



Am. H.B. 514

124th General Assembly
(As Passed by the House)

Reps. Seitz, Willamowski, Manning, Grendell, Schmidt, Schneider, Clancy, Niehaus, Lendrum, Salerno, Womer Benjamin, Distel, Setzer, Britton, Roman, Allen, Stapleton, Hagan, Kearns, Hoops, Husted, Buehrer, G. Smith, Flowers, Collier, Faber, Calvert, Williams, Barrett, Schaffer, Gilb

BILL SUMMARY

- Specifically provides that a subcontractor or material supplier need not serve a notice of furnishing to preserve lien rights for the period before a notice of commencement is recorded by the owner, part owner, or lessee of the real estate upon which improvements are made, or by a designee of any of them.
- Provides that a notice, affidavit, or other document required to be served under the Mechanics' Lien Law is considered served, whether or not service was made by the means specified under current law, and that service is complete on the date of receipt, if either the person served acknowledges receipt of, or it can be proved by a preponderance of evidence that the person being served actually received, the notice, affidavit, or other document.
- Expands the definition of "improvement" for purposes of the General Mechanics' Lien Law to include the excavation, cleanup, or removal of hazardous material or waste from real property.

CONTENT AND OPERATION

Background--General Mechanics' Lien Law

Under the General Mechanics' Lien Law (see **COMMENT 1**), prior to the performance of any labor or work or the furnishing of any *materials* for an *improvement* on real property that may give rise to a mechanics' lien under that Law, the *owner, part owner, or lessee* who contracts for the labor, work, or

materials must 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." The notice of commencement must contain, in affidavit form, all of the information specified in the law. The law also specifies the circumstances in which a notice of commencement is amended or considered as amended. If an owner, part owner, lessee, or designee fails to record a notice of commencement, no *subcontractor* or *materialman* who performs labor or work upon or furnishes material in furtherance of that improvement has to serve a notice of furnishing as described in the following paragraph in order to preserve the subcontractor's or materialman's lien rights. (R.C. 1311.04(A)(1), (B), and (R).) (See **COMMENT 2**, for definitions of italicized terms, and **COMMENT 3**.)

Generally, if any person has recorded a notice of commencement, a subcontractor or materialman who performs labor or work upon or furnishes material in furtherance of an improvement to real property and who wishes to preserve the subcontractor's or materialman's lien rights must serve a "notice of furnishing" upon the owner's, part owner's, or lessee's designee named in the notice of commencement or amended notice and upon the *original contractor* (see **COMMENT 2**) under the original contract pursuant to which the subcontractor or materialman 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. The notice of furnishing must be served at any time after the recording of the notice of commencement or amended notice but within 21 days after performing the first labor or work or furnishing the first materials or within the *extended time period* as described in the following paragraph and in **COMMENT 4**. No original contractor has to serve a notice of furnishing to preserve lien rights arising from a contract with an owner, part owner, or lessee. No materialman who is in direct privity of contract with an owner, part owner, or lessee has to serve a notice of furnishing upon the owner, part owner, or lessee or designee in order to preserve the materialman's lien rights. No subcontractor or materialman who is in direct privity of contract with the original contractor has to serve a notice of furnishing upon the original contractor in order to preserve the subcontractor's or materialman's lien rights. (R.C. 1311.05(A)--not in the bill.)

Service of notice of furnishing

Under existing law, if the owner, part owner, lessee, or designee fails to record the notice of commencement in accordance with the law as described in the second preceding paragraph, the time within which a subcontractor or materialman may serve a notice of furnishing as required under the law as described in the preceding paragraph is *extended until 21 days after the notice of commencement has been recorded* (R.C. 1311.04(I)).

The bill adds to existing law the provision that *a subcontractor or material supplier (gender neutralized term) need not serve a notice of furnishing to preserve lien rights for the period before the notice of commencement is recorded* (R.C. 1311.04(I)).

Service of notices, affidavits, or copies generally

Existing law

Except for the specific requirements in the law (R.C. 1311.11) for the delivery to a lienholder of a written notice to commence suit on the lien, any notice, affidavit, or other document required to be served under the Mechanics' Lien Law must be served by one of the following means (R.C. 1311.19(A)):

(1) By the sheriff of the county in which the person to be served resides or maintains the person's principal place of business, in one or more of the methods provided in the Ohio Rules of Civil Procedure. The sheriff may charge reasonable fees for that service.

(2) By certified or registered mail, overnight delivery service, hand delivery, or any other method that includes a written evidence of receipt;

(3) By the means provided in the General Corporation Law if the person is a corporation (see **COMMENT 5**).

For purposes of the Mechanics' Lien Law, service is complete upon *receipt by the party being served*, except that: (a) service upon a corporation is complete as described in **COMMENT 5**, and (b) for the purposes of the provisions in the General Mechanics' Lien Law and the Public Improvements Mechanics' Lien Law governing a subcontractor or materialman serving a notice of furnishing, if service of a notice of furnishing is made by certified mail, service is complete on the date of the mailing. If the service is attempted upon an owner, part owner, or lessee, or designee at the address contained in the notice of commencement and if the notice, affidavit, or other document is returned unclaimed or refused, service is complete when first attempted. (R.C. 1311.19(B).)

