

1989

Session Law 89-370

Florida Senate & House of Representatives

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H 1120 GENERAL BILL/CS/1ST ENG by Commerce; Lawson (Similar CS/H 1483, CS/S 1040)

Mechanics' Lien Law Study Commission; creates said commission & provides for membership; requires Executive Office of Governor to staff commission; prescribes subjects about which commission shall make recommendations; requires report; authorizes commission members to incur travel & per diem expenses. Appropriation: \$50,000. Effective Date: 07/06/89.

03/21/89 HOUSE Prefiled
03/24/89 HOUSE Referred to Commerce; Appropriations
04/04/89 HOUSE Proposed, referred to Commerce; Appropriations -HJ 105
04/10/89 HOUSE On Committee agenda—Commerce, 04/12/89, 3:30 pm, 21-HOB—For ratification to subcommittee
04/14/89 HOUSE On subcommittee agenda—Commerce, 04/18/89, 10:45 am, 24-HOB—Temporarily passed
04/24/89 HOUSE On Committee agenda—Commerce, 04/26/89, 3:45 pm, 21-HOB
04/26/89 HOUSE Preliminary Committee Action by Commerce: Favorable as a CS
05/03/89 HOUSE Comm. Report: CS by Commerce -HJ 370; CS read first time -HJ 368; Now in Appropriations -HJ 370
05/17/89 HOUSE Withdrawn from Appropriations -HJ 514; Placed on Calendar
05/26/89 HOUSE Placed on Consent Calendar; Read second time; Read third time; CS passed; YEAS 112 NAYS 0 -HJ 678
05/26/89 SENATE In Messages
05/30/89 SENATE Received, referred to Commerce; Community Affairs; Governmental Operations; Appropriations -SJ 563
06/01/89 SENATE Withdrawn from Commerce; Community Affairs; Governmental Operations; Appropriations; Substituted for CS/SB 1040; CS passed as amended; YEAS 35 NAYS 0 -SJ 788
06/01/89 HOUSE In Messages
06/02/89 HOUSE Concurred; CS passed as amended; YEAS 113 NAYS 0 -HJ 1137
06/02/89 Ordered engrossed, then enrolled
06/20/89 Signed by Officers and presented to Governor
07/06/89 Became Law without Governor's Signature; Chapter No. 89-370

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1120-f.com
DATE: 07/07/89

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1120
RELATING TO: Mechanics' Lien Law
SPONSOR(S): Commerce & Representative Lawson
EFFECTIVE DATE: Upon becoming a law
DATE BECAME LAW: July 6, 1989
CHAPTER #: 89-370, Laws of Florida
COMPANION BILL(S): SB 1040
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

The committee substitute creates a 13 member study commission which is charged with the responsibility to assess the state's mechanic lien laws.

A. PRESENT SITUATION:

A mechanic's lien is "a claim created by law for the purpose of securing priority of payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure, and as such attaches to the land as well as buildings and improvements erected thereon." Black's Law Dictionary, Rev. 4th Ed., (1968). Part I of Chapter 713, F. S., constitutes the Florida mechanics' lien law. The purpose of this law is to protect lienors, i.e., suppliers of materials, labor and skills, by providing a plan by which they may record and foreclose a claim of lien against property improved by their provision of materials, labor or services. See Crane Co. v. Fine, 221 So.2d 145 (Fla. 1969), conformed to 222 So.2d 36.

While the mechanics' lien law protects materialmen, laborers and other providers of services, it is a complex law that is difficult for the typical property owner (or, provider of material, labor or services) to understand. Unless the property owner requires his general contractor to obtain a bond, the property owner must record a notice of commencement in the public records and post a certified copy of the notice at the job site. If the owner makes any payments prior to recording, the payments may be considered unpaid.

Prospective lienors are required to serve a notice to owners prior to obtaining a valid lien, and must do so within a specified time period. Unless the property owner has a direct contract with the materialman, laborer or service provider, he is under no obligation to lienors who fail to serve the notice to owners in a timely manner.

