



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 473

PRINTERS NO. 3893

PRIME SPONSOR: Killion

COST / (SAVINGS)

FUND	FY 2014/15	FY 2015/16
General Fund	\$0	See "Fiscal Impact"

SUMMARY: Amends the Mechanics' Lien Law (Act 497 of 1963) to create a "Notice of Commencement" process whereby owners can identify subcontractors working on their project. This legislation would take effect as follows: the section relating to the Department of General Services designation of a directory operational date would take effect immediately; the notice requirements for owners/contractors/subcontractors would take effect December 31, 2016 or upon publication in the PA Bulletin and the remainder of the legislation would take effect in 30 days.

ANALYSIS: This legislation amends the Mechanics' Lien Law to alter mechanics' lien rights for subcontractors who performed work on an owner-occupied property if the owner paid the contractor in full and completes 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 General Services (DGS) establish an Internet based website to be known as the "State Construction Notices Directory." This website will have to be operational by December 31, 2016. However, if DGS cannot meet this deadline, the legislation permits DGS to delay the operational date by sending a notice to the Labor & Industry Committee Chairmen in the House and Senate.

The Directory will serve primarily as a central, statewide repository for owners to file "Construction Notices" which are: 1) Notice of Commencement; 2) Notice of Furnishing; 3) Notice of Completion; and 4) Notice of Nonpayment.

DGS will be required to publish a notice in the PA Bulletin, within 120 days of the Directory implementation, advising the public of plans for and existence of the Directory. DGS will have to take all reasonable measures to inform the general public of the Directory and its purpose.

The website will be funded by fees that owners will pay to file notices. Fees may not exceed the amount reasonably necessary to implement, operate, and maintain the directory. There will 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 will be an optional tool that owners of “searchable projects” may utilize to identify the field of subcontractors on their project. A “searchable project” is a construction project that costs more than \$1.5 million. A searchable project owner (or a contractor authorized through contractual agreement to do so) may file a Notice of Commencement on the Directory website prior to commencing any work on a project. The Notice of Commencement will include the following: 1) full name, address and email address of contractor; 2) full name and location of the searchable project; 3) the county in which the searchable project is located; 4) legal description of the property upon which the improvements are being made, including tax identification number of each parcel include in the searchable project; 5) full name, address and email address of the owner of record of the property; 6) full name, address and email address of a surety for the performance and payment bonds, if applicable; and 7) the unique identifying number that is assigned to the Notice of Commencement.

An owner that files a Notice of Commencement will have to conspicuously post a copy of the notice at the project site before physical work commences on the project and keep the notice posted for the duration of the project. If the owner receives a written notification that the notice is not posted, the owner will have 48 hours to repost. Contracts for searchable projects shall include a written notice that failure to file a Notice of Furnishing will result in loss of lien rights.

Notice of Furnishing Requirements for Subcontractors: If a Notice of Commencement has been properly filed on the Directory, a subcontractor will be required to serve a Notice of Furnishing online, within 45 days of first starting work/supplying materials, upon the owner in order to preserve lien rights for all work/materials supplied to a project.

If a subcontractor fails to substantially comply with the 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: A subcontractor will still 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 Notice of Completion which an owner can file with the Directory within 45 days of an actual completion of work to inform all those that have filed Notices of Furnishings 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 for informational purposes. The failure to file a Notice of Non-Payment by a subcontractor who has filed a Notice of Furnishing shall not inhibit their right to file a lien under the law.

Notice of Directory: The legislation requires that the Directory provide notification of the filing of a Notice of Commencement, Notice of Furnishing or Notice of Completion to a person who requests such notification. The person requesting such notice must: 1) provide an email address, mailing address, or telefax number, to where such notice must be sent; and 2) be responsible for the accuracy of the email address, mailing address, or telefax number.

Prohibitions/Civil Cause of Action: The legislation states that it is unlawful for an owner or owner's agent, a contractor or subcontractor, to suggest, request, encourage or require a subcontractor to not file a Notice of Furnishing in order to obtain work on a project. Violations will be graded as 2nd degree misdemeanors (maximum penalty is 2 years imprisonment and a maximum fine of \$5,000 fine).

Subcontractors will maintain the right to file a lien even if they did not properly file a Notice of Furnishing if it can be proved that the failure to comply with the filing requirement was due to the owner or contractor violating the prohibition stated above. In addition, aggrieved subcontractors will have the right to bring a civil cause of action if they were coerced into not filing a Notice of Furnishing. A court of competent jurisdiction may award a subcontractor actual damages arising from the violation and attorney fees/court costs.

The legislation prohibits abuse of the Directory by persons who file notices without a good faith reason to do so, with the intent to exact more payment than is due from an owner or other party, or to obtain an unjustified advantage/benefit. Abusers will be liable for actual damages or \$2,000, whichever is greater.

Applicability to Residential Buildings: The legislation states that the Notice of Commencement process applies to both commercial and residential work as long as the project exceeds \$1.5 million.

Applicability of Notice Provisions: The notice provisions of the legislation will take effect December 31, 2016, 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 General Services does not foresee the development of the State Construction Notices Directory having a cost as user fees would be charged. The department indicates that it will be necessary to hire one additional staff person to monitor and oversee the directory when implemented at a salary and benefit cost of \$81,000 per year. The department indicates that it remains unclear as to the length of the implementation phase of the directory. The hiring of the additional staffer would occur about half-way during the implementation phase. It is unlikely that any personnel costs will be incurred in FY2014-15.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: October 3, 2014

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