

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 797 Notice of Commencement Requirements

SPONSOR(S): Civil Justice Subcommittee, Griffiths

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law seeks to ensure 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 lien on the property, provided the person complies with statutory procedures. Such a lien generally extends to the right, title, and interest of the person who contracts for the improvement to the extent such right, title, and interest exists at the improvement's commencement or is acquired in the real property.

A person with lien rights may record a construction lien at any time during the progress of the work but may not record the lien later than 90 days after the person's final furnishing of labor or materials. To record a construction lien on real property, the lienor must record the lien with the clerk's office in the county where the property is located and serve the owner with the claim of lien within 15 days of its recording. If a claim of lien is not recorded, the lien is void to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.

Before construction begins, a private property owner or the owner's authorized agent must generally file a notice of commencement with the clerk's office and post a copy of the notice on the property to be improved. Such notice, which must be substantially similar to the statutorily-prescribed form:

- Helps subcontractors and material suppliers secure liens for their services or materials; and
- Protects property owners from having to pay twice for such services and materials if they follow the statutorily-specified methods for making proper payments after filing the notice.

CS/HB 797 requires that the Department of Business and Professional Regulation furnish for distribution a uniform notice of commencement, which notice an owner or an owner's authorized agent must use to satisfy the construction lien law's notice of commencement requirement.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Construction Liens

Florida law seeks to ensure 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 Such a lien generally extends to the right, title, and interest of the person who contracts for the improvement to the extent such right, title, and interest exists at the improvement's commencement or is acquired in the real property.³

A person with lien rights may record a construction lien at any time during the progress of the work but may not record the lien later than 90 days after the person's final furnishing of labor or materials.⁴ To record a construction lien on real property, the lienor must record the lien with the clerk's office in the county where the property is located and serve the owner with the claim of lien within 15 days of its recording.⁵ If a claim of lien is not recorded, the lien is void to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.⁶

Notice of Commencement

Before construction begins, a private property owner or the owner's authorized agent must generally file a notice of commencement with the clerk's office⁷ and post a copy of the notice on the property to be improved.⁸ Such notice must be substantially similar to the statutorily-authorized form and contain:

- Descriptions of the real property to be improved, and the improvements;
- The name and address of the:
 - Owner, fee simple title holder (if not the owner),⁹ contractor, and any person lending money for the project, along with a description of the owner's interest in the property;¹⁰
 - Surety¹¹ on a payment bond, if any, and the bond amount;
 - Persons, designated by the owner, upon whom notices may be served or who may receive a claim of lien;
- The notice's effective period; and
- A warning in uppercase type that the notice must be recorded, and that certain payments could be improper and lead to the owner paying twice.¹²

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.; *Edwin Taylor Corp. v. Mortgage Electronic Registration Systems, Inc.* 311 So. 3d 139 (Fla. 2d DCA 2020).

³ S. 713.10(1), F.S.

⁴ S. 713.08(5), F.S.

⁵ S. 713.08, F.S.

⁶ S. 713.08(4), F.S.

⁷ "Clerk's office" means the office of the clerk of the circuit court of the county in which the real property is located. S. 713.01(4), F.S.

⁸ A notice of commencement is not required for direct contracts for \$2500 or less or for air conditioning or heating system repair or replacement for less than \$15,000. A notice of commencement is also not required for public construction projects because public property is not lienable. Ss. 713.01(26), 713.02(5), 713.13, and 713.135(1)(d), F.S.

⁹ Fee simple title is an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. Black's Law Dictionary (11th ed. 2019).

¹⁰ A lessee may contract for improvements as an owner but must be listed as the owner in the notice of commencement. S. 713.13(1)(a)3., F.S.

¹¹ A surety guarantees the performance or obligations of a second party (the principal) to a third party (the obligee) under a three-party contract. 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 March 27, 2023).

¹² Any amount paid before a notice of commencement's filing is considered improperly paid. Further, the construction lien law sets forth methods for making proper payments after the notice of commencement is filed to guarantee that amounts paid for the work of subcontractors, laborers, and material suppliers go to such persons. S. 713.13(1)(a)-(d) and (6), F.S.; *Design Aluminum, Inc. v. DeSanti*, 521 So. 2d 285 (Fla. 2d DCA 1988).