The regulation of Florida's construction industry was assessed by the Legislature in 1988. During the extensive process, it became evident that numerous disciplinary problems were associated with construction contractors. One of the primary complaints by aggrieved consumers was the frequent delay experienced after a complaint was made against a contractor. In a significant number of instances, the dishonest contractor was permitted to continue its operation despite the likelihood that severe discipline would result. According to a recent report by the Construction Complaints Study Committee, there has been a 250 percent increase in consumer complaints against construction contractors in the past six years: from approximately 1,800 to 4,200.

The lending industry in the state of Florida, and particularly its construction financing institutions, play an integral part in the construction industry. Virtually every project is funded by outside money which is usually obtained from commercial banks or loan institutions. Dishonest contractors present a serious problem for financial institutions and homeowners.

Upon the completion of a lengthy and involved process, the homeowner who has obtained approval for a loan by a financial institution generally believes that sufficient protection has been provided. However, the presence of a dishonest contractor can quickly shatter the dreams of the homeowner.

The practice of the financial industry regarding the disbursement of funds approved for the homeowner results in the lending institution distributing monies to the general contractor. Usually, the contractor obtains the funds after completion of a percentage of the project, which is inspected by a representative of the institution. The money is expected to be allocated to the subcontractor and suppliers for work performed and materials obtained. However, a dishonest contractor will often obtain the funds from the lending institution and retain them for personal use or a use not associated with the intended project.

Generally, the homeowner is unaware of the occurrence of such activity. It is when the homeowner is contacted by the subcontractors or suppliers or when a lien is filed that the homeowner becomes informed of the existent problem. However, the homeowner is financially responsible for the loss caused by the general contractor.

Where the homeowner faces such a situation, the general contractor is usually not bonded and sometimes not licensed. Therefore, the homeowner is not provided a mechanism whereby the funds may be recovered. In addition, the lending institution normally does not encounter any liability in such instances as

they have not failed to comply with established laws or regulations.

In such circumstances, the homeowner will potentially suffer a substantial financial loss. Frequently, the residential dwelling cannot be completed or the value of the home is significantly less than the cost.

It is the intent of the sponsor to better protect the public through more specific laws, which should result from the proposed study commission. The report from the Construction Complaints Study Commission clearly reveals that this is an area which demands study. Additionally, the commission noted that a method of recovery and restitution for persons who are monetarily damaged by a licensed contractor should be established.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute for HB 1120 creates a 13 member study commission to participate in an exhaustive review of the state's mechanics' lien laws. Commission members are required to be appointed by July 31, 1989.

Members of the commission will not receive compensation but will receive per diem and travel expenses in accordance with section 112.061, F.S. For the purpose of paying per diem and travel expenses of commission members and authorized staff, \$50,000 has been appropriated.

The commission is charged with the responsibility of reviewing the Mechanics' Lien Law and making recommendations concerning, but not limited to: how to educate the public about the lien law, how to encourage or require notice of commencement be recorded, the effectiveness of notice requirements, the scope of lender responsibility under the mechanics' lien law, and the scope of exemptions under the mechanics' lien law. Recommendations of the commission must be submitted in the form of a written report on or before December 1, 1990.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Per diem and travel costs for the members of the study commission.

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

To the extent that legislation is proposed by the study commission, homeowners will receive enhanced protection from unscrupulous activity relating to construction contractors and will be better served by Florida's Mechanics' Lien Law.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill is not inconsistent with the State Comprehensive Plan.

IV. COMMENTS:

Statement of Substantial Changes:

This short form bill proposed legislation which would require financial institutions to disburse all funds relating to construction of residential dwellings to the homeowner and not the contractor. Homeowners and representatives of financial institutions would be required to sign a waiver which releases the financial institution from liability relating to the disbursement of the funds. Where the general contractor fails to provide the homeowner with certified receipts of expenditures, a penalty would result. Finally, a study commission would be created to assess the role of financial institutions in the area of construction contracting. The committee substitute creates a 13-member Mechanics' Lien Law Study Commission which is responsible for assessing the effectiveness of Florida's mechanics' lien law.

