

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 Community Affairs

BILL: SB 658

INTRODUCER: Senator Truenow

SUBJECT: Waiver or Release of Liens

DATE: March 28, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Shuler</u>	<u>Fleming</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 658 amends the Construction Lien Law to modify the statutory forms which may be used to waive and release liens, and to expand upon the kinds of payment that a person may use to obtain an executed waiver and release of lien document.

The Construction Lien Law seeks to ensure that people working on construction projects are paid for their work. To ensure payment, any person who provides services, labor, or materials for improving, repairing, or maintaining real property may place a construction lien on the property, provided the person (the “lienor”) complies with certain statutory procedures.

When a lienor is seeking a progress payment or final payment for his or her work, the lienor can induce payment by waiving and releasing his or her lien on the property using certain statutory forms. Currently, the lienor can use forms that are substantially similar to the statutory forms, or even forms that are entirely different, which are enforced in accordance with their own terms.

Instead of permitting lienors to use forms that are substantially similar to the statutory forms, or different forms altogether, the bill amends the Construction Lien Law to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends the Construction Lien Law to permit other forms of payment in addition to payment by check.

The bill takes effect July 1, 2025.

II. Present Situation:

Construction Liens

Generally

The Construction Lien Law¹ 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 lien² on the property, provided the person complies with statutory procedures.³ These procedures require the filing or serving of various documents, including a:

- Notice of Commencement.⁴
- Notice to Owner.⁵
- Claim of Lien.⁶
- Notice of Termination.⁷
- Waiver or Release of Lien.⁸
- Notice of Contest of Lien.⁹
- Contractor's Final Payment Affidavit.¹⁰
- Request for Sworn Statement of Account.¹¹

To record a construction lien on real property, the lienor must record a claim of 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 after recording the lien.¹² If a claim of lien is not recorded, the lien is

¹ Chapter 713, Part I, F.S. *See* s. 713.001, F.S. (providing the short title).

² A lien is a claim against property that evidences a debt, obligation, or duty. *See* Legal Information Institute, *Construction Lien*, https://www.law.cornell.edu/wex/construction_lien (last visited Mar. 27, 2025). "A construction lien, also known as a mechanic's lien, laborer's lien, or artisan's lien, is a type of lien that gives contractors a security interest in property until they have been paid for their work on that property. A construction lien offers the holder of this lean [sic] an interest in the property under construction. If a specific debt is not paid, then the construction lien can be enforced against the property upon which the lien exists." *Id.*

³ Chapter 713, Part I, F.S.

⁴ Section 713.13, F.S.

⁵ To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to the owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner generally must obtain a waiver or release of lien from the notice's sender before paying the contractor unless a payment bond applies. Otherwise, payments to the contractor may leave the owner liable to the notice sender if the contractor does not pay such person. *See generally* s. 713.06, F.S.; *see also* *Stock Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011) (observing that the "purpose of the notice is to protect an owner from the possibility of paying over to his contractor sums which ought to go to a subcontractor who remains unpaid" (citations omitted)).

⁶ Section 713.08, F.S.

⁷ Section 713.132, F.S.

⁸ Section 713.20, F.S.

⁹ Section 713.22(2), F.S.

¹⁰ Section 713.06(3)(d), F.S.

¹¹ Section 713.16, F.S.

¹² Section 713.08(4)(c), F.S.

voidable to the extent that the failure to record the claim prejudices any person entitled to rely on service of the claim of lien.¹³

A person may file a claim of lien at any time during the progress of the work but may not file a claim of lien later than 90 days after the person's final furnishing of labor or materials.¹⁴ A person may record a single claim of lien for multiple services or materials provided to different properties so long as such services or materials were provided under the same contract, the person is in privity with the owner, and the properties have the same owner.¹⁵ However, a person may not record a single claim of lien for multiple services or materials if there is more than one contract, even if the contracts for services and materials are with the same owner.¹⁶

