

**As Reported by the House Financial Institutions Real Estate and
Securities Committee**

**126th General Assembly
Regular Session
2005-2006**

H. B. No. 487

**Representatives Widener, Martin, McGregor, R., Wagoner, Seitz, Hartnett,
Allen, Koziura, Hagan, Gibbs, Evans, C.**

—

A B I L L

To amend sections 153.54, 153.57, 1311.01, 1311.011, 1
1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 2
1311.12, 1311.13, 1311.14, 1311.15, 1311.25, 3
1311.26, 1311.261, 1311.28, 1311.29, 1311.32, 4
4113.61, 5309.57, and 5525.16 of the Revised Code 5
to specify that an owner, part owner, or lessee of 6
real property, with respect to a home construction 7
contract, must record a notice of commencement 8
only if required by a lending institution, to 9
stipulate that a notice of commencement for a home 10
construction contract expires six years after it 11
is recorded, and to permit court costs and 12
reasonable attorney fees to be included in damages 13
an owner may recover from a lienholder who refuses 14
to release the lien after the owner makes full 15
payment and to stipulate for all types of liens 16
that a mortgage is considered filed first if a 17
mortgage and notice of commencement are filed on 18
the same day. 19

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 153.54, 153.57, 1311.01, 1311.011, 20
1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1311.13, 21
1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1311.29, 22
1311.32, 4113.61, 5309.57, and 5525.16 of the Revised Code be 23
amended to read as follows: 24

Sec. 153.54. (A) Each person bidding for a contract with the 25
state or any political subdivision, district, institution, or 26
other agency thereof, excluding therefrom the department of 27
transportation, for any public improvement shall file with the 28
bid, a bid guaranty in the form of either: 29

(1) A bond in accordance with division (B) of this section 30
for the full amount of the bid; 31

(2) A certified check, cashier's check, or letter of credit 32
pursuant to Chapter 1305. of the Revised Code, in accordance with 33
division (C) of this section. Any such letter of credit is 34
revocable only at the option of the beneficiary state, political 35
subdivision, district, institution, or agency. The amount of the 36
certified check, cashier's check, or letter of credit shall be 37
equal to ten per cent of the bid. 38

(B) A bid guaranty filed pursuant to division (A)(1) of this 39
section shall be conditioned to: 40

(1) Provide that, if the bid is accepted, the bidder, after 41
the awarding or the recommendation for the award of the contract, 42
whichever the contracting authority designates, will enter into a 43
proper contract in accordance with the bid, plans, details, 44
specifications, and bills of material. If for any reason, other 45
than as authorized by section 9.31 of the Revised Code or division 46
(G) of this section, the bidder fails to enter into the contract, 47
and the contracting authority awards the contract to the next 48
lowest bidder, the bidder and the surety on the bidder's bond are 49

liable to the state, political subdivision, district, institution, 50
or agency for the difference between the bid and that of the next 51
lowest bidder, or for a penal sum not to exceed ten per cent of 52
the amount of the bond, whichever is less. If the state, political 53
subdivision, district, institution, or agency does not award the 54
contract to the next lowest bidder but resubmits the project for 55
bidding, the bidder failing to enter into the contract and the 56
surety on the bidder's bond, except as provided in division (G) of 57
this section, are liable to the state, political subdivision, 58
district, institution, or agency for a penal sum not to exceed ten 59
per cent of the amount of the bid or the costs in connection with 60
the resubmission of printing new contract documents, required 61
advertising, and printing and mailing notices to prospective 62
bidders, whichever is less. 63

(2) Indemnify the state, political subdivision, district, 64
institution, or agency against all damage suffered by failure to 65
perform the contract according to its provisions and in accordance 66
with the plans, details, specifications, and bills of material 67
therefor and to pay all lawful claims of subcontractors, 68
~~materialmen~~ material suppliers, and laborers for labor performed 69
or material furnished in carrying forward, performing, or 70
completing the contract; and agree and assent that this 71
undertaking is for the benefit of any subcontractor, ~~materialman~~ 72
material supplier, or laborer having a just claim, as well as for 73
the state, political subdivision, district, institution, or 74
agency. 75

(C)(1) A bid guaranty filed pursuant to division (A)(2) of 76
this section shall be conditioned to provide that if the bid is 77
accepted, the bidder, after the awarding or the recommendation for 78
the award of the contract, whichever the contracting authority 79
designates, will enter into a proper contract in accordance with 80
the bid, plans, details, specifications, and bills of material. If 81

for any reason, other than as authorized by section 9.31 of the
Revised Code or division (G) of this section, the bidder fails to
enter into the contract, and the contracting authority awards the
contract to the next lowest bidder, the bidder is liable to the
state, political subdivision, district, institution, or agency for
the difference between the bidder's bid and that of the next
lowest bidder, or for a penal sum not to exceed ten per cent of
the amount of the bid, whichever is less. If the state, political
subdivision, district, institution, or agency does not award the
contract to the next lowest bidder but resubmits the project for
bidding, the bidder failing to enter into the contract, except as
provided in division (G) of this section, is liable to the state,
political subdivision, district, institution, or agency for a
penal sum not to exceed ten per cent of the amount of the bid or
the costs in connection with the resubmission, of printing new
contract documents, required advertising, and printing and mailing
notices to prospective bidders, whichever is less.

If the bidder enters into the contract, the bidder, at the
time the contract is entered to, shall file a bond for the amount
of the contract to indemnify the state, political subdivision,
district, institution, or agency against all damage suffered by
failure to perform the contract according to its provisions and in
accordance with the plans, details, specifications, and bills of
material therefor and to pay all lawful claims of subcontractors,
~~materialmen~~ material suppliers, and laborers for labor performed
or material furnished in carrying forward, performing, or
completing the contract; and agree and assent that this
undertaking is for the benefit of any subcontractor, ~~materialman~~
material supplier, or laborer having a just claim, as well as for
the state, political subdivision, district, institution, or
agency.

(2) A construction manager who enters into a contract

pursuant to sections 9.33 to 9.333 of the Revised Code, if 114
required by the public owner at the time the construction manager 115
enters into the contract, shall file a letter of credit pursuant 116
to Chapter 1305. of the Revised Code, bond, certified check, or 117
cashier's check, for the value of the construction management 118
contract to indemnify the state, political subdivision, district, 119
institution, or agency against all damage suffered by the 120
construction manager's failure to perform the contract according 121
to its provisions, and shall agree and assent that this 122
undertaking is for the benefit of the state, political 123
subdivision, district, institution, or agency. A letter of credit 124
provided by the construction manager is revocable only at the 125
option of the beneficiary state, political subdivision, district, 126
institution, or agency. 127

(D) Where the state, political subdivision, district, 128
institution, or agency accepts a bid but the bidder fails or 129
refuses to enter into a proper contract in accordance with the 130
bid, plans, details, specifications, and bills of material within 131
ten days after the awarding of the contract, the bidder and the 132
surety on any bond, except as provided in division (G) of this 133
section, are liable for the amount of the difference between the 134
bidder's bid and that of the next lowest bidder, but not in excess 135
of the liability specified in division (B)(1) or (C) of this 136
section. Where the state, political subdivision, district, 137
institution, or agency then awards the bid to such next lowest 138
bidder and such next lowest bidder also fails or refuses to enter 139
into a proper contract in accordance with the bid, plans, details, 140
specifications, and bills of material within ten days after the 141
awarding of the contract, the liability of such next lowest 142
bidder, except as provided in division (G) of this section, is the 143
amount of the difference between the bids of such next lowest 144
bidder and the third lowest bidder, but not in excess of the 145

liability specified in division (B)(1) or (C) of this section. 146
Liability on account of an award to any lowest bidder beyond the 147
third lowest bidder shall be determined in like manner. 148

(E) Notwithstanding division (C) of this section, where the 149
state, political subdivision, district, institution, or agency 150
resubmits the project for bidding, each bidder whose bid was 151
accepted but who failed or refused to enter into a proper 152
contract, except as provided in division (G) of this section, is 153
liable for an equal share of a penal sum in connection with the 154
resubmission, of printing new contract documents, required 155
advertising, and printing and mailing notices to prospective 156
bidders, but no bidder's liability shall exceed the amount of the 157
bidder's bid guaranty. 158

(F) All bid guaranties filed pursuant to this section shall 159
be payable to the state, political subdivision, district, 160
institution, or agency, be for the benefit of the state, political 161
subdivision, district, institution, or agency or any person having 162
a right of action thereon, and be deposited with, and held by, the 163
board, officer, or agent contracting on behalf of the state, 164
political subdivision, district, institution, or agency. All bonds 165
filed pursuant to this section shall be issued by a surety company 166
authorized to do business in this state as surety approved by the 167
board, officer, or agent awarding the contract on behalf of the 168
state, political subdivision, district, institution, or agency. 169

(G) A bidder for a contract with the state or any political 170
subdivision, district, institution, or other agency thereof, 171
excluding therefrom the Ohio department of transportation, for a 172
public improvement costing less than one-half million dollars may 173
withdraw the bid from consideration if the bidder's bid for some 174
other contract with the state or any political subdivision, 175
district, institution, or other agency thereof, excluding 176
therefrom the department of transportation, for the public 177

improvement costing less than one-half million dollars has already 178
been accepted, if the bidder certifies in good faith that the 179
total amount of all the bidder's current contracts is less than 180
one-half million dollars, and if the surety certifies in good 181
faith that the bidder is unable to perform the subsequent contract 182
because to do so would exceed the bidder's bonding capacity. If a 183
bid is withdrawn under authority of this division, the contracting 184
authority may award the contract to the next lowest bidder or 185
reject all bids and resubmit the project for bidding, and neither 186
the bidder nor the surety on the bidder's bond are liable for the 187
difference between the bidder's bid and that of the next lowest 188
bidder, for a penal sum, or for the costs of printing new contract 189
documents, required advertising, and printing and mailing notices 190
to prospective bidders. 191

(H) Bid guaranties filed pursuant to division (A) of this 192
section shall be returned to all unsuccessful bidders immediately 193
after the contract is executed. The bid guaranty filed pursuant to 194
division (A)(2) of this section shall be returned to the 195
successful bidder upon filing of the bond required in division (C) 196
of this section. 197

(I) For the purposes of this section, "next lowest bidder" 198
means, in the case of a political subdivision that has adopted the 199
model Ohio and United States preference requirements promulgated 200
pursuant to division (E) of section 125.11 of the Revised Code, 201
the next lowest bidder that qualifies under those preference 202
requirements. 203

(J) For the purposes of this section and sections 153.56, 204
153.57, and 153.571 of the Revised Code, "public improvement," 205
"subcontractor," "~~materialman~~ material supplier," "laborer," and 206
"materials" have the same meanings as in section 1311.25 of the 207
Revised Code. 208

Sec. 153.57. (A) The bond provided for in division (C)(1) of 209
section 153.54 of the Revised Code shall be in substantially the 210
following form, and recovery of any claimant thereunder shall be 211
subject to sections 153.01 to 153.60 of the Revised Code, to the 212
same extent as if the provisions of those sections were fully 213
incorporated in the bond form: 214

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned 215
..... as principal and 216
as sureties, are hereby held and firmly bound unto 217
..... in the penal sum of dollars, for 218
the payment of which well and truly to be made, we hereby jointly 219
and severally bind ourselves, our heirs, executors, 220
administrators, successors, and assigns. 221

Signed this day of, 222

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas 223
the above named principal did on the day of 224
.....,, enter into a contract with 225
....., which said contract is made a part of this bond 226
the same as though set forth herein; 227

Now, if the said shall well and 228
faithfully do and perform the things agreed by 229
to be done and performed according to the terms of said contract; 230
and shall pay all lawful claims of subcontractors, ~~materialmen~~ 231
material suppliers, and laborers, for labor performed and 232
materials furnished in the carrying forward, performing, or 233
completing of said contract; we agreeing and assenting that this 234
undertaking shall be for the benefit of any ~~materialman~~ material 235
supplier or laborer having a just claim, as well as for the 236
obligee herein; then this obligation shall be void; otherwise the 237
same shall remain in full force and effect; it being expressly 238
understood and agreed that the liability of the surety for any and 239

all claims hereunder shall in no event exceed the penal amount of 240
this obligation as herein stated. 241

The said surety hereby stipulates and agrees that no 242
modifications, omissions, or additions, in or to the terms of the 243
said contract or in or to the plans or specifications therefor 244
shall in any wise affect the obligations of said surety on its 245
bond." 246