V. LEGISLATIVE HISTORY:

ENACTED BILL:

House Bill 1120 was prefiled by Representative Lawson on March 21, 1989 and referred to the Committees on Commerce and Appropriations. The bill scheduled to be heard in the subcommittee on Banking and Commerce on April 18, but was temporarily passed. Although the bill was never heard in subcommittee, the Full Commerce Committee passed the bill as a committee substitute on May 3 (HJ 00370). The bill was withdrawn from the Appropriations Committee and placed on the Consent Calendar. The CS passed by a vote of 112-0 on May 26 (HJ 00678). Upon receiving the bill in messages, the Senate referred the CS to the Committees on Commerce, Community Affairs, Governmental Operations, and Appropriations. On June 1, the bill was withdrawn from each of the Senate committees and the House bill was substituted for CS/SB 1040 and passed as amended. The vote was 35-0 (SJ 00788). The House received the bill in messages and passed the CS as amended by a vote of 113-0 (HJ 01137). The bill was ordered engrossed then enrolled on June 2. On June 20 the bill was presented to the Governor and on July 6, became law (Chapter 89-370).

DISPOSITION OF COMPANION:

Senate Bill 1040 was filed by Senator Dudley on April 5, 1989 and referred to the Committees on Judiciary-Civil and Rules and Calendar. On May 5, the Committee on Judiciary-Civil passed the bill as a committee substitute. The bill was withdrawn from the Committee on Rules and Calendar on May 30 and placed on the Special Order Calendar. On June 6, the Senate bill was laid on the Table under Rule, and the similar House bill was passed (SJ 00788).

STORAGE NAME: h1120-f.com

DATE: 07/07/89

PAGE: 6

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Beryl D. Burke Beryl D. Burke

Staff Director:

William Leary William Leary

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/SB 1040

DATE: May 10, 1989

Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Smawley</u>	<u>Smawley</u>	1. <u>JCI</u>	<u>Fav/CS</u>
2. _____	_____	2. <u>RC</u>	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Mechanics' Lien Law Study
Commission

BILL NO. AND SPONSOR:

CS/SB 1040 by
Judiciary-Civil and
Senator Dudley

I. SUMMARY:

A. Present Situation:

Part I of ch. 713, F.S., contains the mechanics' lien law. The law creates a statutory lien in favor of contractors, subcontractors, sub-subcontractors, laborers, materialmen, and certain other persons rendering services, in connection with improvements to real property if they are not paid for the materials or services they provide.

There are several exemptions from the application of the mechanics' lien law. Except for persons in privity with the owner, the law does not apply to improvements for which the direct contract price is \$2,500 or less. If the owner requires the contractor to furnish a payment bond, as set forth in s. 713.23, F.S., then the owner is exempt from the mechanics' lien law, except with regard to the lien of the contractor who furnishes the bond. Finally, the law provides that no lien exists in favor of a contractor, subcontractor, a sub-subcontractor, unless they are properly licensed for the work they performed.

The law divides persons rendering services and materials into two classes; those who are in privity with the owner and those who are not. If a person is in privity, i.e., has a direct contract between himself and the owner, then he must record the claim of lien in the clerk's office in the county in which the real property, which is the object of the lien, is located. If the real property is located in two or more counties then it must be recorded in each such county. The lienor must serve a copy of the claim of lien on the owner within 15 days after recording. No such claim of lien is valid unless the lien is recorded within 90 days of the last furnishing of materials or services. A contractor must furnish an affidavit, as set forth in s. 713.06(3)(d), F.S., to the owner at least 5 days before filing an action to enforce the lien. The affidavit states that all lienors under the contractors' direct contract have been paid, or if not, the name of each lienor not paid and the amount then owing. The lienor must commence an action to enforce the lien within one year from the time it is recorded, regardless of whether the lienor is in privity with the owner.

For persons not in privity the mechanics' lien law also provides procedure for notice to the owner, contractor, and subcontractors, as appropriate, as a prerequisite to successfully enforcing a claim of lien.

