



Sub. H.B. 487*

126th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

Reps. Widener, Martin, R. McGregor, Wagoner, Seitz, Hartnett, Allen, Koziura, Hagan, Gibbs, C. Evans, Bulp, Chandler, Coley, Combs, DeBose, Dolan, Domenick, Flowers, Hughes, Luckie, J. McGregor, Otterman, Schaffer, Schneider, G. Smith, Williams

BILL SUMMARY

- Allows, in connection with the establishment of a mechanics lien on home construction (improvement) contracts, that a "notice of commencement" be filed by the owner, part owner, or lessee with the office of the county recorder when a lending institution requires it as part of the financing for a home improvement project.
- Establishes that a notice of commencement for all liens available under the Mechanics' Lien Law expires six years after it is recorded, unless the notice itself specifies otherwise.
- Exempts subcontractors or material suppliers, under certain circumstances, from a requirement to serve a "notice of furnishing" in order to preserve lien rights.
- Permits court costs and reasonable attorney fees to be included in damages an owner, under a home construction or home purchase contract, may recover from a lien holder who refuses to release the lien after the owner makes full payment.
- Stipulates that a mortgage is considered filed first if a mortgage and notice of commencement are filed on the same day.

* *This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Permits multiple liens when a material supplier sold materials to more than one owner, original contractor, or subcontractor.
- Replaces the term "materialman" with the term "material supplier" throughout the Revised Code.
- Modifies requirements and procedures for licensing contractors under the Ohio Construction Industry Licensing Board Law.
- Enables a contractor and a business entity to which a contractor's license is assigned to agree upon a time of less than 90 days for the license to expire after the contractor ceases association with the business entity, and enables an agreement that permits the re-assignment of a license to another business entity in less than 90 such days.
- Requires public entities to require licensure for contractors if they require a person doing contracting work to register and pay a fee.
- Establishes penalties relative to checks for fees under the Ohio Construction Licensing Board Law that are returned to the Board unpaid.

CONTENT AND OPERATION

Background

A mechanic's lien is a lien that gives a person who performs labor or supplies material that improves real property a right to impose a lien on that property to secure payment for the material supplied or the work performed. Chapter 1311. of the Revised Code generally governs the process in Ohio that a contractor or material supplier must follow in order to preserve its lien rights. This process involves two key documents: the "notice of commencement" and the "notice of furnishing." A third document, the "affidavit for mechanic's lien," must be filed with the county recorder if the contractor or material supplier wish to actually place a lien on the real property (R.C. 1311.06).

Prior to any labor or materials being furnished for an improvement of real property, the owner or lessee who contracts for the labor or materials must record in the office of the county recorder a notice of commencement, and must serve a copy of the notice on the original contractor. The notice of commencement is an affidavit that provides specific information on the property, including the owner, the contractor, and any lending institution involved in financing the improvement (R.C. 1311.04).

Certain subcontractors or material suppliers, who are not under direct contract with the owner or lessee, but rather are working under an agreement with the original contractor, must serve a notice of furnishing, within a specified time frame, in order to preserve the subcontractor's or material supplier's lien rights. The notice of furnishing is served to the owner or lessee of the real property and must include a statement explaining that the notice is required by the Ohio Mechanics' Lien Law (R.C. 1311.05).

Notice of commencement

Under current law, an owner, part owner, or lessee of real property, who contracts for labor, work, or materials, must record a notice of commencement in the office of the county recorder prior to any work being performed or materials being furnished, if the improvement may give rise to a mechanics' lien (R.C. 1311.04(A)). Home construction contracts are currently exempt from this requirement.

The bill allows a notice of commencement be filed on home construction (home improvement) contracts if a lending institution requires it as part of the financing for a home improvement contract "which is secured in whole or in part by a mortgage on real estate upon which the improvements are to be constructed" (R.C. 1311.04(O)).

Notice of commencement expiration date

Current law does not specify an expiration date on notices of commencement. The bill establishes that a notice of commencement for all types of projects (not just home construction projects) filed will expire six years after its filing date unless the specific notice of commencement specifies otherwise (R.C. 1311.04(S)).

Notice of furnishing

Under current law, a subcontractor or material supplier who performs labor or furnishes material to an original contractor for the improvement of real property on a project for which a notice of commencement has been recorded, must serve a notice of furnishing if the subcontractor or material supplier wishes to preserve its lien rights. The bill creates an exception to this requirement. When a lending institution, as part of the financing for a home improvement project, has required that the notice of commencement be filed, and if the owner, part owner, or lessee files that notice, a subcontractor or material supplier need not serve a notice of furnishing in order to preserve lien rights (R.C. 1311.04(O) and 1311.05(I)).

