

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2458

SPONSOR: Regulated Industries Committee and Senator Argenziano

SUBJECT: Construction Lien Law

DATE: April 9, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u> </u>	<u> </u>	<u>JU</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>CM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill amends provisions of ch. 713, F.S., to provide for greater consumer protection regarding lien law. The bill also requires that the state attorney and statewide prosecutor forward information to the department when filing charges of certain violations of ch. 713, F.S.

This bill substantially amends the following sections of the Florida Statutes: 713.06, 713.08, 713.135, 713.31, 713.345, 713.3471, 713.35. The bill creates s. 713.015, F.S.

II. Present Situation:

The regulation of construction contracting is governed by part I of ch. 489, F.S., and is administered by the Construction Industry Licensing Board (CILB) with the Department of Business and Professional Regulation (department). Contractors are divided into Division I and II categories. Division I contractors include general, building, and residential contractors. Division II contractors are those contractors typically referred to as “subcontractors” that include professions such as roofing, plumbing, air-conditioning, and pool contracting.

Liens are governed by ch. 713, F.S. Section 713.01, F.S. defines the term “lienor” to include a person who is: a contractor; a subcontractor; a sub-subcontractor; a laborer; or a materialman who contracts with the owner or one of the above. The term also includes professional lienors defined under s. 713.03, F.S. which includes architects, landscape architects, interior designers, engineers, and surveyor and mappers.

Under most contracts to improve real property, a contractor is usually paid a percentage of the entire price upon the completion of a certain percentage of the work. This disbursement is often

referred to as a “draw” and is meant to cover the costs of materials, labor, and services paid up to that point.

Section 489.129(1)(g), F.S., provides that the CILB may take disciplinary action against a contractor licensed under ch. 489, F.S., when valid liens are recorded against the property of the contractor’s customer, for supplies or services ordered by contractor for the customer’s job; the contractor has received funds to pay for the supplies or services; and the contractor has not had the liens released within 75 days after the date of such liens. In order for a lien to be valid, s. 713.06((2)(a), F.S., provides that the lienor, with the exception of laborers, must provide the owner with a "Notice to Owner" within 45 days of commencing to furnish labor, services, or materials, but in any event, before the owner’s disbursement of the final payment after the contractor has provided an affidavit indicating that all lienors have been paid. Further, s. 713.085(5), F.S., provides that the lien must be recorded within 90 days after furnishing the final labor, services, or materials.

Section 713.06(3)(d), F.S., requires that prior to receipt of final payment, a contractor must provide an affidavit to the owner, which states that all lienors under his or her direct contract who have timely served Notices to Owner on the owner and the contractor have been paid in full or, if not paid, showing the name of each lienor and the amount owed.

Section 713.135, F.S., provides that when a building permit is pulled, the local building department is required to provide a property owner with a statement summarizing the Construction Lien Law. The department is required to furnish that summary to the building departments.

Under s. 713.31(3), F.S., the filing of a fraudulent lien constitutes a third-degree felony. Under s. 713.345, F.S., a contractor who receives any payment under a contract must apply that portion to the payment of all amounts then due and owing for services, labor, or materials which were furnished prior to receipt of the payment. The misapplication of those funds constitutes either a first, second, or third degree felony depending upon the amount of money misappropriated. Section 713.35, F.S. provides that the making of a false written statement within an affidavit regarding the payment of subcontractors, sub-subcontractors, or suppliers to induce an owner to make payment under a contract constitutes a third degree felony.

III. Effect of Proposed Changes:

Section 1

Section 713.015, F.S., is created to require that any direct contract between an owner and contractor relating to improvements to real property consisting of single or multiple family dwellings up to and including 4 units, must contain a notice advising the owner that he or she may be subject to construction liens and recommending that the owner consult an attorney whenever a specific problem arises.

Section 2

Section 713.06, F.S. is amended to provide new warning language giving the owner notice that unpaid contractors, subcontractors and material suppliers may file liens against the owner’s property even if the owner has made payment in full.

Section 3

Section 713.06, F.S., provides the language that must be in the contractor's final payment affidavit to the owner.

Section 4

Section 713.08, F.S., is amended to provide new warning language for the claim of lien to be sufficient.

Section 5

Section 713.135(1)(b), F.S., is amended to include an "explanation of owner's rights" in the already required statement issued to building permit applicants and the owners of the real property by the authority issuing permits. The "explanation of owner's rights" alerts the owner of what steps to take if a lienor fails to furnish the owner with a notice as required under s. 713.06(2), F.S. It clarifies that the department provides the statements to the authority issuing permits for distribution.

It also clarifies that in addition to providing the required statement to the owner, the permit issuing authority must inform each non-owner permit applicant that, as a condition to issuance of the permit, the applicant must deliver the statement to the owner.

Section 6

Section 713.31, F.S., is amended to require a state attorney or statewide prosecutor to forward a copy of an indictment or information that charges a contractor, subcontractor, or sub-subcontractor with the willful filing of a fraudulent lien, to the department. It also requires the department to promptly open an investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property.

Section 7

Section 713.345, F.S., creates a permissive inference that a person knowingly and intentionally misapplied construction funds when a valid lien has been recorded against the property of the owner and the person who recorded the lien has received sufficient funds for the construction and has failed, for a period of at least 45 days, to remit sufficient funds to pay of the labor, services or materials.

It requires a state attorney or statewide prosecutor to forward a copy of an indictment or information that charges a contractor, subcontractor, or sub-subcontractor with the misapplication of construction funds, to the department. It also requires the department to promptly open an investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property.

Section 8

Section 713.3471, F.S., is amended to require a lender, prior to making any loan disbursement directly to the owner or jointly to the owner and any other party, to provide a written warning statement regarding lien releases.

Section 9

Section 713.35, F.S., is amended to require a state attorney or statewide prosecutor to forward a copy of an indictment or information which charges a contractor, subcontractor, or sub-subcontractor with the making of a false statement regarding the payment of subcontractors, sub-subcontractors, or suppliers, to induce an owner to make payment under a contract to the department. It also requires the department to promptly open an investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property.

Section 10

Provides that the bill takes effect July 1, 2003, except as provided in the bill

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, there does not appear to be any fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