Waiver or Release of Lien

The Construction Lien Law provides that any person may, at any time, waive, release, or satisfy any part of his or her lien under the Construction Lien Law.¹⁷ The waiver, release, or satisfaction of the lien may be either as to the amount due for labor, services, or materials furnished; for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release; or as to any part or parcel of the real property.¹⁸ A written waiver of the right to file a mechanics' lien is generally valid and effective.¹⁹

A right to claim a lien may not be waived in advance, and any waiver of a right to claim a lien that is made in advance is unenforceable.²⁰ A lien may be waived only to the extent of labor, services, or materials furnished.²¹ The right to a lien may be waived expressly or by implication.²² Before such an important right will be deemed to have been waived by the implication of one's conduct, the implication must be clear and unambiguous, and any ambiguity will be resolved against a waiver;²³ but if it is clear that a waiver is intended, the contract will be construed according to the parties' intention.²⁴

The Construction Lien Law sets forth the forms to be substantially followed when a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, either a progress payment²⁵ or the final payment.²⁶ A person may not require a lienor to furnish a lien

¹³ *Id.*

¹⁴ Section 713.08(5), F.S.

¹⁵ Section 713.09, F.S.

¹⁶ *See id.*; *see also Lee v. All Florida Construction Co.*, 662 So. 2d 365, 366-67 (Fla. 3d DCA 1995) (finding that a contractor was required to file two claims of mechanics' lien against a home for construction and subsequent repair work done on the home, even though work was done on the same structure, where construction and repairs were done under two separate contracts).

¹⁷ Section 713.20(3), F.S.

¹⁸ *Id.*

¹⁹ *Greco-Davis Contracting Co. v. Stevmier, Inc.*, 162 So. 2d 285, 285 (Fla. 2d DCA 1964).

²⁰ Section 713.20(2), F.S.

²¹ *Id.*

²² *Frank Maio General Contractor, Inc. v. Consolidated Elec. Supply, Inc.*, 452 So. 2d 1092, 1093 (Fla. 4th DCA 1984); *Orlando Central Park, Inc. v. Master Door Co. of Orlando, Inc.*, 303 So. 2d 685, 686 (Fla. 4th DCA 1974).

²³ *Orlando Central Park, Inc.*, 303 So. 2d at 686.

²⁴ *Frank Maio General Contractor, Inc.*, 452 So. 2d at 1093.

²⁵ Section 713.20(4), F.S.

²⁶ Section 713.20(5), F.S.

waiver or release of lien that is different from the forms set forth in the statute;²⁷ nevertheless, a lien waiver or lien release that is not substantially similar to the forms set forth is enforceable in accordance with its terms.²⁸

A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check.²⁹ However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.³⁰

III. Effect of Proposed Changes:

Under the existing Construction Lien Law, whenever a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment (see s. 713.20(4), F.S.) or a final payment (see s. 713.20(5), F.S.), the lienor has the option of either:

- Using waiver and release of lien forms that are identical or substantially similar to the forms in s. 713.20(4) and (5), F.S.
- Using waiver and release of lien forms that are not substantially similar to the forms in the statute, in which case the form will be enforced in accordance with its terms.

The bill amends s. 713.20(4) and (5), F.S., to make it so lienors no longer have the option of using waiver and release of lien forms that differ from the forms prescribed by statute. All waiver and release of lien forms will have to be identical to the forms prescribed by statute to be enforceable.

Additionally, under existing Construction Lien Law, a lienor may execute a lien waiver and release in exchange for a check, and may condition the waiver and release on payment of the check. The bill amends s. 713.20(7), F.S., to permit other forms of payment in addition to payment by check.

The bill takes effect on July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ Section 713.20(6), F.S.

²⁸ Section 713.20(8), F.S.

²⁹ Section 713.20(7), F.S.

³⁰ *Id.*

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:

By prohibiting the use of waiver and release forms that differ from the statutory forms, those obligated to make payments will have less power to force those entitled to payment to waive additional rights as a condition of receiving payment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 713.20 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.