

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 473

PRINTER'S NO. 3893

AMOUNT

\$79,000

FUND

General Fund

DATE INTRODUCED

January 30, 2013

PRIME SPONSOR

Representative Killion

DESCRIPTION AND PURPOSE OF BILL

House Bill 473 amends the Mechanics' Lien Law to establish the State Construction Notices Directory.

The bill requires the Department of General Services to establish an internet website to be known as the State Construction Notices Directory to serve as a standardized system for filing construction notices and requires the directory to be operational by December 31, 2016.

Allows the department to establish fees for required notices filed by owners and for providing notice to third parties. Limits the aggregate amount of fees to the amount reasonably necessary to implement, operate and maintain the directory.

Requires the directory to make notices of commencement available for a searchable project in a job site specific format, provide copies of the filings of notices of furnishing to an owner or third party who files a notice of commencement, provide certified hard copy printing of electronic receipts for the filing of a notice of commencement, notice of furnishing or third part notice, list all notices of furnishing and notices of completion filed with respect to a particular notice of commencement, provide a verification process to allow persons filing required notices or requests for notices in the directory to confirm the proper indexing and linkage of their filings and, be primarily indexed by county Defines a searchable project as a project costing a minimum of \$1,500,000.

Requires certain contracts to include written notice that failure to file a notice of furnishing will result in the loss of lien rights.

Provides that prior to commencement of labor, work or the furnishing of materials for a searchable project that may give rise to a mechanics' lien, the owner or agent of the owner must file a notice of commencement with the directory. Requires the owner post a copy of the notice at the site of a searchable project before physical work commences. Stipulates that the owner and the contractor are to make reasonable efforts to ensure that the notice is made part of the contract documents.

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Requires a subcontractor to file a notice of furnishing if the subcontractor performs work or services or provides material in furtherance of a searchable project if a notice has been posted.

Provides for the contents of a notice of furnishing.

Permits a third party to file a notice of interest relating to a searchable project to indicate that the third party has provided goods or services for which payment is due.

Stipulates that a subcontractor that fails to substantially comply with the provisions of the act forfeits the right to file a lien claim.

Requires an owner to file a notice of completion within 45 days of the actual completion of work on a searchable project.

Requires the notice of completion to be transmitted via the directory to all subcontractors who have filed notices of furnishing and to third parties who have registered for the project.

Allows subcontractors or third parties who have not received full payment for their work, or for goods or services, to file a notice of nonpayment.

Stipulates that a court is not to use the filing of a notice of completion to determine the actual completion dates relating to limitation periods or warranty obligations.

Requires the directory to provide notification to a person who requests notification of the filing of a required notice for a searchable project. Requires the submission of certain information from those requesting notifications for a searchable project. Stipulates that the directory must fulfill notification requirements by sending the official notification to the e-mail address, mailing address or telefax number that the person provides.

Requires those filing notices with the directory to verify the accuracy of the information entered into the registry. Provides for the information that must accompany each notice or other document submitted to the directory.

Prohibits the actions of an individual to suggest, request, encourage or require a subcontractor to not file a notice of furnishing as a condition of the contract for work or the furnishing of materials for a searchable project. Grades the offense as a second degree misdemeanor. Provides a subcontractor with a civil cause of action.

Stipulates that a person abuses the directory if a person files a notice in the directory without a good faith reason to do so, with the intent to exact more payment than is due from the owner or other party or to obtain an unjustified advantage or benefit. Provides that a person who abuses the directory is liable for actual damages or \$2,000, whichever is greater.

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Notice provisions 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, however, it will be necessary to hire a one additional staff person to manage the program when implemented at a cost of \$79,000 per year.