Section 713.13, F.S., requires the owner or his authorized agent to record, in the clerk's office a notice of commencement and to post a certified copy of this notice. The notice of commencement must contain: a legal description of the property as well as a street address or a sufficient physical

description so that it can be located; a general description of the improvement; the name and address of the owner, his interest in the property and, if other than the owner, the name and address of the fee simple titleholder; the name and address of the contractor; the name and address of the surety, if any; the name and address of the lender, if any; and the name and address of any other person, designated by the owner, to be served with notices or other documents. It is not uncommon for owners, particularly those connected with single-family construction, to fail to file the notice of commencement.

A subcontractor or materialman who is in privity with the contractor but not the owner must serve a notice to owner before commencing work or furnishing materials or within 45 days thereafter, but in any event no later than the date of the final payment. The claim of lien must be recorded within 90 days of the last furnishing of services or materials. A copy of the claim of lien must be served on the owner within 15 days from the time it is recorded. If the lienor is a materialman or sub-subcontractor then the notice to owner must also be served upon the general contractor. If the lienor is a materialman and is furnishing materials to a sub-subcontractor, then the notice to owner must also be served upon the subcontractor.

The notice to owner, see s. 713.06(2), F.S., is a prerequisite to perfecting a lien under the mechanics' lien law. The furnishing of the notice contemplates direct payments by the owner to those persons who supply the notice to owner. In addition, for the protection of the owner, the mechanics' lien law provides that payments will be accompanied by a partial release of lien, and a total waiver of lien when full payment for services and materials, by those persons providing a notice to owner.

There have been many cases in which contractors have been paid for work but proper amounts were not remitted to subcontractors, sub-subcontractors, materialman, and laborers. These individuals then recorded and enforced claims of lien against the owner of the property. This has resulted in owners paying twice for improvements to real property.

Section 713.34, F.S., provides that the misapplication of funds loaned for the purpose of improving real property constitutes embezzlement. Section 713.345, F.S., provides that it is a misdemeanor of the first degree to misapply payments received for materials and services in connection with improvements. Section 713.346, F.S., provides a civil action for the misapplication of construction funds.

B. Effect of Proposed Changes:

The commission's thirteen members would be appointed in the following manner, no later than July 31, 1989:

The President of the Senate would appoint two Senators, a contractor, a member of the Construction Industry Licensing Board of the Department of Professional Regulation, and a lay member.

The Speaker of the House of Representatives would appoint two Representatives, a subcontractor, a local code enforcement official, and a lay member.

The Governor would appoint a member of the construction lending industry, a materialman and a lay member.

The commission would be required to examine the Mechanics' Lien Law and make recommendations on the following subjects:

- 1) The creation of a construction industry recovery fund.
- 2) Whether additional steps need to be taken to prevent the embezzlement of construction funds.
- 3) Whether privity of contract should be a prerequisite to a lien.
- 4) If additional enforcement powers should be given to the Department of Professional Regulation.
- 5) The responsibility of lending institutions.
- 6) Whether direct payment should be required and if utilized, whether an exemption from the Mechanics' Lien Law be given in such instances.
- 7) Should additional parties be served with a notice to owner and what consequence should result from the failure to serve such notice.
- 8) Whether the issuance of building permits should be conditioned upon the filing of a notice of commencement, and the effect of the failure to file such notice.
- 9) Whether single-family construction should be exempted from the Mechanics' Lien Law.

The commission would be provided staff by the Executive Office of the Governor. The written report would be submitted, on or before December 1, 1989, to the President of the Senate, the Speaker of the House of Representatives, and the Governor. Commission members would be authorized to incur per diem and travel expenses in accordance with s. 112.061, F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The sum of \$50,000 would be appropriated for the purpose of paying per diem and travel as authorized in the bill pursuant to s. 112.061, F.S.

III. COMMENTS:

The Construction Complaints Study Committee, created by the 1988 Legislature, submitted its report to the Governor and the Legislature on March 1, 1989. That committee, among other recommendations, recommended further study of a construction industry recovery fund.

IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1040

Adds a member fo the Construction Industry Licensing Board
and a local code enforcement officer to the commission.

Provides a \$50,000 appropriation.

Sets forth further areas for study by the commission.

Provides that commission members are to be paid per diem of
travel.

Committee on Judiciary-Civil


Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)