Court costs and attorney's fees

Under current law, certain liens that secure payment for labor or work performed or materials furnished in connection with a home construction contract or home purchase contract are subject to certain conditions, such as, no contractor or laborer has a lien if the original contractor has been paid in full. If the lien holder fails to release the lien after the original contractor has been paid in full, the lien holder is liable to the owner or lessee for all damages arising from the lien holder's failure to do so. The bill requires that these damages are to include court costs and reasonable attorney fees incurred during any litigation between the owner and a lien claimant who has refused to release the lien after receiving a copy of the affidavit of mechanics' lien or "evidence that the cost of completing a home construction contract exceeded, or is reasonably expected to exceed, the balance due the original contractor under the home construction contract" (R.C. 1311.011(B)(3)).

Mortgage

The bill provides that, unless otherwise stipulated in a mortgage securing financing for the construction of an improvement, if a mortgage and a notice of commencement for said improvement are recorded on the same day, the mortgage is to be considered recorded before the notice of commencement for purposes of priority of payment (R.C. 1311.13).

Multiple liens

Under current law, all of the deliveries or sales by a material supplier for an improvement give rise to one mechanic's lien for the unpaid portion of the sale (R.C. 1311.12(D)). The bill permits a material supplier to file multiple liens when the material supplier sold materials, for the same improvement, to more than one owner, original contractor, or subcontractor.

Materialman

In current law the terms "materialman" or "material supplier" are defined together as "any person by whom any materials are furnished in furtherance of an improvement" (R.C. 1311.01). The bill strikes out the word "materialman," and its plural "materialmen" throughout the Revised Code and replaces each reference with either "material supplier" or "material suppliers."

Ohio Construction Industry Licensing Board Law changes

Background law

The Ohio Construction Industry Licensing Board Law, Chapter 4740. of the Revised Code, establishes standards and procedures for licensing contractors in the following areas: heating, ventilating, and air conditioning; refrigeration; electrical; plumbing; and hydronics. The Law is carried out by the sections of the Ohio Construction Industry Licensing Board, which is comprised of an Administrative Section and individual trade sections that represent the above-named types of contractors. The Administrative Section is responsible for general administration of the Law as well as other specific duties, including designing an examination for each type of contractor, scheduling, administering, scoring, and maintaining confidentiality of examinations, and administering fees. The Administrative Section makes an annual written report to the Director of Commerce and keeps records of licenses. (R.C. 4740.02 and 4740.04.)

Each trade section is responsible for approving persons as qualified for licensure, establishing qualifications for licensure in its area, investigating allegations of violations, and establishing continuing education requirements. The trade sections authorize the Administrative Section to issue, renew, suspend, revoke, or refuse to issue or renew licenses for the classes of contractors for which each section has primary responsibility. The trade sections also establish or approve a continuing education curriculum for license renewal. (R.C. 4740.05.)

Changes proposed by the bill

Licensure and licensure renewal procedures. Under continuing law, the various trade sections of the Ohio Construction Industry Licensing Board establish criteria for licensure and conduct examinations for licensure in their particular trade and authorize the Administrative Section to issue the licenses they approve. Under existing law, the expiration date for licenses is one year after the date of their issuance. (R.C. 4740.04, 4740.05, and 4740.06.)

The bill grants the Administrative Section explicit authority to issue licenses to and to renew the licenses of persons the trade sections approve. It directs the Administrative Section to issue licenses to any individual the appropriate trade section determines is qualified and to renew licenses of persons the trade sections indicate. Each license expires annually on the same date and must include a license number and an expiration date, and, if a person holds more than one license, the bill requires each license to contain the same license number and expiration date as the original license issued to the individual. (R.C. 4740.04(C)(1) and (2) and 4740.06(D).)

Continuing education requirement for license renewal. Existing law requires that the Administrative Section adopt, by rule, a requirement that individuals who hold a valid and unexpired license accrue ten hours of continuing education courses per year. Under continuing law, no more than five of those hours may be in specific coursework that is required by any one trade section of the Ohio Construction Industry Licensing Board. Under existing law, the Administrative Section is responsible for adopting, by rule, requirements for persons seeking approval to provide continuing education courses as well as the procedures and timing for applying for that approval. (R.C. 4740.04 and 4740.05.)