(B) The bond provided for in division (C)(2) of section 247
153.54 of the Revised Code shall be in substantially the following 248
form: 249

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned 250
..... as principal and as sureties, are hereby 251
held and firmly bound unto in the penal sum of 252
..... dollars, for the payment of which well and truly be 253
made, we hereby jointly and severally bind ourselves, our heirs, 254
executors, administrators, successors, and assigns. 255

Signed this day of, 256

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas 257
the above named principal did on the day of, 258
....., entered into a contract with which said 259
contract is made a part of this bond the same as though set forth 260
herein; 261

Now, if the said shall well and faithfully 262
do and perform the things agreed by to be done and 263
performed according to the terms of the said contract; we agreeing 264
and assenting that this undertaking shall be for the benefit of 265
the obligee herein; then this obligation shall be void; otherwise 266
the same shall remain in full force and effect; it being expressly 267
understood and agreed that the liability of the surety for any and 268
all claims hereunder shall in no event exceed the penal amount of 269
the obligation as herein stated. 270

The surety hereby stipulates and agrees that no 271
modifications, omissions, or additions, in or to the terms of the 272
contract shall in any way affect the obligation of the surety on 273
its bond." 274

Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the 275
Revised Code: 276

(A) "Owner," "part owner," or "lessee" includes all the 277
interests either legal or equitable, which such person may have in 278
the real estate upon which the improvements are made, including 279
the interests held by any person under contracts of purchase, 280
whether in writing or otherwise. 281

(B) "~~Materialman~~ or "~~material~~ Material supplier" includes 282
any person by whom any materials are furnished in furtherance of 283
an improvement. 284

(C) "Laborer" includes any mechanic, worker, artisan, or 285
other individual who performs labor or work in furtherance of any 286
improvement. 287

(D) "Subcontractor" includes any person who undertakes to 288
construct, alter, erect, improve, repair, demolish, remove, dig, 289
or drill any part of any improvement under a contract with any 290
person other than the owner, part owner, or lessee. 291

(E) "Original contractor," except as otherwise provided in 292
section 1311.011 of the Revised Code, includes a construction 293
manager and any person who undertakes to construct, alter, erect, 294
improve, repair, demolish, remove, dig, or drill any part of any 295
improvement under a contract with an owner, part owner, or lessee. 296

(F) "Construction manager" means a person with substantial 297
discretion and authority to manage or direct an improvement, 298
provided that the person is in direct privity of contract with the 299
owner, part owner, or lessee of the improvement. 300

(G) "Notice of commencement" means the notice specified in 301
section 1311.04 of the Revised Code. 302

(H) "Notice of furnishing" means the notice specified in 303
section 1311.05 of the Revised Code. 304

(I) "Materials" means all products and substances including, 305
without limitation, any gasoline, lubricating oil, petroleum 306
products, powder, dynamite, blasting supplies and other 307
explosives, tools, equipment, or machinery furnished in 308
furtherance of an improvement. 309

(J) "Improvement" means constructing, erecting, altering, 310
repairing, demolishing, or removing any building or appurtenance 311
thereto, fixture, bridge, or other structure, and any gas pipeline 312
or well including, but not limited to, a well drilled or 313
constructed for the production of oil or gas; the furnishing of 314
tile for the drainage of any lot or land; the excavation, cleanup, 315
or removal of hazardous material or waste from real property; the 316
enhancement or embellishment of real property by seeding, sodding, 317
or the planting thereon of any shrubs, trees, plants, vines, small 318
fruits, flowers, or nursery stock of any kind; and the grading or 319
filling to establish a grade. 320

(K) "Wages" means the basic hourly rate of pay and all other 321
contractually owed benefits. 322

Sec. 1311.011. (A) As used in this section: 323

(1) "Home construction contract" means a contract entered 324
into between an original contractor and an owner, part owner, or 325
lessee for the improvement of any single- or double-family 326
dwelling or portion of the dwelling or a residential unit of any 327
condominium property that has been submitted to the provisions of 328
Chapter 5311. of the Revised Code; an addition to any land; or the 329
improvement of driveways, sidewalks, swimming pools, porches, 330

garages, carports, landscaping, fences, fallout shelters, siding, 331
roofing, storm windows, awnings, and other improvements that are 332
adjacent to single- or double-family dwellings or upon lands that 333
are adjacent to single- or double-family dwellings or residential 334
units of condominium property, if the dwelling, residential unit 335
of condominium property, or land is used or is intended to be used 336
as a personal residence by the owner, part owner, or lessee. 337

(2) "Home purchase contract" means a contract for the 338
purchase of any single- or double-family dwelling or residential 339
unit of a condominium property that has been subjected to the 340
provisions of Chapter 5311. of the Revised Code if the purchaser 341
uses or intends to use the dwelling, a unit of a double dwelling, 342
or the condominium unit as ~~his~~ the purchaser's personal residence. 343

(3) "Lending institution" means any person that enters into a 344
contract with the owner, part owner, purchaser, or lessee to 345
provide financing for a home construction contract or a home 346
purchase contract, which financing is secured, in whole or in 347
part, by a mortgage on the real estate upon which the improvements 348
contemplated by the home construction contract are to be made or 349
upon the property that is the subject of the home purchase 350
contract, and that makes direct disbursements under the contract 351
to any original contractor or the owner, part owner, purchaser, or 352
lessee. 353

(4) "Original contractor" includes any person with whom the 354
owner, part owner, lessee, or purchaser under a home purchase 355
contract or a home construction contract has directly contracted. 356

(B) Notwithstanding sections 1311.02 to 1311.22 of the 357
Revised Code, all liens, except mortgage liens, that secure 358
payment for labor or work performed or materials furnished in 359
connection with a home construction contract or in connection with 360
a dwelling or residential unit of condominium property, that is 361

the subject of a home purchase contract are subject to the 362
following conditions: 363

(1) No original contractor, subcontractor, ~~materialman~~ 364
material supplier, or laborer has a lien to secure payment for 365
labor or work performed or materials furnished by the contractor, 366
subcontractor, ~~materialman~~ material supplier, or laborer, in 367
connection with a home construction contract between the original 368
contractor and the owner, part owner, or lessee or in connection 369
with a dwelling or residential unit of condominium property, that 370
is the subject of a home purchase contract, if the owner, part 371
owner, or lessee paid the original contractor in full or if the 372
purchaser has paid in full for the amount of the home construction 373
or home purchase contract price, and the payment was made prior to 374
the owner's, part owner's, or lessee's receipt of a copy of an 375
affidavit of mechanics' lien pursuant to section 1311.07 of the 376
Revised Code. 377

An owner, part owner, or lessee may file with the county 378
recorder of the county in which the property that is the subject 379
of a home construction contract or a home purchase contract is 380
situated an affidavit that the owner, part owner, or lessee has 381
made payment in accordance with this division. Except if the 382
owner, part owner, or lessee is guilty of fraud, any lien 383
perfected on the property by any subcontractor, ~~materialman~~ 384
material supplier, or laborer for labor or work performed or for 385
materials furnished is void and the property wholly discharged 386
from the lien, if the lien was perfected after full payment was 387
made in accordance with this division. The recorder shall index 388
and record the affidavit in the same manner that releases of 389
mortgages and other liens are indexed and recorded, and shall 390
receive the same fees for indexing and recording the affidavit 391
that are provided for the recording of leases. 392

Nothing in this section shall adversely affect a mechanics' 393

lien claimed against a prior owner if the lien is perfected prior 394
to a conveyance under a home purchase contract. 395

(2) If the original contractor has not been paid in full as 396
provided in division (B)(1) of this section, no subcontractor, 397
~~materialman~~ material supplier, or laborer has a lien to secure 398
payment for labor or work performed or materials furnished by the 399
subcontractor, ~~materialman~~ material supplier, or laborer for an 400
amount greater than the amount due under the home construction 401
contract that has not been paid to the original contractor for the 402
work, labor, or materials or for an amount greater than the amount 403
of the home purchase contract price that has not been paid to the 404
original contractor. The total amount of all liens for labor or 405
work performed or for materials furnished in connection with a 406
home construction contract that may be enforced in lien 407
foreclosure proceedings shall not exceed the amount due under the 408
home construction contract that has not been paid to the original 409
contractor or the amount due under the home purchase contract that 410
has not been paid to the original contractor. 411

If the amount due under the home construction contract or 412
under the home purchase contract to the original contractor is 413
insufficient to secure the mechanics' liens of all lien claimants 414
that arose out of the home construction contract or that arose out 415
of a contract in connection with a dwelling or residential unit of 416
condominium property, that is the subject of a home purchase 417
contract, each mechanics' lien shall be secured by a pro rata 418
share of the amount due to the original contractor, except that 419
mechanics' liens filed by laborers have priority. The pro rata 420
share shall be equal to the monetary amount of the amount due to 421
the original contractor that is subject to all valid mechanics' 422
liens on the property that is the subject of the home purchase 423
contract or all valid mechanics' liens under the home construction 424
contract multiplied by a fraction in which the denominator is the 425

total monetary amount of all valid mechanics' liens on the 426
property that is the subject of the home purchase contract or of 427
all valid mechanics' liens that arose out of the home construction 428
contract, and the numerator is the amount claimed to be due by the 429
lien claimant under a contract in connection with a dwelling or 430
residential unit of condominium property, that is the subject of 431
the home purchase contract or under the home construction 432
contract. 433

For the purpose of this section, the amount due under a home 434
construction contract or a home purchase contract is the unpaid 435
balance under the home construction contract or the home purchase 436
contract, minus the cost to complete the contract according to its 437
terms and conditions, including any warranty or repair work. 438

(3) If, after receiving written notice from an owner, part 439
owner, purchaser, or lessee that full payment has been made by the 440
owner, part owner, purchaser, or lessee to the original contractor 441
for the amount of the home construction or home purchase contract 442
and that payment was made prior to the owner's, part owner's, or 443
lessee's receipt of a copy of an affidavit of mechanics' lien 444
pursuant to section 1311.07 of the Revised Code, the lienholder 445
fails within thirty days after receipt of the notice to cause the 446
lien securing payment for the work, labor, or materials to be 447
released of record, the lienholder is liable to the owner, part 448
owner, or lessee for all damages arising from the lienholder's 449
failure to cause the lien to be released. Damages shall include, 450
but are not limited to, court costs and reasonable attorney fees 451
incurred during any litigation between the owner and a lien 452
claimant or lien claimants who have refused to release their liens 453
after receiving a copy of the affidavit referred to in division 454
(B)(1) of this section, or evidence that the cost of completing a 455
home construction contract exceeded, or is reasonably expected to 456
exceed, the balance due the original contractor under the home 457

construction contract as provided in division (B)(2) of this 458
section. 459

(4) No lending institution shall make any payment to any 460
original contractor until the original contractor has given the 461
lending institution the original contractor's affidavit stating: 462

(a) That the original contractor has paid in full for all 463
labor and work performed and for all materials furnished by the 464
original contractor and all subcontractors, ~~materialmen~~ material 465
suppliers, and laborers prior to the date of the closing of the 466
purchase or during and prior to the payment period, except such 467
unpaid claims as the original contractor specifically sets forth 468
and identifies both by claimant and by amount claimed; 469

(b) That no claims exist other than those claims set forth 470
and identified in the affidavit required by division (B)(4) of 471
this section. 472

(5) When making any payment under the home construction 473
contract or on behalf of the owner or part owner under a home 474
purchase contract, the lending institution may accept the 475
affidavit of the original contractor required by division (B)(4) 476
of this section and act in reliance upon it, unless it appears to 477
be fraudulent on its face. The lending institution is not 478
financially liable to the owner, part owner, purchaser, lessee, or 479
any other person for any payments, except for gross negligence or 480
fraud committed by the lending institution in making any payment 481
to the original contractor. 482

After receipt of a written notice of a claim of a right to a 483
mechanic's lien by a lending institution, failure of the lending 484
institution to obtain a lien release from the subcontractor, 485
~~materialman~~ material supplier, or laborer who serves notice of 486
such claim is prima-facie evidence of gross negligence. 487

(6) Any owner, part owner, purchaser, or lessee, who requests 488

an original contractor to supply the affidavit required by 489
division (B)(4) of this section, may withhold any payment that is 490
due under the home construction contract or under the home 491
purchase contract until the original contractor provides the 492
owner, part owner, purchaser, or lessee with the affidavit. The 493
owner's, part owner's, purchaser's, or lessee's remedies and 494
rights under this section shall not be prejudiced by the owner's, 495
part owner's, purchaser's, or lessee's failure to request or to 496
obtain the affidavit provided for in division (B)(4) of this 497
section. 498

