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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/16/11

SPONSOR Morales & Cook LAST UPDATED 03/13/11 HB \_\_\_\_\_

SHORT TITLE Revising Notice Requirements for Liens SB 343/aSJC

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Regulation & Licensing Department (RLD)  
 Energy, Minerals & Natural Resources Department (EMNRD)  
 Association of County Clerks

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 343 provides a shorter time period for original contractors and mechanics and materialmen who contract directly with the original contractor to give notice to the owner or reputed owner prior to filing a lien: rather than the sixty day period after initially performing work or furnishing materials generally required, the period is shortened to within thirty days immediately preceding the filing of the lien. The date and method of delivery of that notice must be listed on the lien, as is true for all others filing a lien.

The amendment corrects the technical error in Section 2(E).

In addition, the amendment repeals the Stop Notice Act, which provides a procedure for timely payment by an original contractor to mechanics or materialmen who have furnished labor or materials used or to be used in residential construction. That Act provides for claims against the construction lender, or the owner if there is no lender, through the use of a stop notice that requires the lender or owner to withhold the claimed amount from the original contractor until the claim has been resolved.

Synopsis of Original Bill

Senate Bill 343 amends existing lien laws applicable to:

- mechanics and materialmen
- abstracters
- threshers and harvesters
- hospitals and
- oil and gas products

to provide and clarify that no recorded lien may be enforced unless the lien claimant gives written notice to the owner, original contractor or other specified entity, and the date and method of delivery of such notice is listed on the recorded lien.

The bill eliminates the notice exceptions previously granted for claims made on residential properties containing four or fewer dwelling units, for claims by an original contractor, for claims made by mechanics or materialmen who contract directly with the original contractor, and for mechanics' and materialmens' liens when the amount at issue is \$5,000 or less. It also removes an exception currently granted to filers of mechanic's and materialmens' liens from compliance with existing law requiring acknowledgement of recorded documents.

SB 343 also replaces the hospital lien requirement that a detailed billing be attached to the lien with a requirement that instructions for obtaining such a statement be provided in the lien.

Lastly, as to oil and gas production liens, the bill clarifies the lien shall reference the unit number that has been designated by the oil and gas bureau of Taxation & Revenue Department (rather than the Oil and Gas Accounting Commission).

The delayed effective date of this bill is July 1, 2011.

**FISCAL IMPLICATIONS**

The AOC notes that increased filing requirements for lien claims may decrease overall case filings to enforce liens, plus decrease defenses based on lack of notice of a claim.

**SIGNIFICANT ISSUES**

The Association of County Clerks (ACC) explains that this bill was generated by the NMAC County Clerks Affiliate, and that the county clerks believe that if someone's title is going to be clouded or compromised by a lien, they have a right to be notified of such.

Additionally, the ACC points out that the existing requirement that a hospital attach a detailed billing to a hospital lien could violate HIPPA and the patient's privacy rights.

**TECHNICAL ISSUES**

Since subsection D of Section 1 of this bill allows notice to be given at a later time than that required in subsection A, reference to D, as well as A, may be appropriate in subsection E of that same section (page 4, line 9).

**ALTERNATIVES**

The ACC believes this bill is the least disruptive way of requiring notice when a lien is filed.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The ACC advises that people will continue to have liens placed on their property without notice and may not have the opportunity to address either the problem or the misunderstanding that led to the lien, noting that although most liens are legitimate, some are not and without notice, those cannot be timely contested.

MD/bym:mew