The bill removes the responsibility for continuing education courses from the Administrative Section and places that responsibility with the individual trade sections. It requires the trade sections to adopt, by rule, criteria for continuing education courses and establish the procedures for persons seeking approval to offer those courses as the bill specifies. Under the bill, no trade section may require a contractor to take more than ten hours in continuing education courses per year, and the ten hours are specified to be an aggregate for all licenses the contractor holds. The bill also requires the Administrative Section to adopt a rule that requires an individual who holds any number of licenses to accrue a total of ten hours of continuing education courses per year. (R.C. 4740.01(B), 4740.04(G), and 4740.05(A) and (C).)

Engineers. Under continuing law, an engineer may take an examination for a construction industry license. The bill adds requirements that an engineer must meet to take an examination, specifying that the engineer be currently registered in Ohio and have three years of business experience in the construction industry in the trade for which the engineer is applying to be licensed. (R.C. 4740.06(B)(3).)

Assignment of a license. Continuing law permits an individual contractor to assign a license to an associated business entity. Under existing law, the license becomes invalid 90 days after that person is no longer associated with the business entity. Existing law also prohibits an individual who has assigned a license to a business entity from assigning a license for the same type of contracting to another business entity within 90 days after the person ceases to be associated with the business entity to which the license was assigned. (R.C. 4740.07.)

The bill permits the time period that must elapse before an assigned license becomes invalid to be reduced to a length of time less than 90 days mutually agreed upon by the individual and the business entity. In addition, under the bill, the license may be re-assigned prior to 90 days upon the mutual agreement of the business entity to which it formerly was assigned and the individual. (R.C. 4740.07(B), (D), and (F).)

Licensing reciprocity. Continuing law allows a license to be issued to a person who holds a construction-industry-type license from another state if the license requirements of that state are similar to those of Ohio. The bill adds a condition precedent to the issuance of such an Ohio license--that a written reciprocity agreement exists between Ohio and the state that issued the person's license. And, it places the responsibility on the person seeking the license in this state to provide a copy of that reciprocity agreement to the appropriate trade section of the Ohio Construction Industry Licensing Board. (R.C. 4740.08.)

Local requirements for contractors. Existing law states that nothing in the Ohio Construction Industry Licensing Board Law may be construed to limit the operation of any statute or rule of the state, or any ordinance or rule of any political subdivision, district, or agency of the state, that regulates the installation of specified systems or that requires the registration and payment of a fee by a person performing construction, improvement, renovation, repair, or maintenance of those systems (R.C. 4740.12).

The bill continues this provision but places a condition on it. The bill requires that any political subdivision, district, or agency of the state that adopts an ordinance or rule that requires contractor registration and the assessment of a registration or license fee also must require any contractor who registers and pays the fee to be licensed in the contractor's trade pursuant to the Ohio Construction Industry Licensing Board Law. (R.C. 4740.12.)

Penalty for returned checks. Existing law is silent with regard to specific procedures to follow when checks for the payment of fees under the Ohio Construction Industry Licensing Board Law are returned to the Board unpaid. The bill establishes procedures for dealing with returned checks and specifies that penalties will be imposed when a check is returned for insufficient funds. They include the imposition of a *penalty fee* in an amount the Ohio Construction Industry Licensing Board establishes by rule. In addition, the bill requires that, if the unpaid fee in question and penalty fee are not timely paid or if the licensee submits another check to pay the unpaid fee and the penalty fee and that check is returned for insufficient funds, the *license must be cancelled* immediately without a hearing, and the licensee must cease activity as a licensee until the unpaid fee and the penalty fee are paid. (R.C. 4740.15.)

Definition of tradesperson. Under existing law, "tradesperson" is defined as a person who "for compensation engages in construction . . ." . The bill revises the definition by eliminating the phrase "for compensation" and defining a tradesperson as an individual "employed by a contractor who engages in construction . . ." . (R.C. 4740.01(D).)

Hydronics contractors. Existing law requires hydronics contractors to pass the examinations for both the Plumbing Section and the Heating, Ventilating, Air Conditioning, and Refrigeration Section. The bill eliminates this requirement. (R.C. 4740.04(C).)

HISTORY

ACTION	DATE
Introduced	01-25-06
Reported, H. Financial Institutions, Real Estate & Securities	11-30-06
Passed House (93-0)	12-07-06
Reported, S. Insurance, Commerce, & Labor	---

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