(7) An owner, part owner, purchaser, lessee, or lending 499
institution may make payment jointly to the original contractor 500
and to a subcontractor, ~~materialman~~ material supplier, or laborer 501
as a condition to their giving lien releases. 502

(8) If a subcontractor, ~~materialman~~ material supplier, or 503
laborer refuses to supply a lien release to the original 504
contractor, owner, part owner, lessee, or lending institution 505
because the amount of money that the original contractor owes the 506
subcontractor, ~~materialman~~ material supplier, or laborer is in 507
dispute, the owner, part owner, lessee, and lending institution 508
shall withhold from payment to the original contractor an amount 509
of money equal to the amount of money claimed by the 510
subcontractor, ~~materialman~~ material supplier, or laborer. If a 511
subcontractor, ~~materialman~~ material supplier, or laborer refuses 512
within ten days after receipt of a written request from either the 513
original contractor or the lending institution to state the amount 514
due and the last date that the lien claimant performed any labor 515
or work or furnished any material in furtherance of the 516
improvement which gives rise to the lien claimant's lien claim, 517
the amount and the last date shall be stated by the original 518
contractor. The owner, part owner, lessee, and lending institution 519
shall pay the withheld amount of money to the original contractor 520

when any of the following occur: 521

(a) The subcontractor, ~~materialman~~ material supplier, or 522
laborer gives written notice to the owner, part owner, lessee, or 523
lending institution that the amount of money claimed to be due has 524
been paid. 525

(b) The subcontractor, ~~materialman~~ material supplier, or 526
laborer delivers a lien release to the original contractor, owner, 527
part owner, lessee, or lending institution. 528

(c) The original contractor provides the subcontractor, 529
~~materialman~~ material supplier, or laborer with a bond, in a form 530
that is satisfactory to the owner, part owner, lessee, or lending 531
institution and in an amount equal to the amount of money claimed 532
to be due. 533

(d) The time for filing a lien by the subcontractor, 534
~~materialman~~ material supplier, or laborer has expired and no 535
affidavit of lien has been recorded pursuant to section 1311.06 of 536
the Revised Code. 537

(9) Any lien release given pursuant to this section is valid 538
and enforceable without separate consideration for the release. 539

Sec. 1311.02. Every person who performs work or labor upon or 540
furnishes material in furtherance of any improvement undertaken by 541
virtue of a contract, express or implied, with the owner, part 542
owner, or lessee of any interest in real estate, or ~~his~~ the 543
owner's, part owner's, or lessee's authorized agent, and every 544
person who as a subcontractor, laborer, or material ~~man~~ supplier, 545
performs any labor or work or furnishes any material to an 546
original contractor or any subcontractor, in carrying forward, 547
performing, or completing any improvement, has a lien to secure 548
the payment therefor upon the improvement and all interests that 549
the owner, part owner, or lessee may have or subsequently acquire 550

in the land or leasehold to which the improvement was made or 551
removed. 552

Sec. 1311.021. (A) Every person who performs any labor or 553
work upon or furnishes material for digging, drilling, boring, 554
operating, completing, or repairing, any well drilled or 555
constructed for the production of oil or gas or any injection well 556
which furthers the production of oil and gas or which disposes of 557
waste products generated by oil and gas operations, or for 558
altering, repairing, or constructing any oil derrick, oil tank, or 559
leasehold production pipe line by virtue of a contract, express or 560
implied, with the owner or part owner, or ~~his~~ the owner's or part 561
owner's authorized agent, of any oil and gas lease or leasehold 562
estate or, in the event there is no lease or estate, any mineral 563
estate, and every subcontractor, laborer, and ~~materialman~~ material 564
supplier who performs any labor or work or furnishes material to 565
an original contractor or any subcontractor, in carrying forward, 566
performing, or completing the contract, has a lien to secure the 567
payment thereof upon the oil and gas lease or leasehold estate or, 568
in the event there is no lease or estate, any mineral estate, the 569
oil or gas produced therefrom and the proceeds thereof, and upon 570
all material located thereon or used in connection therewith. 571

(B) The lien, insofar as it extends to oil or gas or the 572
proceeds of the sale of oil or gas, is not effective against any 573
purchaser or pipe line carrier of such oil or gas until a copy of 574
the affidavit provided for in section 1311.06 of the Revised Code 575
is delivered to such purchaser or pipe line carrier by certified 576
mail. 577

(C) To the extent not inconsistent with this section, the 578
lien provided by this section is governed by this chapter, and 579
shall be perfected and enforced as other liens as provided by this 580
chapter, except as follows: 581

(1) No owner, part owner, or lessee who contracts for labor 582
or work to be performed or materials furnished for an improvement 583
need prepare, provide, or record a notice of commencement pursuant 584
to section 1311.04 of the Revised Code. 585

(2) No subcontractor or ~~materialman~~ material supplier who 586
performs work or labor upon or furnishes material in furtherance 587
of an improvement need prepare, provide, or serve a notice of 588
furnishing pursuant to section 1311.05 of the Revised Code. 589

(3) The affidavit required to be made and filed by an 590
original contractor, subcontractor, ~~materialman~~ material supplier, 591
or laborer under section 1311.06 of the Revised Code to claim a 592
lien under this section need not include the first date that the 593
lien claimant performed any labor or work or furnished any 594
material to the improvement giving rise to ~~his~~ the claimant's 595
lien. 596

(4) For the purpose of determining issues of priority, liens 597
created under this section are effective from the date the first 598
visible work or labor is performed or the first materials are 599
furnished at the site of the improvement. 600

(5) An owner, part owner, or lessee may request from an 601
original contractor an affidavit setting forth the name and 602
address of, a description of labor or work performed or materials 603
furnished by, and the total amount of the contract and the balance 604
owed to, all unpaid laborers, subcontractors, and ~~materialmen~~ 605
material suppliers providing labor or work or furnishing material 606
for the improvement, and the serving of the affidavit after such a 607
request shall be a condition precedent to any right by the 608
original contractor to file a lien under this section. If an 609
owner, part owner, or lessee has not made a request under this 610
division, the original contractor need not serve an affidavit as 611
provided in this division to file a lien under this section. 612

(6)(a) An owner, part owner, or lessee who receives an affidavit pursuant to division (C)(5) of this section or a notice pursuant to division (C)(6)(c) of this section may make payment jointly to the original contractor and any laborers, subcontractors, and ~~materialmen~~ material suppliers who are listed in such an affidavit or who serve such a notice for the amount shown to be unpaid by such affidavit and notices or may require the original contractor to obtain lien waivers from any such persons prior to making payment to the original contractor.

(b) No person who fails to serve the owner, part owner, or lessee with a notice pursuant to division (C)(6)(c) of this section and who is omitted from an affidavit provided to the owner, part owner, or lessee pursuant to division (C)(5) of this section shall have a right to file a lien pursuant to this section if the owner has paid the full amount due on the contract, including payment to the parties listed on the affidavit or from whom notices were received either in the full amount due to such parties or in such lesser amount as represents their pro-rata portion of the full amount of the contract with the original contractor.

(c) Any laborer, subcontractor, or ~~materialman~~ material supplier may serve upon the owner, part owner, or lessee a notice in writing, which notice shall be such as will inform the owner, part owner, or lessee of the improvement, of the nature of the work performed or to be performed, the materials furnished or to be furnished, the amount due or to become due therefor, the identity of the person with whom such laborer, subcontractor, or ~~materialman~~ material supplier has contracted, and the identity of the well, oil derrick, oil tank, or leasehold production pipe line, the permit number, and the county upon which such work was or is to be performed or materials were or are to be furnished.

(7) The provisions of division (B) of section 1311.15 of the

Revised Code shall be applicable with respect to payments to any
subcontractors, ~~materialmen~~ material suppliers, or laborers
identified on the affidavit provided in division (C)(5) of this
section.

Sec. 1311.03. Any person who performs labor or work or
furnishes material, for the construction, alteration, or repair of
any street, turnpike, road, sidewalk, way, drain, ditch, or sewer
by virtue of a private contract between ~~him~~ the person and the
owner, part owner, or lessee of lands upon which the same may be
constructed, altered, or repaired, or of lands abutting thereon,
or as subcontractor, laborer, or ~~materialman~~ material supplier,
performs labor or work or furnishes material to such original
contractor or to any subcontractor in carrying forward or
completing such contract, has a lien for the payment thereof
against the lands of the owner, part owner, or lessee, upon which
the street, turnpike, road, sidewalk, way, drain, or sewer is
constructed or upon which any such street, turnpike, road,
sidewalk, way, drain, ditch, or sewer abuts, as provided in
section 1311.02 of the Revised Code.

Sec. 1311.04. (A)(1) Prior to the performance of any labor or
work or the furnishing of any materials for an improvement on real
property which may give rise to a mechanics' lien under sections
1311.01 to 1311.22 of the Revised Code, the owner, part owner, or
lessee who contracts for the labor, work, or materials shall
record in the office of the county recorder for each county in
which the real property to be improved is located a notice of
commencement in substantially the form specified in division (B)
of this section.

(2) Only one notice of commencement is required to be filed
for a single improvement and if more than one notice of

commencement is filed for a single improvement, all notices filed 675
after the original notice shall be deemed to be amendments to the 676
original notice. If an owner, part owner, or lessee contracts with 677
additional original contractors, lenders, or sureties not 678
identified in the original notice of commencement filed for the 679
improvement, the owner, part owner, or lessee shall amend the 680
original notice of commencement to identify the additional 681
original contractors, lenders, and sureties. The date of the 682
filing of the amended notice is the date of the filing of the 683
original notice of commencement. 684

(B) The notice of commencement required under division (A) of 685
this section shall contain, in affidavit form, all of the 686
following information: 687

(1) The legal description of the real property on which the 688
improvement is to be made. For purposes of this division, a 689
description sufficient to describe the real property for the 690
purpose of conveyance, or contained in the instrument by which the 691
owner, part owner, or lessee took title, is a legal description. 692

(2) A brief description of the improvement to be performed on 693
the property containing sufficient specificity to permit lien 694
claimants to identify the improvement; 695

(3) The name, address, and capacity of the owner, part owner, 696
or lessee of the real property contracting for the improvement; 697

(4) The name and address of the fee owner of the real 698
property, if the person contracting for the improvement is a land 699
contract vendee or lessee; 700

(5) The name and address of the owner's, part owner's, or 701
lessee's designee, if any; 702

(6) The name and address of all original contractors, except 703
that if the notice of commencement is recorded for an improvement 704

involving a single- or double-family dwelling and if more than one 705
original contractor is involved, instead of listing each original 706
contractor, the owner shall state that multiple original 707
contractors are involved in the improvement; 708

(7) The date the owner, part owner, or lessee first executed 709
a contract with an original contractor for the improvement; 710

(8) The name and address of all lending institutions which 711
provide financing for the improvements, if any; 712

(9) The name and address of all sureties on any bond which 713
guarantee payment of the original contractor's obligations under 714
the contract for the improvement, if any; 715

(10) The following statement: 716

"To Lien Claimants and Subsequent Purchasers: 717

Take notice that labor or work is about to begin on or 718
materials are about to be furnished for an improvement to the real 719
property described in this instrument. A person having a 720
mechanics' lien may preserve the lien by providing a notice of 721
furnishing to the above-named designee and the above-named 722
designee's original contractor, if any, and by timely recording an 723
affidavit pursuant to section 1311.06 of the Revised Code. 724

A copy of this notice may be obtained upon making a written 725
request by certified mail to the above-named owner, part owner, 726
lessee, designee, or the person with whom you have contracted." 727

(11) The name and address of the person preparing the notice; 728

(12) An affidavit of the owner, part owner, or lessee or the 729
agent of the owner, part owner, or lessee which verifies the 730
notice. 731

(C) If the notice of commencement furnished by or for an 732
owner, part owner, or lessee contains incorrect information, the 733
owner, part owner, or lessee is liable for any loss of lien rights 734

of a lien claimant and any actual expenses incurred by the lien claimant in maintaining lien rights, including attorney's fees, if the loss and expenses incurred are a direct result of the lien claimant's reliance on the incorrect information.