The property owner must also sign the notice himself or herself, and if the improvement described in the notice is not actually commenced within 90 days of the notice's filing, the notice is void and of no further effect.¹³

However, a notice of commencement may be amended to extend its effective period, correct erroneous information in the original notice, or add information that was omitted from the original notice.¹⁴ An amended notice must identify the official records book and page where the original notice of commencement is recorded, and a copy of the amended notice must be served by the owner on the contractor and each lienor who serves a notice to owner before or within 30 days after the date the amended notice is filed with the clerk's office.¹⁵

Further, a property owner may terminate a notice of commencement's effective period by executing, swearing to, and recording a notice of termination containing specified information, including a statement that:

- All lienors have been paid in full; and
- The owner has, before recording the notice of termination, served a copy of such notice on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.¹⁶

A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording the notice of termination or the date stated as the termination date in the notice of termination, if the notice has been properly served on the contractor and each qualifying lienor.¹⁷ However, a property owner may not record a notice of termination except after construction completion, or after construction ceases before completion and all lienors have been paid in full or pro rata as authorized by the construction lien law.¹⁸ Any lienor served with a notice of termination who has not been paid and who wishes to have his or her construction lien relate back to the notice of commencement's filing date must record his or her lien before the notice of commencement is terminated; otherwise, the lien will attach on the date it is filed, ceding priority to earlier-filed liens.

Practically speaking, a properly-executed notice of commencement serves two main purposes. First, the notice protects all subcontractors, laborers, and material suppliers who will work on or provide materials for a construction project by signaling to such persons that the project is beginning and providing them with the information necessary to file a notice to owner to secure their lien rights.¹⁹ Second, the notice protects property owners by shielding the owner from having to pay twice for the same services, labor, or materials if the owner follows proper payment procedures after recording the notice.²⁰

¹³ S. 713.13(1)(g) and (2), F.S.

¹⁴ S. 713.13(5), F.S.

¹⁵ *Id.*

¹⁶ A notice to owner must generally be served on the property owner before or within 45 days of the date that the lienor begins work on or first furnishes materials for the project, but, in any event, before the date of the owner's disbursement of the final payment after the contractor furnishes his or her final payment affidavit as required by Florida law. The notice must contain specified information, including a warning that Florida's lien law allows some unpaid subcontractors, laborers, and material suppliers to file liens against the owner's property even where the owner has paid the contractor in full; and that the owner should ensure that each such person is paid before paying the contractor in full to avoid having to pay for services or materials twice. Ss. 713.06(2) and (3)(d) and 713.132(1), F.S.

¹⁷ S. 713.13(4), F.S.

¹⁸ S. 713.13(3), F.S.

¹⁹ S. 713.06(2), F.S.; *Edwin Taylor Corp.*, 311 So. 3d at 142; *Adamson v. First Fed. Sav. And Loan Ass'n of Andalusia*, 519 So. 2d 1036 (Fla. 1st DCA 1988).

²⁰ *Edwin Taylor Corp.*, 311 So. 3d at 142.; S. 713.06(3), F.S.

Effect of Proposed Changes

CS/HB 797 modifies s. 713.13, F.S., to require that the Department of Business and Professional Regulation²¹ (“DBPR”) furnish for distribution a uniform notice of commencement, which notice an owner or an owner’s authorized agent must use for the purposes of the construction lien law’s notice of commencement requirement. Practically speaking, this will ensure that the notice of commencement is uniform throughout the state, which may increase the likelihood that a subcontractor, laborer, or material supplier obtains the information he or she needs to file a notice to owner and thereby secure his or her lien rights. This, in turn, may increase the chance that such a person is paid for his or her services, labor, or materials.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 713.13, F.S., relating to notice of commencement.

Section 2: Provides an effective date of July 1, 2023.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it ensures that subcontractors, laborers, and material suppliers are better able to secure their lien rights and obtain payment for their services, labor, or materials. The bill may also protect property owners to the extent that it assists lienors in filing a notice to owner, so that the property owner may ensure that such persons are paid and thereby reduce the chances of having liens filed on his or her property.

D. FISCAL COMMENTS:

None.

²¹ The Construction Industry Licensing Board within DBPR licenses and regulates contractors and others working in the construction industry. See Ch. 489, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Florida law already confers rulemaking authority upon DBPR. Thus, it is unlikely that additional rulemaking authority is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute required DBPR to furnish for distribution a uniform notice of commencement, which notice an owner or an owner's authorized agent must use to satisfy the construction lien law's notice of commencement requirements.