



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 473

PRINTERS NO. 2161

PRIME SPONSOR: Killion

COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund	\$0	See "Fiscal Impact"

SUMMARY: Amends the Mechanics' Lien Law (Act 497 of 1963). This legislation would take effect in 30 days.

ANALYSIS: This legislation amends the Mechanics' Lien Law to eliminate mechanics' lien rights for subcontractors who performed work on an owner-occupied residential property if the owner paid the contractor in full and creates a "Notice of Commencement" process whereby owners can identify subcontractors working on their project.

Creation of State Construction Notices Directory: The legislation requires that the Department of Labor & Industry establish an internet website to be known as the "State Construction Notices Directory" by July 1, 2015. However, if the department could not meet this deadline, the legislation permits the department to delay the operational date by sending notice to the Labor & Industry Committee Chairmen in the House and Senate. The department could contract with a third party vendor to create, and administer, the Internet website.

The directory would serve primarily as a central, statewide repository for owners to file Notices of Commencement (NOC), and for contractors and subcontractors to readily locate such notices. The Department would be required to publish notice in the Pennsylvania Bulletin, when appropriate, advising the public of plans for, and existence of the directory. The department would have to take all reasonable measures to inform the general public of directory and its purpose. The website could be funded by fees that owners would pay to file NOCs. There would be no fee charged to subcontractors to access and use the site.

Notice of Commencement Requirements: The legislation establishes a Notice of Commencement process that would be an optional tool that owners of projects could utilize to identify the field of subcontractors on their project. Under the legislation, an owner could file a NOC on the State Construction Notices Directory website prior to commencing any work on a project. The legislation details what items need to be on the NOC.

An owner that files a NOC would have to conspicuously post a copy of the notice at the project site at the time physical work commences on the project. The owner would be responsible for keeping the notice posted for the duration of the project. If the owner received written notification that the notice was not posted, the owner would have 48 hours to repost.

Notice of Furnishing Requirements for Subcontractors: If an NOC has been properly filed on the State Construction Notices Directory, a subcontractor would be required to serve a Notice of Furnishing, within 20 days of first starting work/supplying materials, upon the owner in order to preserve lien rights for all work/materials supplied to a project. A notice of furnishing delivered outside the 20 day window would only reserve the right to a lien for services and/or materials furnished within the 20 day period before the date of the notice and thereafter.

The Notice of Furnishing would have to be filed either by accessing State Construction Notices Directory and filing online. If a subcontractor fails to comply with filing a notice of furnishing in the proper time frames, such subcontractor shall be deemed to have forfeited its right to file a mechanics' lien.

Elimination of Pre-Lien Notice Requirement: If a subcontractor properly files a NOF, that subcontractor will not be required to file a 30 day pre-lien notice as required by Section 501 of the law before filing a mechanics lien with the Prothonotary.

Informational Notice of Completion: The legislation creates an optional NOC which an owner can file with the Directory to inform all those that have filed NOFs that a project is complete. A subcontractor that has not received full payment for their work may file a Notice of Non-Payment with the Directory to inform the owner of nonpayment. The failure to file a Notice of Non-Payment by a subcontractor who has filed an NOF shall not inhibit their right to file a lien under the law.

Statement of Public Policy: The legislation states that it is against public policy and unlawful for an owner or owner's agent, a contractor or subcontractor, to request or require a subcontractor not to file a NOF order to obtain work on a project. A subcontractor will maintain the right to file a lien even if they did not properly file a NOF if it can be proved that the failure to comply with filing requirement was due to the owner, contractor or subcontractor violating the public policy stated above. In addition, an aggrieved subcontractor shall have the right to bring a cause of action if they were coerced into not filing a NOF. A court of competent jurisdiction may award a subcontractor actual damages arising from a violation of public policy.

Non-Applicability to Residential Buildings: The legislation states that the NOC process does not apply to work on residential properties.

Applicability of Notice Provisions: The notice provisions of the legislation will take effect July 1, 2015, or on the date designated by the Department as the operational date of the Directory. The notice provisions will only apply to projects commenced on or after the operational date of the Directory.

FISCAL IMPACT: The Department of Labor & Industry indicates that they currently have no role with the Mechanics' Lien Law of 1963 and cannot predict the cost of the State Construction Notices Directory at this point. The legislation provides for filing fees on owners assessed by the Department which would offset the administrative costs. However, the Department indicates that start-up costs may be incurred and would not be reimbursable by these fees. The remainder of the legislation would have no adverse fiscal impact on Commonwealth funds.

The State of Utah was required to create a State Construction Registry. The Registry was estimated to be between \$275,000 and \$300,000 and made up mostly by personnel expenses. However, the Registry was implemented in 2005 with a third party vendor for the project. The vendor covered the entire cost of the registry without charging the state in exchange for assessing transaction fees.

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House Appropriations Committee (R)

DATE: June 28, 2013

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.