Any lien claimant who has included incorrect information in the claimant's affidavit for a lien under section 1311.06 of the Revised Code, as a result of incorrect information contained in the notice of commencement, may file for record an amended affidavit for a lien. The amended affidavit shall contain all of the information required by section 1311.06 of the Revised Code for an original affidavit. The lien claimant shall serve a copy of the amended affidavit on the owner, part owner, or lessee as provided in section 1311.07 of the Revised Code. The lien claimant may file the amended affidavit for record at any time during the time that the lien acquired by the original affidavit continues in effect under section 1311.13 of the Revised Code. In no event shall the amended affidavit extend such time period. The filing of an amended affidavit does not constitute a waiver of the rights granted by this division.

(D) Within ten days after the date a subcontractor, material supplier, or laborer serves a written request upon the owner, part owner, or lessee, or designee for a copy of the notice of commencement, the owner, part owner, lessee, or designee shall serve a copy of the notice of commencement to the requesting subcontractor, material supplier, or laborer.

(E) Within ten days after the date a subcontractor, material supplier, or laborer serves a written request for a copy of the notice of commencement upon the original contractor who has been provided with a notice of commencement from the owner, part owner, or lessee, or designee and with whom the subcontractor, material supplier, or laborer has a direct contract, the original contractor shall serve a copy of the notice of commencement to the

requesting subcontractor, material supplier, or laborer. 767

(F) Within ten days after the date a subcontractor, material 768
supplier, or laborer serves a written request for a copy of the 769
notice of commencement upon the subcontractor who has been 770
provided with a notice of commencement from the owner, part owner, 771
lessee, designee, or original contractor and with whom the 772
subcontractor, material supplier, or laborer has a direct 773
contract, the subcontractor shall serve a copy of the notice of 774
commencement upon the requesting subcontractor, material supplier, 775
or laborer. 776

(G)(1) Except as provided in division (G)(2) of this section, 777
the owner, part owner, lessee, or designee shall post and maintain 778
posted a copy of the notice of commencement in a conspicuous place 779
on the real property described in the notice during the course of 780
the actual physical improvement to the real property. 781

(2) No owner, part owner, lessee, or designee, has to post a 782
copy of the notice of commencement on the real property described 783
in the notice for an improvement that is the subject of a home 784
purchase contract. 785

(H) The owner, part owner, lessee, or designee shall serve a 786
copy of the notice of commencement upon the original contractor. 787
If the owner, part owner, lessee, or designee fails to serve a 788
copy of the notice of commencement upon the original contractor, 789
the owner, part owner, or lessee is liable to the original 790
contractor for all actual expenses incurred by the original 791
contractor in obtaining the information otherwise provided by the 792
notice of commencement. 793

(I) If the owner, part owner, lessee, or designee fails to 794
record the notice of commencement in accordance with this section, 795
the time within which a subcontractor or material supplier may 796
serve a notice of furnishing as required by section 1311.05 of the 797

Revised Code is extended until twenty-one days after the notice of
commencement has been recorded. A subcontractor or material
supplier need not serve a notice of furnishing to preserve lien
rights for the period before the notice of commencement is
recorded.

(J) If the owner, part owner, lessee, or designee fails to
serve, upon written request, the notice of commencement in
accordance with this section, the time within which a
subcontractor or material supplier may serve a notice of
furnishing as required by section 1311.05 of the Revised Code is
extended until twenty-one days after the notice of commencement
actually has been served to the subcontractor or material
supplier. The owner, part owner, or lessee who fails to serve the
notice pursuant to this section is liable to any subcontractor or
material supplier who becomes a lien claimant for all actual
expenses incurred by the lien claimant in obtaining the
information that would have been contained in the notice.

(K) If an owner, part owner, lessee, or designee fails to
post or maintain a copy of the notice of commencement as required
by division (G)(1) of this section, the owner, part owner, or
lessee is liable to a subcontractor, material supplier, or laborer
who becomes a lien claimant for all actual expenses incurred by
the lien claimant in obtaining the information otherwise provided
by the posting.

(L) If an original contractor or subcontractor who has been
provided with a notice of commencement fails to serve a copy of
the notice of commencement to any subcontractor, material
supplier, or laborer who requests it, the original contractor or
subcontractor who fails to serve the copy of the notice is liable
to the subcontractor, material supplier, or laborer who made the
request for all costs incurred by the subcontractor, material
supplier, or laborer in obtaining the information contained in the

notice of commencement, provided that an original contractor or 830
subcontractor who fails to provide the notice upon request is not 831
liable under this division to any subcontractor, material 832
supplier, or laborer with whom the original contractor or 833
subcontractor is not in direct privity of contract. 834

(M)(1) If after the first work, labor, or material has been 835
performed on or furnished to the improvement, the owner, part 836
owner, lessee, or designee fails to serve, record, or post a 837
notice of commencement as required by this section, the original 838
contractor may, in writing, request the owner, part owner, lessee, 839
or designee to serve, record, or post the notice. If an owner, 840
part owner, lessee, or the designee of an owner, part owner, or 841
lessee fails or refuses to serve, record, or post a notice of 842
commencement within ten days of receipt of a request, the owner, 843
part owner, or lessee is liable for the owner's, part owner's, or 844
lessee's failure or refusal and for the designee's failure or 845
refusal, without recourse to the original contractor for all 846
damages, costs, and expenses which result from the filing of a 847
valid mechanics' lien to the extent that the lien, damages, costs, 848
and expenses could have been avoided through proper payment. 849

(2) Nothing in this division shall be interpreted as to 850
either of the following: 851

(a) Relieving an original contractor from the duty to pay the 852
original contractor's subcontractors, material suppliers, and 853
laborers for labor or work performed or materials furnished 854
pursuant to a contract directly with the original contractor; 855

(b) Obligating an owner, part owner, or lessee to pay for 856
work or labor performed or materials furnished by subcontractors, 857
material suppliers, or laborers pursuant to direct contracts with 858
the original contractor. 859

(N)(1) If the owner, part owner, or lessee fails to record a 860

notice of commencement or an amended notice, any person holding a mortgage on the real property to be improved may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee. If the owner, part owner, or lessee fails to record a notice of commencement or an amended notice within the later of ten days after the performance of any labor or work or the furnishing of any material for an improvement on real property which gives rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code or three days after service of a demand to record the notice or amended notice by the original contractor, the original contractor may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee.

(2) If the original contractor or a mortgage holder has recorded a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the owner, part owner, or lessee is liable to the original contractor or mortgage holder for all costs and expenses incurred in obtaining the information contained in the notice of commencement or an amended notice and all costs incurred in the preparation and recording of the notice of commencement or an amended notice.

(3) Unless required to file the notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the party filing a written notice of commencement or amended notice on behalf of the owner, part owner, or lessee is not liable to the owner, part owner, or lessee for any errors contained in the notice of commencement or amended notice.

(4) If a mortgage holder or an original contractor records a notice of commencement or amended notice on behalf of an owner, part owner, or lessee, such fact must be included on the notice or amended notice.

(O) This section does not apply to ~~any improvement made~~ 892
~~pursuant to~~ a home construction contract as defined in section 893
1311.011 of the Revised Code, except that when a lending 894
institution as defined in division (A)(3) of section 1311.011 of 895
the Revised Code requires that a notice of commencement be 896
recorded as part of the financing for a home construction 897
contract, which is secured in whole or in part by a mortgage on 898
real estate upon which the improvements are to be constructed, the 899
owner, part owner, or lessee may file a notice of commencement 900
pursuant to this section by recording the notice of commencement 901
in the county recorder's office of the county where the owner, 902
part owner, or lessee's property is located. If the property is 903
located in more than one county, the owner, part owner, or lessee 904
shall record the notice of commencement in the county recorders' 905
office of each county in which the property is located. 906

If the owner, part owner, or lessee files a notice of 907
commencement pursuant to this division, the attachment, 908
continuance, and priority provisions of section 1311.13 of the 909
Revised Code apply to that improvement, but the notice of 910
furnishing requirements specified in section 1311.05 of the 911
Revised Code do not apply to that improvement. 912

(P) The county recorder of the county where a notice of 913
commencement is filed for record shall endorse the date and hour 914
of its filing and cause it to be recorded as mechanics' liens are 915
recorded, and collect the same fees for recording the notice of 916
commencement as are provided in section 317.32 of the Revised 917
Code. The recorder shall index the real property described in the 918
notice of commencement and shall index the names of all owners, 919
part owners, lessees, and land contract vendees in the direct 920
index and the names of all original contractors in the reverse 921
index as provided for in section 317.18 of the Revised Code. 922

(Q) Notwithstanding this section, if the owner, part owner, 923

or lessee is a telephone company, an electric light company, a gas
company, a water works company, all as defined in section 4905.03
of the Revised Code, or a subsidiary or affiliate thereof, the
owner, part owner, or lessee may, but is not required to, record a
notice of commencement pursuant to division (A) of this section,
and is not required to serve, post, and provide copies of a notice
of commencement pursuant to divisions (D), (G), and (H) of this
section unless such owner, part owner, or lessee elects to record
the notice of commencement. If the owner, part owner, or lessee
elects to record the notice of commencement and the improvement
extends beyond one parcel of real property or one county, the
owner, part owner, or lessee may, in lieu of using the legal
description required in division (B)(1) of this section, use a
description which reasonably describes the real property on which
the improvement is to be made. Any description used other than the
description specified in division (B)(1) of this section shall
refer to the township and county in which the improvement is
located, the name and route number of any local, state, or federal
highway near the improvement, if any, the post office address of
the real property, if any, and the name by which the owner, part
owner, or lessee refers to the improvement.

If an owner, part owner, or lessee elects not to record,
serve, post, or provide copies of a notice of commencement
pursuant to divisions (A), (D), (G)(1), and (H) of this section,
the owner, part owner, or lessee is subject to all applicable
liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N)
of this section.

(R) If an owner, part owner, lessee, or designee fails to
record a notice of commencement in accordance with this section,
no subcontractor or material supplier who performs labor or work
upon or furnishes material in furtherance of that improvement has
to serve a notice of furnishing in accordance with section 1311.05

of the Revised Code in order to preserve the subcontractor's or
material supplier's lien rights.

956
957

(S) A notice of commencement filed as provided herein expires
six years after its filing date unless the notice of commencement
or amendments made to the notice of commencement specify
otherwise.

958
959
960
961

Sec. 1311.05. (A) Except as provided in section 1311.04 of
the Revised Code and this section, a subcontractor or ~~materialman~~
material supplier who performs labor or work upon or furnishes
material in furtherance of an improvement to real property and who
wishes to preserve ~~his~~ the subcontractor's or material supplier's
lien rights shall serve a notice of furnishing, if any person has
recorded a notice of commencement in accordance with section
1311.04 of the Revised Code, upon the owner's, part owner's, or
lessee's designee named in the notice of commencement or amended
notice and the original contractor under the original contract
pursuant to which ~~he~~ the subcontractor or material supplier is
performing labor or work or furnishing materials, as named in the
notice of commencement or amended notice and at the address listed
in the notice or amended notice at any time after the recording of
the notice of commencement or amended notice but within twenty-one
days after performing the first labor or work or furnishing the
first materials or within the extended time period provided for in
division (I) or (J) of section 1311.04 of the Revised Code. If an
owner, part owner, or lessee has not named a designee in the
notice of commencement or amended notice or if the designee has
died or otherwise has ceased to exist, the subcontractor or
~~materialman~~ material supplier shall serve the notice of furnishing
upon the owner, part owner, or lessee named in the notice of
commencement. If no designee is named or if the designee has died
or otherwise has ceased to exist, and if more than one owner is

962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986

named in the notice of commencement, service of the notice of 987
furnishing to the first owner, part owner, or lessee named in the 988
notice of commencement is sufficient. No original contractor has 989
to serve a notice of furnishing to preserve lien rights arising 990
from a contract with an owner, part owner, or lessee. No 991
~~materialman~~ material supplier who is in direct privity of contract 992
with an owner, part owner, or lessee has to serve a notice of 993
furnishing upon the owner, part owner, or lessee or designee in 994
order to preserve ~~his~~ the material supplier's lien rights. No 995
subcontractor or ~~materialman~~ material supplier who is in direct 996
privity of contract with the original contractor has to serve a 997
notice of furnishing upon the original contractor in order to 998
preserve ~~his~~ the subcontractor's or material supplier's lien 999
rights. 1000

