with the clerk of court for the county where the property is located.⁴ The notice of commencement must also be posted on the property and, where a building permit is required,⁵ filed with the issuing authority before the first inspection. If a building permit applicant does not properly file the notice of commencement, the issuing authority cannot perform or approve any inspections until the notice is filed.⁶ The issuing authority must also verify that the name and address of the owner, the name of the contractor, and the location or address of the property being improved provided in the notice is consistent with the information contained in the building permit application.⁷

The notice of commencement signifies that a construction project is beginning. It also determines construction lien priority, provides details necessary for those not in direct contract ("privity") with the property owner to secure their lien rights by serving a notice to owner,⁸ and helps protect property owners who make proper payments⁹ from having to pay twice for the same work or materials.¹⁰ To

¹ A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.

² Ch. 713, F.S.

³ See generally ch. 713, part I, F.S.

⁴ S. 713.13(1)(a) and (g), F.S.

⁵ The Florida Building Code requires building permits for most construction-related work, but does not require permits for certain projects, typically of a cosmetic nature, such as painting or carpeting. Ss. 105.1 and 105.2, Fla. Building Code (7th ed. 2020), available at <https://codes.iccsafe.org/content/FLBC2020P1> (last visited Mar. 15, 2022).

⁶ Ss. 713.135(1)(a) and (g) and 713.135(1)(d), F.S.

⁷ S. 713.135(1)(d), F.S.

⁸ A notice to owner informs a property owner that someone with whom he or she is not in privity has or will provide services or materials for the owner's construction project and expects to be paid for such services or materials; and that absent such payment, he or she may claim a construction lien on the property. Persons not in privity with the property owner must serve the property owner with a notice to owner after the filing of a notice of commencement to secure their lien rights. S. 713.06(2), F.S.; *Stocking Bldg. Supply of Florida, Inc. v. Soares Da Costa Constr. Servs., LLC*, 76 So. 3d 313 (Fla 3d DCA 2011).

⁹ A payment is "proper" if the owner, after filing a notice of commencement, pays the contractor and collects lien releases from all subcontractors, laborers, or material suppliers who served the owner with a notice to owner. However, a payment is "improper" if a lien release is not collected from such persons or if payment is made after the notice of commencement expires. Where a property owner makes "proper" payments, the property owner is protected against all lien claims related to the labor, services, or materials for which proper payment was made. Ss. 713.06(3), 713.13(1)(c), and 713.20, F.S.

¹⁰ Construction liens attach and relate back to the notice of commencement recording date, taking priority over liens not recorded before that date. S. 713.07(2) and (3), F.S.; *Stocking Bldg.*, 76 So. 3d at 319; The Florida Senate Committee on Regulated Industries, *Review of the Florida Construction Lien Law*, November 2007, http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-149ri.pdf (last visited Mar. 15, 2022).

accomplish this, the notice of commencement must be substantially similar to the statutorily-provided form and contain specified information, including:¹¹

- A description of the real property to be improved;
- A general description of the improvement;
- The name and address of the property owner;
- The name and address of the fee simple title holder if not the owner;
- The name and address of the contractor, any person lending money for the improvements, and any person the property owner designated for the service of notices or claims of lien;
- A statement of the owner's or fee simple title holder's interest in the property;
- The name and address of the surety on the payment bond, if any, and the bond amount;¹² and
- The notice's expiration date.

Generally, a notice of commencement expires one year after it is filed with the clerk of the court. However, if the construction contract expresses a time period for project completion that is greater than one year, the notice of commencement must state that it is effective for a period of one year plus any additional time required under the contract.¹³

Current law exempts from the notice of commencement requirement a direct contract valued at \$2,500 or less and a direct contract for the repair or replacement of an existing heating or air-conditioning system ("HVAC system") in an amount less than \$7,500.¹⁴ The HVAC system exception was first adopted in 1999 for contracts valued under \$5,000.¹⁵ In 2006, the HVAC exception's limit was increased to \$7,500, but it has not been modified since.¹⁶

Effect of The Bill

The bill increases the HVAC exception limit from \$7,500 to \$15,000, meaning that a notice of commencement would not be required for a direct contract for HVAC system repair or replacement for less than \$15,000.

Subject to the Governor's veto powers, the effective date of the bill is July 1, 2022.

¹¹ S. 713.13(1)(d), F.S.

¹² A surety bond is a promise to be liable for another's debt, default, or failure. It is a three-party contract by which one party (the surety) guarantees the performance or obligations of a second party (the principal) to a third party (the obligee). National Association of Security Bond Providers, *What are Surety Bonds*, [https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20\(the%20obligee\)](https://www.nasbp.org/getabond/about-surety#:~:text=A%20surety%20bond%20is%20a,third%20party%20(the%20obligee)) (last visited Mar. 15, 2022).

¹³ S. 713.13(1)(a), (c), and (d), F.S.

¹⁴ Ss. 713.02(5) and 713.135, F.S.

¹⁵ Ch. 99-386, s. 5, Laws of Fla.

¹⁶ Ch. 2006-187, s. 1, Laws of Fla.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may reduce the number of HVAC system repair or replacement projects for which a notice of commencement must be filed with the clerk's office, thereby reducing filing fees collected by clerks of the court by an indeterminate amount.

2. Expenditures:

The bill may reduce the number of HVAC system repair or replacement projects for which a notice of commencement must be filed with the clerk's office, thereby reducing the workload and, consequently, expenditures, for clerks of the court by an indeterminate amount.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce costs for persons contracting for HVAC system repair or replacement who have a direct contract for such work for less than \$15,000 by saving the cost of notarizing and filing a notice of commencement for the project.

D. FISCAL COMMENTS:

None.