If any person has recorded a notice of commencement in 1001
accordance with section 1311.04 of the Revised Code for an 1002
improvement involving a single- or double-family dwelling and if 1003
that notice states that multiple original contractors are involved 1004
in the improvement, a subcontractor or ~~materialman~~ material
supplier does not have to serve a notice of furnishing upon any 1006
original contractor in order to preserve ~~his~~ the subcontractor's
or material supplier's lien rights. 1008

A subcontractor or ~~materialman~~ material supplier who serves a 1009
notice of furnishing in conformity with this section does not have 1010
to serve an amended notice of furnishing on any party if ~~he~~ the
subcontractor or material supplier receives an amended notice of 1012
commencement subsequent to service of ~~his~~ the subcontractor's or
material supplier's notice of furnishing. If a subcontractor or 1014
~~materialman~~ material supplier serves a notice of furnishing based 1015
upon information contained in any notice of commencement or 1016
amended notice of commencement relative to the improvement for 1017
which ~~he~~ the subcontractor or material supplier performs labor or 1018

work or furnishes material, the notice of furnishing is deemed 1019
effective even if the notice of commencement already has been 1020
amended or is amended in the future. 1021

If a lender is named in the notice of commencement or amended 1022
notice, a subcontractor or ~~materialman~~ material supplier may serve 1023
a copy of the notice of furnishing upon the lender at the address 1024
listed in the notice or amended notice, provided that no 1025
subcontractor or ~~materialman~~ material supplier is required to 1026
serve a copy of the notice of furnishing upon the lender to 1027
preserve ~~his~~ the subcontractor's or material supplier's lien 1028
rights. The receipt of a notice of furnishing by a lender imposes 1029
no duty upon the lender by implication or otherwise with respect 1030
to the disbursement of any loan proceeds or the payment to any 1031
subcontractor, ~~materialman~~ material supplier, or any other person. 1032

(B) The notice of furnishing shall be in substantially the 1033
following form: 1034

"Notice of Furnishing 1035

(For use in connection with improvements 1036

to property other than public improvements) 1037

To: 1038

(Name of owner, part owner, or lessee or designee 1039

from the notice of commencement) 1040

..... 1041

(Address from the notice of commencement) 1042

To: 1043

(Name of original contractor from notice of commencement) 1044

(Address of original contractor from notice of commencement) 1045

Please take notice that the undersigned is performing certain 1046

labor or work or furnishing certain materials to 1047

.....(name and 1048

address of other contracting party)..... in 1049

connection with the improvement to the real property located at 1050

..... The labor, work, or materials were 1051
performed or furnished first or will be performed or furnished 1052
first on (date). 1053

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' 1054
LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES 1055
UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT 1056
YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO 1057
YOUR PROPERTY. 1058

..... 1059
(Name and address of lien claimant) 1060
By 1061
(Name and capacity of party signing 1062
for lien claimant) 1063
..... 1064
(Address of party signing) 1065

Date:" 1066

(C) The description of the location of the property required 1067
in the notice of furnishing is sufficient if it reasonably 1068
identifies the real property upon which the labor or work is 1069
performed or for which the material is furnished. 1070

(D)(1) Except as provided in division (D)(2) of this section, 1071
a notice of furnishing served more than twenty-one days after a 1072
subcontractor or ~~materialman~~ material supplier who is required by 1073
this section to serve a notice of furnishing, first performed 1074
labor or work or furnished material at the site of the improvement 1075
preserves the subcontractor's or ~~materialman's~~ material supplier's 1076
lien rights for amounts owing for labor and work performed and 1077
materials furnished within the twenty-one-day period immediately 1078
preceding service of the notice of furnishing and thereafter, but 1079
does not revive any prior lien rights for labor or work performed 1080
or materials furnished prior to the twenty-one days immediately 1081

preceding service of the notice of furnishing. 1082

(2) A notice of furnishing served within the applicable 1083
period provided for in section 1311.04 of the Revised Code 1084
preserves the subcontractor's or ~~materialman's~~ material supplier's 1085
lien rights for amounts owing for labor and work performed and 1086
materials furnished from the date the labor or work was first 1087
performed or materials were first furnished through the date of 1088
service of the notice of furnishing and thereafter. A notice of 1089
furnishing served after the applicable period provided for in 1090
section 1311.04 of the Revised Code does not revive any prior lien 1091
rights for labor or work performed or materials furnished prior to 1092
the twenty-one days immediately preceding service of the notice of 1093
furnishing. 1094

(E) This section does not apply to any improvement made 1095
pursuant to a home construction contract as defined in section 1096
1311.011 of the Revised Code. 1097

(F) A notice of furnishing, even if served upon a mortgagee 1098
of real property to be improved, does not constitute a written 1099
notice of a lien or encumbrance under section 5301.232 or a 1100
written notice of a claim of a right to a mechanics' lien under 1101
division (B)(5) of section 1311.011 of the Revised Code. 1102

(G) No laborer must serve a notice of furnishing in 1103
accordance with this section to preserve lien rights. 1104

(H) No subcontractor or ~~materialman~~ material supplier who 1105
performs labor or work upon or furnishes material in furtherance 1106
of an improvement has to serve a notice of furnishing in 1107
accordance with this section in order to preserve ~~his~~ the 1108
subcontractor's or material supplier's lien rights if the owner, 1109
part owner, or lessee who contracted for the labor, work, or 1110
materials fails to record a notice of commencement in accordance 1111
with section 1311.04 of the Revised Code. 1112

(I) If a notice of commencement is filed as provided in 1113
division (O) of section 1311.04 of the Revised Code, the 1114
subcontractors and material suppliers working on or providing 1115
materials to the improvement shall not be required to serve 1116
notices of furnishing as provided in division (A) of section 1117
1311.05 of the Revised Code hereinabove in order to preserve lien 1118
rights. 1119

Sec. 1311.12. (A) A mechanic's lien for furnishing materials 1120
arises under sections 1311.01 to 1311.22 of the Revised Code only 1121
if the materials are: 1122

(1) Furnished with the intent, as evidenced by the contract 1123
of sale, the delivery order, delivery to the site by the claimant 1124
or at the claimant's direction, or by other evidence, that the 1125
materials be used in the course of the improvement with which the 1126
lien arises; 1127

(2) Incorporated in the improvement or consumed as normal 1128
wastage in the course of the improvement; 1129

(3) Specifically fabricated for incorporation in the 1130
improvements and not readily resalable in the ordinary course of 1131
the fabricator's business even if not actually incorporated in the 1132
improvement; 1133

(4) Used for the improvement or for the operation of 1134
machinery or equipment used in the course of the improvement and 1135
not remaining in the improvement, subject to diminution by the 1136
salvage value of those materials; or 1137

(5) Tools or machinery used on the particular improvement, 1138
subject to division (C) of this section. 1139

(B) The delivery of materials to the site of the improvement, 1140
whether or not by the claimant, creates a conclusive presumption 1141
that the materials were used in the course of the improvement or 1142

were incorporated into the improvement. 1143

(C) A mechanics' lien for furnishing tools or machinery which 1144
arises under division (A)(5) of this section is limited to either 1145
of the following: 1146

(1) If the tools or machinery are rented, the lien is for the 1147
reasonable rental value for the period of actual use and any 1148
reasonable period of nonuse taken into account in the rental 1149
contract. 1150

(2) If the tools or machinery are purchased, the lien is for 1151
the price, but the lien only arises if the tools or machinery were 1152
purchased for use in the course of the particular improvement and 1153
have no substantial value to the purchaser after the completion of 1154
the improvement on which they were used. 1155

(D) All of the deliveries or the sales, or both, by a ~~lien~~ 1156
~~claimant~~ material supplier of materials, including tools and 1157
machinery to or for an improvement, as ordered or purchased by an 1158
owner, original contractor, or subcontractor, shall give rise to 1159
one mechanics' lien for the unpaid portion of the sales to that 1160
owner, original contractor, or subcontractor. Nothing in this 1161
division shall prohibit the filing of more than one lien if a 1162
material supplier sold materials to more than one owner, original 1163
contractor, or subcontractor for the same improvement. 1164

Sec. 1311.13. (A)(1) ~~Liens~~ All liens under sections 1311.01 1165
to 1311.22 of the Revised Code for labor or work performed or 1166
materials furnished to the same improvement prior to the recording 1167
of the notice of commencement pursuant to section 1311.04 of the 1168
Revised Code are effective from the date the first visible work or 1169
labor is performed or the first materials are furnished by the 1170
first original contractor, subcontractor, ~~materialman~~ material 1171
supplier, or laborer at the site of to work, labor on, or provide 1172

materials to the improvement. 1173

(2) Except as provided in division (A)(3) of this section, 1174
liens under sections 1311.01 to 1311.22 of the Revised Code for 1175
labor or work performed or materials furnished after the recording 1176
of a notice of commencement pursuant to section 1311.04 of the 1177
Revised Code are effective from the date of the recording of the 1178
notice of commencement. 1179

(3) Notwithstanding division (A)(2) of this section, if there 1180
is a valid and recorded lien with an effective date described in 1181
division (A)(1) of this section which has not been released at the 1182
time a lien is filed by a laborer after the recording of the 1183
notice of commencement or if a valid lien against the improvement 1184
pursuant to division (A)(1) of this section is filed subsequent to 1185
the filing of a laborer's lien, the lien of the laborer is 1186
effective from the date the first visible labor or work was 1187
performed or materials were furnished by the original contractor, 1188
subcontractor, ~~materialman~~ material supplier, or laborer at the 1189
site of the improvement. 1190

(B)(1) Except for the liens of laborers as provided in 1191
division (B)(2) of this section, a lien securing the claim of a 1192
claimant who has performed labor or work or furnished materials 1193
both prior to and after the recording of the notice of 1194
commencement pursuant to section 1311.04 of the Revised Code has 1195
two effective dates. That portion of the lien which arises from 1196
labor or work performed or materials furnished prior to the filing 1197
of the notice of commencement has the effective date described in 1198
division (A)(1) of this section and that portion of the lien which 1199
arises from labor or work performed or materials furnished on or 1200
after the filing of the notice of commencement has the effective 1201
date described in division (A)(2) of this section. Any payment 1202
received by the lien claimant both before and after the filing of 1203
a lien shall be applied first to the labor or work performed or 1204

materials furnished prior to the filing of the notice of 1205
commencement, and then to labor or work performed or materials 1206
furnished on and after the filing of the notice of commencement. 1207

(2) A lien filed by a laborer for labor or work performed 1208
both prior to and after the recording of the notice of 1209
commencement pursuant to section 1311.04 of the Revised Code has 1210
one effective date as described in division (A)(1) of this 1211
section. 1212

(C) Liens under sections 1311.01 to 1311.22 of the Revised 1213
Code continue in force for six years after an affidavit is filed 1214
in the office of the county recorder under section 1311.06 of the 1215
Revised Code. If an action is brought to enforce the lien within 1216
that time, the lien continues in force until final adjudication 1217
thereof. 1218

(D) If several liens are obtained by several persons upon the 1219
same improvement they have no priority among themselves, except as 1220
follows: 1221

(1) Liens which have an effective date described in division 1222
(A)(1) of this section have priority over all other liens, except 1223
for liens described in divisions (A)(3), (B)(2), or (D)(2) of this 1224
section, to the extent of the value of the work and labor 1225
performed and materials furnished prior to the recording of the 1226
notice of commencement pursuant to section 1311.04 of the Revised 1227
Code. 1228

(2) Liens filed by laborers have priority over all other 1229
liens whether the labor or work was performed before or after the 1230
recording of the notice of commencement pursuant to section 1231
1311.04 of the Revised Code. 1232

(E)(1) Except as provided in division (E)(2) of this section, 1233
liens which have an effective date described in division (A)(1) of 1234
this section shall be preferred to the extent of the value of the 1235

labor or work performed or materials furnished prior to the 1236
recording of the notice of commencement, to all other titles, 1237
liens, or encumbrances which may attach to or upon the improvement 1238
or to or upon the land upon which it is situated, which either 1239
shall be given or recorded subsequent to the effective date of the 1240
liens described in division (A)(1) of this section. 1241

(2) Liens recorded by laborers which have an effective date 1242
described in division (A)(1) or (3) of this section shall be 1243
preferred to all other titles, liens, or encumbrances which may 1244
attach to or upon the improvement or to or upon the land upon 1245
which it is situated which are given or recorded subsequent to the 1246
effective date of such laborers' liens. 1247

(F) Liens which have an effective date described in division 1248
(A)(2) of this section shall be preferred to all other titles, 1249
liens, or encumbrances which may attach to or upon such 1250
improvement or to or upon the land upon which it is situated, 1251
which either are given or recorded subsequent to the recording of 1252
the notice of commencement. 1253

(G) Unless otherwise stipulated in a mortgage securing 1254
financing for the construction of an improvement, if a mortgage 1255
securing financing for the construction of an improvement and 1256
notice of commencement for said improvement are recorded on the 1257
same day, the mortgage shall be considered recorded before the 1258
notice of commencement for purposes of priority described in this 1259
section. 1260

(H) The recorder may destroy the record of all mechanics' 1261
liens which have been recorded for a period of ten years or 1262
longer. 1263

Sec. 1311.14. (A) Except as provided in this section, the 1264
lien of a mortgage given in whole or in part to improve real 1265

estate, or to pay off prior encumbrances thereon, or both, the 1266
proceeds of which are actually used in the improvement in the 1267
manner contemplated in sections 1311.02 and 1311.03 of the Revised 1268
Code, or to pay off prior encumbrances, or both, and which 1269
mortgage contains therein the correct name and address of the 1270
mortgagee, together with a covenant between the mortgagor and 1271
mortgagee authorizing the mortgagee to do all things provided to 1272
be done by the mortgagee under this section, shall be prior to all 1273
mechanic's, ~~materialmen's~~ material supplier's, and similar liens 1274
and all liens provided for in this chapter that are filed for 1275
record after the improvement mortgage is filed for record, to the 1276
extent that the proceeds thereof are used and applied for the 1277
purposes of and pursuant to this section. Such mortgage is a lien 1278
on the premises therein described from the time it is filed for 1279
record for the full amount that is ultimately and actually paid 1280
out under the mortgage, regardless of the time when the money 1281
secured thereby is advanced. 1282

Any laborer or ~~materialman~~ material supplier who claims or at 1283
any time can claim a right of lien on the premises for any labor 1284
or work performed or to be performed or for material furnished or 1285
to be furnished for the improvement, may serve a written notice on 1286
the mortgagee, which notice shall show the kind and nature of the 1287
labor or work performed or to be performed, or both, and of the 1288
material furnished or to be furnished, or both, and the amount 1289
claimed or to be claimed therefor, and a description of the 1290
premises upon which the labor or work has been or is to be 1291
performed or to which the material has been or is to be furnished, 1292
and the amount claimed therefor. 1293

(B) The mortgagee need not pay out any of the mortgage fund 1294
for fifteen days after filing the mortgage. At the end of such 1295
period, ~~he~~ the mortgagee may refuse to go forward with the loan or 1296
to pay out the fund, in which case, if no funds have been 1297

advanced, ~~he~~ the mortgagee shall make, execute, and deliver to the 1298
mortgagor, or to the county recorder to be recorded, a proper 1299
release of the mortgage, but if the mortgagee elects to complete 1300
the loan, ~~he~~ the mortgagee shall, in order to obtain the priority 1301
set forth in this section, distribute the mortgage fund in the 1302
following order: 1303

~~(A)~~(1) The mortgagee may at any time pay off the prior 1304
encumbrance, or withhold the amount thereof for that purpose. 1305

~~(B)~~(2) Out of the residue of the fund, the mortgagee may at 1306
any time retain sufficient funds to complete the improvement, 1307
according to the original plans, specifications, and contracts, 1308
and within the original contract price. 1309

~~(C)~~(3) The mortgagee may from time to time pay out on the 1310
owner's order, directly to the original contractor or 1311
subcontractor, or directly to the owner ~~himself~~ if ~~he~~ the owner is 1312
~~his~~ the owner's own contractor, such sums as the owner certifies 1313
to be necessary to meet and pay labor payrolls for the 1314
improvement. 1315

~~(D)~~(4) The mortgagee shall pay on the order of the owner, the 1316
accounts of the ~~materialmen~~ material suppliers and laborers who 1317
have filed with the mortgagee a written notice as provided in this 1318
section, the amounts due for labor or work then performed and 1319
material then furnished for the improvement; and shall retain out 1320
of the mortgage fund such money to become due as is shown by the 1321
notice served and shall hold such money, and shall pay on the 1322
order of the owner, the amounts due to such persons who have 1323
served such notices, if the mortgagee has sufficient money in ~~his~~ 1324
the mortgagee's hands to do so and also to complete the 1325
improvement; but if the mortgagee has funds in ~~his~~ the mortgagee's 1326
hands insufficient to pay all such laborers and ~~materialmen~~ 1327
material suppliers in full and to complete the improvement, ~~he~~ the 1328
mortgagee shall retain sufficient money to complete the 1329

improvement and to distribute the balance pro rata among the 1330
~~materialmen~~ material suppliers and laborers who have filed such 1331
notices. 1332

~~(E)~~(5) If the owner refuses to issue an order to pay the 1333
amount of the notice filed, the mortgagee shall retain the whole 1334
amount claimed until the proper amount has been agreed upon or 1335
judicially determined, provided that the mortgagee may withhold 1336
sufficient funds to complete the improvement. 1337

~~(F)~~(6) The mortgagee shall pay out on the owners' order, 1338
directly to ~~materialmen~~ material suppliers or laborers who have 1339
performed labor or work or furnished material for the improvement. 1340

~~(G)~~(7) The mortgagee shall pay the balance of the mortgage 1341
fund after the improvement is completed to the owner, or to 1342
whomsoever the owner directs. 1343

In case the mortgagee pays out the fund otherwise than as 1344
provided in this section, then the lien of the mortgage to the 1345
extent that the funds had been otherwise paid, is subsequent to 1346
liens of original contractors, subcontractors, ~~materialmen~~ 1347
material suppliers, and laborers; but in no case is such a 1348
mortgagee obligated to pay or liable at law for more than the 1349
principal of the mortgage. 1350

All payments and distributions made by the mortgagee as 1351
provided in this section shall be considered the same as if paid 1352
to the owner, part owner, lessee, or mortgagor under the mortgage, 1353
and as if paid to the original contractor, and when paid pursuant 1354
to this section there is no further liability on the part of the 1355
mortgagee. This chapter does not require the mortgagee to 1356
ascertain by affidavit or otherwise the respective claims of 1357
original contractors, subcontractors, laborers, or ~~materialmen~~ 1358
material suppliers, or to determine priorities among lien 1359
claimants. 1360

The mortgagee is not responsible for a mistake of the owner 1361
in determining priorities, or for any failure of the payee 1362
properly to distribute funds paid on the written order of the 1363
owner. 1364

(C) Any original contractor, subcontractor, ~~materialman~~ 1365
material supplier, or laborer may at any time serve on any 1366
mortgagee a written request demanding to know the exact balance of 1367
the mortgage fund in ~~his~~ the mortgagee's possession and the 1368
aggregate amount included in the notices filed with the mortgagee 1369
at the time of the receipt of such notice. The mortgagee shall 1370
correctly inform the person serving the notice of the exact 1371
balance and the aggregate amount included in the notices filed. If 1372
the mortgagee fails to inform the original contractor, 1373
subcontractor, ~~materialman~~ material supplier, or laborer serving 1374
the written demand of the exact balance of the mortgage fund in 1375
~~his~~ the mortgagee's possession at the time of the receipt of the 1376
notice, the mortgagee is liable to the original contractor, 1377
subcontractor, ~~materialman~~ material supplier, and laborer making 1378
such demand, each time ~~he~~ the mortgagee fails to comply with such 1379
demand, in the sum of one hundred dollars. 1380

This section, as to mortgages contemplated by this section, 1381
controls over all other sections of the Revised Code relating to 1382
mechanic's, ~~materialmen's~~ material supplier's, contractor's, 1383
subcontractor's, laborer's, and all liens that can be had under 1384
this chapter, and shall be liberally construed in favor of such 1385
mortgagees, a substantial compliance by such mortgagees being 1386
sufficient. 1387

Sec. 1311.15. (A) The lien of a subcontractor is superior to 1388
any already taken or to be taken by the original contractor in 1389
respect of the same labor, work, or material, and the liens of 1390
laborers, ~~materialmen~~ material suppliers, and subcontractors to an 1391

original contractor or subcontractor, are superior to any lien 1392
already taken or to be taken by such original contractor or 1393
subcontractor indebted to them in respect of such labor, work, or 1394
material. An assignment or transfer by the original contractor or 1395
subcontractor, of ~~his~~ the contract with the owner or original 1396
contractor, as well as all proceedings in attachment, or 1397
otherwise, against the original contractor or subcontractor, to 1398
subject or encumber ~~his~~ the original contractor's or 1399
subcontractor's interest in such contract, is subject to the 1400
claims of every laborer, subcontractor, or ~~materialman~~ material 1401
supplier who performs any labor or work or furnishes any material 1402
in furtherance of any improvement in accordance with this chapter. 1403

(B)(1) An owner, part owner, lessee, or public authority may 1404
pay directly the claim of any subcontractor or ~~materialman~~ 1405
material supplier who serves a notice of furnishing pursuant to 1406
section 1311.05 or 1311.261 of the Revised Code, or the claim of 1407
any laborer. If the owner, part owner, lessee, or public authority 1408
pays such claim, ~~he~~ the owner, part owner, lessee, or public 1409
authority has a right to a setoff or credit, in an amount equal to 1410
the amount paid, against the original contractor or principal 1411
contractor who employed the subcontractor, ~~materialman~~ material 1412
supplier, or laborer paid by the owner, part owner, lessee, or 1413
public authority under division (B)(1) of this section. 1414

(2) A principal contractor, an original contractor, or a 1415
subcontractor may pay directly the claim of any subcontractor or 1416
~~materialman~~ material supplier who serves a notice of furnishing 1417
pursuant to section 1311.05 or 1311.261 of the Revised Code, or 1418
the claim of any laborer. ~~If the~~ A principal contractor, original 1419
contractor, or subcontractor who pays such a claim, ~~he~~ has a right 1420
to a setoff or credit, in an amount equal to the amount paid, 1421
against the subcontractor who employed the subcontractor, 1422
~~materialman~~ material supplier, or laborer paid by the principal 1423

contractor, original contractor, or subcontractor under division 1424
(B)(2) of this section. 1425

(C) The failure of an original or principal contractor, 1426
subcontractor, ~~materialman~~ material supplier, or laborer to 1427
properly exercise ~~his~~ the rights ~~under~~ provided by this chapter 1428
does not limit ~~his~~ the right to pursue any other legal or 1429
equitable remedy. 1430

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the 1431
Revised Code: 1432

(A) "Public improvement" means any construction, 1433
reconstruction, improvement, enlargement, alteration, demolition, 1434
or repair of a building, highway, drainage system, water system, 1435
road, street, alley, sewer, ditch, sewage disposal plant, water 1436
works, and any other structure or work of any nature by a public 1437
authority. 1438

(B) "Public authority" includes the state, and a county, 1439
township, municipal corporation, school district, or other 1440
political subdivision of the state, and any public agency, 1441
authority, board, commission, instrumentality, or special district 1442
of or in the state or a county, township, municipal corporation, 1443
school district, or other political subdivision of the state, and 1444
any officer or agent thereof. 1445

(C) "~~Materialman~~ or ~~material~~ Material supplier" includes 1446
any person by whom any materials are furnished in furtherance of a 1447
public improvement. 1448

(D) "Laborer" includes any mechanic, worker, artisan, or 1449
other individual who performs labor or work in furtherance of any 1450
public improvement. 1451

(E) "Subcontractor" includes any person who undertakes to 1452
construct, alter, erect, improve, repair, demolish, remove, dig, 1453

or drill any part of any public improvement under a contract with
any person other than the public authority.

(F) "Principal contractor" includes any person who undertakes
to construct, alter, erect, improve, repair, demolish, remove,
dig, or drill any part of any public improvement under a contract
with a public authority.

(G) "Materials" means all products and substances including,
without limitation, any gasoline, lubricating oil, petroleum
products, powder, dynamite, blasting supplies and other
explosives, tools, equipment, or machinery furnished in
furtherance of a public improvement.

(H) "Wages" has the same meaning as "prevailing wage" in
division (E) of section 4115.03 of the Revised Code.

(I) "Notice of commencement" means the notice specified in
section 1311.252 of the Revised Code.

(J) "Notice of furnishing" means the notice specified in
section 1311.261 of the Revised Code.

Sec. 1311.26. Any subcontractor, ~~materialman~~ material
supplier, or laborer who is performing or has performed labor or
work or is furnishing or has furnished material for any public
improvement provided for in a contract between the public
authority and a principal contractor, and under a contract between
the subcontractor, ~~materialman~~ material supplier, or laborer and a
principal contractor or subcontractor, at any time, not to exceed
one hundred twenty days from the performance of the last labor or
work or furnishing of the last material, may serve the public
authority an affidavit stating the amount due and unpaid for the
labor and work performed and material furnished, when the last of
the labor or work was performed and when the last of the material
was furnished with all credits and setoffs thereon, and the

post-office address of the claimant. If a claimant serves an affidavit under this section, ~~he~~ the claimant shall serve the affidavit to the representative of the public authority named in the notice of commencement.

One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

Sec. 1311.261. (A)(1) Every subcontractor and ~~materialman~~ material supplier who wishes to exercise ~~his~~ the subcontractor's or material supplier's rights under sections 1311.25 to 1311.32 of the Revised Code regarding claims for labor or work performed or materials furnished in furtherance of a public improvement shall serve a notice of furnishing, in accordance with division (B) of this section, on the principal contractor whose contract with the public authority is the contract under which the subcontractor or ~~materialman~~ material supplier is performing labor or work or furnishing materials within twenty-one days after the date that the subcontractor or ~~materialman~~ material supplier first performed labor or work or furnished materials on the site of the public improvement, except that no subcontractor or ~~materialman~~ material supplier who is in direct privity of contract with the principal contractor need provide the notice.

(2) A subcontractor or ~~materialman~~ material supplier may serve the principal contractor with a notice of furnishing pursuant to this section more than twenty-one days after the subcontractor or ~~materialman~~ material supplier first performed labor or work or furnished materials on the site of the public improvement. If a subcontractor or ~~materialman~~ material supplier

serves the notice, the subcontractor or ~~materialman~~ material 1515
supplier shall have the rights of sections 1311.25 to 1311.32 of 1516
the Revised Code with regard to only amounts owed for labor and 1517
work performed and materials furnished during and after the 1518
twenty-one days immediately preceding service of the notice of 1519
furnishing. 1520

(B) The notice of furnishing shall be in substantially the 1521
following form: 1522

"Notice of Furnishing 1523

(For use in connection with public improvements) 1524

To: 1525

(Name of principal contractor) 1526

..... 1527

Address of principal contractor) 1528

The undersigned notifies you that ~~he~~ the undersigned has 1529
furnished or performed or will furnish or perform (describe labor, 1530
work, or materials) for the improvement of real property 1531
identified as (property description or address) under order given 1532
by (name of subcontractor or ~~materialman~~ material supplier). The 1533
labor, work, or materials were first furnished or performed or 1534
will be furnished or performed on (date). 1535

..... 1536

(Signature of subcontractor or ~~materialman~~ material supplier) 1537

..... 1538

(Address of subcontractor or ~~materialman~~ material supplier) 1539

..... 1540

(Date)." 1541

(C) Each principal contractor and each subcontractor, on the 1542
date of entering into any agreement with a subcontractor or 1543
~~materialman~~ material supplier, shall provide, in writing, to the 1544
subcontractor or ~~materialman~~ material supplier, the name and 1545

address of the public authority. 1546

(D) Each principal contractor and each subcontractor, on the 1547
date of entering into any agreement with a subcontractor or 1548
~~materialman~~ material supplier, shall provide, in writing, to the 1549
subcontractor or ~~materialman~~ material supplier, the name and 1550
address of the principal contractor. 1551

(E) If the principal contractor or subcontractor fails to 1552
provide the name and address of the public authority or the 1553
principal contractor to those in direct privity of contract and 1554
that failure results in the loss of rights under this section, the 1555
affected person may bring an action in any court of common pleas 1556
which would otherwise have jurisdiction over the action against 1557
the person who failed to furnish the information for any damages 1558
resulting from the loss of rights under this section. 1559

(F) No laborer must serve a notice in accordance with this 1560
section to preserve lien rights under sections 1311.25 to 1311.32 1561
of the Revised Code. 1562

Sec. 1311.28. Upon receiving the affidavit required by 1563
section 1311.26 of the Revised Code, the public authority shall 1564
detain from the principal contractor or from the balance of the 1565
funds remaining in the contract with the principal contractor, an 1566
amount, up to the balance remaining in the contract, that does not 1567
in the aggregate exceed the claim or claims. 1568

The public authority shall not detain any amount requested by 1569
a claimant who is required by section 1311.261 of the Revised Code 1570
to serve a notice of furnishing, unless the claimant has provided 1571
to the public authority a copy of the notice of furnishing and a 1572
sworn statement as to the date the notice of furnishing was served 1573
to the principal contractor, or by a claimant who is a laborer, 1574
unless the laborer serves an affidavit upon the public authority 1575
pursuant to section 1311.26 of the Revised Code. 1576

The public authority shall place any detained funds in an escrow account as provided for under section 153.63 of the Revised Code, to be released at the times, in the amounts, and to the persons ordered by a court of competent jurisdiction or by agreement of the principal contractor and the subcontractor, ~~materialman~~ material supplier, or laborer who filed the affidavit provided for in section 1311.26 of the Revised Code or upon a failure to commence suit as provided in section 1311.311 of the Revised Code.

Sec. 1311.29. A subcontractor, ~~materialman~~ material supplier, laborer, or person who serves the affidavit pursuant to section 1311.26 of the Revised Code, in order to notify other subcontractors, ~~materialmen~~ material suppliers, and laborers, within thirty days thereafter, shall file for record a copy of the affidavit with the county recorder of the county where the public improvement is situated or with the county recorder of each of the counties where the public improvement is situated if the public improvement is situated in more than one county. The filing for record of the affidavit with the county recorders gives such subcontractor, ~~materialman~~ material supplier, laborer, or person filing the affidavit as provided in section 1311.26 of the Revised Code, a preference, as to payments subsequently due from the public authority, over such of ~~his~~ the other subcontractors, ~~materialmen~~ material suppliers, and laborers who have failed, prior to the date any such payment is due, to file the affidavit provided for in section 1311.26 of the Revised Code, and to file for record the copy thereof with the county recorders as provided in this section. On detained funds, such claimants have no priority among themselves, but payment thereon shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each. The failure of any claimant to file for record a copy of the affidavit with the county recorders

**As Reported by the House Financial Institutions Real Estate and Securities
Committee**

does not affect the validity of ~~his~~ the claimant's amount claimed 1609
with respect to persons other than such of ~~his~~ the claimant's 1610
other subcontractors, ~~materialmen~~ material suppliers, and laborers 1611
who have filed for record copies of their affidavits with the 1612
county recorders, and, against detained funds, such claimants who 1613
have failed to make such filing for record with the county 1614
recorders have no priority among themselves, but, after all claims 1615
having preference over theirs have been paid, payment shall be 1616
made to them in amounts prorated according to the amount of the 1617
then-existing valid claim of each. 1618

The recorder shall endorse upon every affidavit the date and 1619
hour of its filing, and record every affidavit filed for record. 1620
For recording or making a copy of the affidavit or certificate of 1621
the date of such filing for record, the recorder is entitled to 1622
the same fees as are provided for in section 317.32 of the Revised 1623
Code. 1624

Sec. 1311.32. The duty to pay to claimants the amounts and in 1625
the order of preference, as provided in sections 1311.29 and 1626
1311.31 of the Revised Code, may be enforced by an action in the 1627
court of common pleas or the subcontractor, ~~materialman~~ material 1628
supplier, or laborer may, when the amounts are due, recover 1629
through the public authority in the court of common pleas the 1630
whole or a pro rata amount of ~~his~~ the subcontractor's, material 1631
supplier's, or laborer's claim or estimate, not exceeding in any 1632
case the balance due to the principal contractor. Either of these 1633
actions shall be brought in the county in which the public 1634
property involved is situated, except that actions against state 1635
officers shall be brought only in Franklin county. The court shall 1636
resolve all disputes concerning whether the affidavit filed 1637
pursuant to section 1311.26 of the Revised Code has been perfected 1638
and concerning priorities, that may arise from enforcement of the 1639
affidavit or the bond that secures the affidavit, pursuant to 1640

section 1311.311 of the Revised Code. 1641

Sec. 4113.61. (A)(1) If a subcontractor or ~~materialman~~ 1642
material supplier submits an application or request for payment or 1643
an invoice for materials to a contractor in sufficient time to 1644
allow the contractor to include the application, request, or 1645
invoice in ~~his~~ the contractor's own pay request submitted to an 1646
owner, the contractor, within ten calendar days after receipt of 1647
payment from the owner for improvements to property, shall pay to 1648
the: 1649

(a) Subcontractor, an amount that is equal to the percentage 1650
of completion of the subcontractor's contract allowed by the owner 1651
for the amount of labor or work performed; 1652

(b) ~~Materialman~~ Material supplier, an amount that is equal to 1653
all or that portion of the invoice for materials which represents 1654
the materials furnished by the ~~materialman~~ material supplier. 1655

The contractor may reduce the amount paid by any retainage 1656
provision contained in the contract, invoice, or purchase order 1657
between the contractor and the subcontractor or ~~materialman~~ 1658
material supplier, and may withhold amounts that may be necessary 1659
to resolve disputed liens or claims involving the work or labor 1660
performed or material furnished by the subcontractor or 1661
~~materialman~~ material supplier. 1662

If the contractor fails to comply with division (A)(1) of 1663
this section, the contractor shall pay the subcontractor or 1664
~~materialman~~ material supplier, in addition to the payment due, 1665
interest in the amount of eighteen per cent per annum of the 1666
payment due, beginning on the eleventh day following the receipt 1667
of payment from the owner and ending on the date of full payment 1668
of the payment due plus interest to the subcontractor or 1669
~~materialman~~ material supplier. 1670

(2) If a lower tier subcontractor or lower tier ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier in sufficient time to allow the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier to include the application, request, or invoice in ~~his~~ the subcontractor's, material supplier's, or other lower tier subcontractor's or lower tier material supplier's own pay request submitted to a contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier, the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier, within ten calendar days after receipt of payment from the contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier for improvements to property, shall pay to the:

(a) Lower tier subcontractor, an amount that is equal to the percentage of completion of the lower tier subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) Lower tier ~~materialman~~ material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the lower tier ~~materialman~~ material supplier.

The subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower

tier ~~materialman~~ material supplier and the lower tier 1703
subcontractor or lower tier ~~materialman~~ material supplier, and may 1704
withhold amounts that may be necessary to resolve disputed liens 1705
or claims involving the work or labor performed or material 1706
furnished by the lower tier subcontractor or lower tier 1707
~~materialman~~ material supplier. 1708

If the subcontractor, ~~materialman~~ material supplier, lower 1709
tier subcontractor, or lower tier ~~materialman~~ material supplier 1710
fails to comply with division (A)(2) of this section, the 1711
subcontractor, ~~materialman~~ material supplier, lower tier 1712
subcontractor, or lower tier ~~materialman~~ material supplier shall 1713
pay the lower tier subcontractor or lower tier ~~materialman~~ 1714
material supplier, in addition to the payment due, interest in the 1715
amount of eighteen per cent per annum of the payment due, 1716
beginning on the eleventh day following the receipt of payment 1717
from the contractor, other subcontractor, ~~materialman~~ material 1718
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1719
material supplier and ending on the date of full payment of the 1720
payment due plus interest to the lower tier subcontractor or lower 1721
tier ~~materialman~~ material supplier. 1722

(3) If a contractor receives any final retainage from the 1723
owner for improvements to property, the contractor shall pay from 1724
that retainage each subcontractor and ~~materialman~~ his material 1725
supplier the subcontractor's or material supplier's proportion of 1726
the retainage, within ten calendar days after receipt of the 1727
retainage from the owner, or within the time period provided in a 1728
contract, invoice, or purchase order between the contractor and 1729
the subcontractor or ~~materialman~~ material supplier, whichever time 1730
period is shorter, provided that the contractor has determined 1731
that the subcontractor's or ~~materialman's~~ material supplier's 1732
work, labor, and materials have been satisfactorily performed or 1733
furnished and that the owner has approved the subcontractor's or 1734

~~materialman's~~ material supplier's work, labor, and materials. 1735

If the contractor fails to pay a subcontractor or ~~materialman~~ 1736
material supplier within the appropriate time period, the 1737
contractor shall pay the subcontractor or ~~materialman~~ material 1738
supplier, in addition to the retainage due, interest in the amount 1739
of eighteen per cent per annum of the retainage due, beginning on 1740
the eleventh day following the receipt of the retainage from the 1741
owner and ending on the date of full payment of the retainage due 1742
plus interest to the subcontractor or ~~materialman~~ material 1743
supplier. 1744

(4) If a subcontractor, ~~materialman~~ material supplier, lower 1745
tier subcontractor, or lower tier ~~materialman~~ material supplier 1746
receives any final retainage from the contractor or other 1747
subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ 1748
material supplier for improvements to property, the subcontractor, 1749
~~materialman~~ material supplier, lower tier subcontractor, or lower 1750
tier ~~materialman~~ material supplier shall pay from that retainage 1751
each lower tier subcontractor or lower tier ~~materialman~~ his the 1752
lower tier subcontractor's or lower tier material supplier's 1753
proportion of the retainage, within ten calendar days after 1754
receipt of payment from the contractor or other subcontractor, 1755
lower tier subcontractor, or lower tier ~~materialman~~ material 1756
supplier, or within the time period provided in a contract, 1757
invoice, or purchase order between the subcontractor, ~~materialman~~ 1758
material supplier, lower tier subcontractor, or lower tier 1759
~~materialman~~ material supplier and the lower tier subcontractor or 1760
lower tier ~~materialman~~ material supplier, whichever time period is 1761
shorter, provided that the subcontractor, ~~materialman~~ material 1762
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1763
material supplier has determined that the lower tier 1764
subcontractor's or lower tier ~~materialman's~~ material supplier's 1765
work, labor, and materials have been satisfactorily performed or 1766

furnished and that the owner has approved the lower tier 1767
subcontractor's or lower tier ~~materialman's~~ material supplier's 1768
work, labor, and materials. 1769

If the subcontractor, ~~materialman~~ material supplier, lower 1770
tier subcontractor, or lower tier ~~materialman~~ material supplier 1771
fails to pay the lower tier subcontractor or lower tier 1772
~~materialman~~ material supplier within the appropriate time period, 1773
the subcontractor, ~~materialman~~ material supplier, lower tier 1774
subcontractor, or lower tier ~~materialman~~ material supplier shall 1775
pay the lower tier subcontractor or lower tier ~~materialman~~ 1776
material supplier, in addition to the retainage due, interest in 1777
the amount of eighteen per cent per annum of the retainage due, 1778
beginning on the eleventh day following the receipt of the 1779
retainage from the contractor or other subcontractor, lower tier 1780
subcontractor, or lower tier ~~materialman~~ material supplier and 1781
ending on the date of full payment of the retainage due plus 1782
interest to the lower tier subcontractor or lower tier ~~materialman~~ 1783
material supplier. 1784

(5) A contractor, subcontractor, or lower tier subcontractor 1785
shall pay a laborer wages due within ten days of payment of any 1786
application or request for payment or the receipt of any retainage 1787
from an owner, contractor, subcontractor, or lower tier 1788
subcontractor. 1789

If the contractor, subcontractor, or lower tier subcontractor 1790
fails to pay the laborer wages due within the appropriate time 1791
period, the contractor, subcontractor, or lower tier subcontractor 1792
shall pay the laborer, in addition to the wages due, interest in 1793
the amount of eighteen per cent per annum of the wages due, 1794
beginning on the eleventh day following the receipt of payment 1795
from the owner, contractor, subcontractor, or lower tier 1796
subcontractor and ending on the date of full payment of the wages 1797
due plus interest to the laborer. 1798

(B)(1) If a contractor, subcontractor, ~~materialman~~ material 1799
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1800
material supplier has not made payment in compliance with division 1801
(A)(1), (2), (3), (4), or (5) of this section within thirty days 1802
after payment is due, a subcontractor, ~~materialman~~ material 1803
supplier, lower tier subcontractor, lower tier ~~materialman~~ 1804
material supplier, or laborer may file a civil action to recover 1805
the amount due plus the interest provided in those divisions. If 1806
the court finds in the civil action that a contractor, 1807
subcontractor, ~~materialman~~ material supplier, lower tier 1808
subcontractor, or lower tier ~~materialman~~ material supplier has not 1809
made payment in compliance with those divisions, the court shall 1810
award the interest specified in those divisions, in addition to 1811
the amount due. Except as provided in division (B)(3) of this 1812
section, the court shall award the prevailing party reasonable 1813
attorney fees and court costs. 1814

(2) In making a determination to award attorney fees under 1815
division (B)(1) of this section, the court shall consider all 1816
relevant factors, including but not limited to the following: 1817

(a) The presence or absence of good faith allegations or 1818
defenses asserted by the parties; 1819

(b) The proportion of the amount of recovery as it relates to 1820
the amount demanded; 1821

(c) The nature of the services rendered and the time expended 1822
in rendering the services. 1823

(3) The court shall not award attorney fees under division 1824
(B)(1) of this section if the court determines, following a 1825
hearing on the payment of attorney fees, that the payment of 1826
attorney fees to the prevailing party would be inequitable. 1827

(C) This section does not apply to any construction or 1828
improvement of any single-, two-, or three-family detached 1829

dwelling houses. 1830

(D)(1) No provision of this section regarding entitlement to 1831
interest, attorney fees, or court costs may be waived by agreement 1832
and any such term in any contract or agreement is void and 1833
unenforceable as against public policy. 1834

(2) This section shall not be construed as impairing or 1835
affecting, in any way, the terms and conditions of any contract, 1836
invoice, purchase order, or any other agreement between a 1837
contractor and a subcontractor or a ~~materialman~~ material supplier 1838
or between a subcontractor and another subcontractor, a 1839
~~materialman~~ material supplier, a lower tier subcontractor, or a 1840
lower tier ~~materialman~~ material supplier, except that if such 1841
terms and conditions contain time periods which are longer than 1842
any of the time periods specified in divisions (A)(1), (2), (3), 1843
(4), and (5) of this section or interest at a percentage less than 1844
the interest stated in those divisions, then the provisions of 1845
this section shall prevail over such terms and conditions. 1846

(E) Notwithstanding the definition of lower tier ~~materialman~~ 1847
material supplier in this section, a person is not a lower tier 1848
~~materialman~~ material supplier unless the materials supplied by ~~him~~ 1849
the person are: 1850

(1) Furnished with the intent, as evidenced by the contract 1851
of sale, the delivery order, delivery to the site, or by other 1852
evidence that the materials are to be used on a particular 1853
structure or improvement; 1854

(2) Incorporated in the improvement or consumed as normal 1855
wastage in the course of the improvement; or 1856

(3) Specifically fabricated for incorporation in the 1857
improvement and not readily resalable in the ordinary course of 1858
the fabricator's business even if not actually incorporated in the 1859
improvement. 1860

(F) As used in this section:	1861
(1) "Contractor" means any person who undertakes to	1862
construct, alter, erect, improve, repair, demolish, remove, dig,	1863
or drill any part of a structure or improvement under a contract	1864
with an owner, or a "construction manager" as that term is defined	1865
in section 9.33 of the Revised Code.	1866
(2) "Laborer," " materialman <u>material supplier</u> ,"	1867
"subcontractor," and "wages" have the same meanings as in section	1868
1311.01 of the Revised Code.	1869
(3) "Lower tier subcontractor" means a subcontractor who is	1870
not in privity of contract with a contractor but is in privity of	1871
contract with another subcontractor.	1872
(4) "Lower tier materialman <u>material supplier</u> " means a	1873
materialman <u>material supplier</u> who is not in privity of contract	1874
with a contractor but is in privity of contract with another	1875
subcontractor or a materialman <u>material supplier</u> .	1876
(5) "Wages due" means the wages due to a laborer as of the	1877
date a contractor or subcontractor receives payment for any	1878
application or request for payment or retainage from any owner,	1879
contractor, or subcontractor.	1880
(6) "Owner" includes the state, and a county, township,	1881
municipal corporation, school district, or other political	1882
subdivision of the state, and any public agency, authority, board,	1883
commission, instrumentality, or special district of or in the	1884
state or a county, township, municipal corporation, school	1885
district, or other political subdivision of the state, and any	1886
officer or agent thereof and relates to all the interests either	1887
legal or equitable, which a person may have in the real estate	1888
upon which improvements are made, including interests held by any	1889
person under contracts of purchase, whether in writing or	1890
otherwise.	1891

Sec. 5309.57. Whenever any attested account to obtain a 1892
mechanic's, ~~materialman's~~ material supplier's, or laborer's lien 1893
is filed in the office of the county recorder by which a lien is 1894
sought to be obtained upon any registered land, the county 1895
recorder shall forthwith make notation and enter a memorial 1896
thereof upon the folium of the register where the last certificate 1897
of title to the land is registered, stating the name of the 1898
claimant, amount claimed, volume and folium of the record where 1899
recorded, and the exact time when said memorial was entered. No 1900
lien shall attach to said land until such notation is entered by 1901
the recorder. 1902

The recorder may, upon written application of the registered 1903
owner, cancel from any certificate of title, a mechanic's lien 1904
which has remained uncanceled for six years and one day from the 1905
date of registration of said lien, provided that no notice of any 1906
suit affecting said lien has been noted upon the register. 1907

Sec. 5525.16. (A) Before entering into a contract, the 1908
director of transportation shall require a contract performance 1909
bond and a payment bond with sufficient sureties, as follows: 1910

(1) A contract performance bond in an amount equal to one 1911
hundred per cent of the estimated cost of the work, conditioned, 1912
among other things, that the contractor will perform the work upon 1913
the terms proposed, within the time prescribed, and in accordance 1914
with the plans and specifications, will indemnify the state 1915
against any damage that may result from any failure of the 1916
contractor to so perform, and, further, in case of a grade 1917
separation will indemnify any railroad company involved against 1918
any damage that may result by reason of the negligence of the 1919
contractor in making the improvement. 1920

(2) A payment bond in an amount equal to one hundred per cent 1921

of the estimated cost of the work, conditioned for the payment by 1922
the contractor and all subcontractors for labor or work performed 1923
or materials furnished in connection with the work, improvement, 1924
or project involved. 1925

(B) In no case is the state liable for damages sustained in 1926
the construction of any work, improvement, or project under this 1927
chapter and Chapters 5501., 5503., 5511., 5513., 5515., 5516., 1928
5517., 5519., 5521., 5523., 5527., 5528., 5529., 5531., 5533., and 1929
5535. of the Revised Code. 1930

This section does not require the director to take bonds as 1931
described in division (A) of this section in connection with any 1932
force account work, but the director may require those bonds in 1933
connection with force account work. 1934

If any bonds taken under this section are executed by a 1935
surety company, the director may not approve such bonds unless 1936
there is attached a certificate of the superintendent of insurance 1937
that the company is authorized to transact business in this state, 1938
and a copy of the power of attorney of the agent of the company. 1939
The superintendent, upon request, shall issue to any licensed 1940
agent of such company the certificate without charge. 1941

The bonds required to be taken under this section shall be 1942
executed by the same surety, approved by the director as to 1943
sufficiency of the sureties, and be in the form prescribed by the 1944
attorney general. 1945

(C) Any person to whom any money is due for labor or work 1946
performed or materials furnished in connection with a work, 1947
improvement, or project, at any time after performing the labor or 1948
furnishing the materials but not later than ninety days after the 1949
acceptance of the work, improvement, or project by the director, 1950
may furnish to the sureties on the payment bond a statement of the 1951
amount due the person. If the indebtedness is not paid in full at 1952

the expiration of sixty days after the statement is furnished, the 1953
person may commence an action in the person's own name upon the 1954
bond as provided in sections 2307.06 and 2307.07 of the Revised 1955
Code. 1956

An action shall not be commenced against the sureties on a 1957
payment bond until sixty days after the furnishing of the 1958
statement described in this section or, notwithstanding section 1959
2305.12 of the Revised Code, later than one year after the date of 1960
the acceptance of the work, improvement, or project. 1961

(D) As used in this section, "improvement," "subcontractor," 1962
"~~materialman~~ material supplier," and "materials" have the same 1963
meanings as in section 1311.01 of the Revised Code, and 1964
"contractor" has the same meaning as "original contractor" as 1965
defined in that section. 1966

Section 2. That existing sections 153.54, 153.57, 1311.01, 1967
1311.011, 1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1968
1311.13, 1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1969
1311.29, 1311.32, 4113.61, 5309.57, and 5525.16 of the Revised 1970
Code are hereby repealed. 1971