Operation of the bill

The bill adds another exception to the requirement that any notice, affidavit, or other document required to be served under the Mechanics' Lien Law must be served by one of the means described above in clauses (1), (2), and (3). Under the bill, a notice, affidavit, or other document required to be served under the Mechanics' Lien Law is considered served, whether or not it was served by the means described above, and service is complete on the date the notice, affidavit, or other document is received, if *either* of the following is true (R.C. 1311.19(C)):



(1) The person served acknowledges receipt of the notice, affidavit, or other document.

(2) It can be proved by a preponderance of evidence that the person being served actually received the notice, affidavit, or other document.

A notice, affidavit, or other document to which the above provision applies is presumed to have been received three days after the date of the mailing of the notice, affidavit, or other document, unless a written acknowledgement, receipt, or other evidence provides proof to the contrary (R.C. 1311.19(C)).

Definition of "improvement"

Under the existing General Mechanics' Lien Law, which governs liens of laborers, subcontractors, or material suppliers generally in improvements of real estate, "improvement" is defined to mean constructing, erecting, altering, repairing, demolishing, or removing any building or appurtenance thereto, fixture, bridge, or other structure, and any gas pipeline or well including, but not limited to, a well drilled or constructed for the production of oil or gas; the furnishing of tile for the drainage of any lot or land; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any shrubs, trees, plants, vines, small fruits, flowers, or nursery stock of any kind; and the grading or filling to establish a grade.

The bill expands the definition of "improvement" for purposes of the General Mechanics' Lien Law to include the excavation, cleanup, or removal of hazardous material or waste from real property. (R.C. 1311.01(J).)

Other changes

As used in the current General Mechanics' Lien Law and the Public Improvements Mechanics' Lien Law, "materialman" is defined as including any person by whom materials are furnished in furtherance of an improvement (R.C. 1311.01(B) and 1311.25(C)).

The bill provides that as used in those Laws, "materialman" or "material supplier" (added by the bill) includes any person by whom materials are furnished in furtherance of an improvement. It replaces "workman" with "worker" in the definitions of "laborer" (see **COMMENT 2**) under those Laws. (R.C. 1311.01(B) and (C) and 1311.25(C) and (D).) The bill replaces "materialman" with "material supplier" in the provisions of the General Mechanics' Lien Law pertaining to notices of commencement (R.C. 3711.04).

COMMENT

1. For purposes of this Analysis, "General Mechanics' Lien Law" refers to the provisions of R.C. 1311.01 to 1311.22, which govern liens of laborers, subcontractors, or material suppliers generally in improvements of real estate; and "Mechanics' Lien Law" refers to the provisions of R.C. Chapter 1311., which additionally covers other types of mechanics' liens such as for furnishing labor or materials for public improvements, railroad work, or aircraft; agricultural product liens; liens for the care of animals; and brokers' liens on commercial realty.

2. The General Mechanics' Lien Law defines the following terms as used in that Law (R.C. 1311.01):

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

(B) "Materialman" includes any person by whom any materials are furnished in furtherance of an improvement.

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

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

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

...

(I) "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 an improvement.

3. These provisions in the General Mechanics' Lien Law do not apply to any improvement made pursuant to a home construction contract defined as follows (R.C. 1311.04(O) and R.C. 1311.011(A)(1)--not in the bill):

(1) "Home construction contract" means a contract entered into between an original contractor and an owner, part owner, or lessee for the improvement of any single- or double-family dwelling or portion of the dwelling or a residential unit of any condominium property that has been submitted to the provisions of Chapter 5311. of the Revised Code; an addition to any land; or the improvement of driveways, sidewalks, swimming pools, porches, garages, carports, landscaping, fences, fallout shelters, siding, roofing, storm windows, awnings, and other improvements that are adjacent to single- or double-family dwellings or upon lands that are adjacent to single- or double-family dwellings or residential units of condominium property, if the dwelling, residential unit of condominium property, or land is used or is intended to be used as a personal residence by the owner, part owner, or lessee.

4. If the owner, part owner, lessee, or designee fails to serve the notice of commencement upon written request, the time within which a subcontractor or materialman may serve a notice of furnishing is extended until 21 days after the notice of commencement actually has been served to the subcontractor or materialman (R.C. 1311.04(J)).

5. R.C. 1701.07(H), not in the bill, provides that any process, notice, or demand required or permitted by statute to be served upon a corporation may be served upon the corporation by delivering a copy of it to its agent, if a natural person, or by delivering a copy of it at the address of its agent in Ohio, as the address appears upon the record in the office of the Secretary of State. If (1) the agent cannot be found, (2) the agent no longer has that address, or (3) the corporation has failed to maintain an agent as required by the General Corporation Law, and if in any such case the party desiring that the process, notice, or demand

be served, or the agent or representative of the party, shall have filed with the Secretary of State an affidavit stating that one of the foregoing conditions exists and stating the most recent address of the corporation that the party after diligent search has been able to ascertain, then service of process, notice, or demand upon the Secretary of State, as the agent of the corporation, may be initiated by delivering to the Secretary of State, or at the Secretary of State's office, quadruplicate copies of the process, notice, or demand and by paying a fee of \$5. The Secretary of State forthwith must give notice of the delivery to the corporation at its principal office as shown upon the record in the Secretary of State's office and at any different address shown on its last franchise tax report filed in Ohio, or to the corporation at any different address set forth in the above mentioned affidavit, and must forward to the corporation at those addresses, by certified mail, with request for return receipt, a copy of the process, notice, or demand; thereupon service upon the corporation is deemed to have been made.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-19-02	p. 1415
Reported, H. Civil and Commercial Law	04-24-02	pp. 1717-1718
Passed House (96-0)	05-15-02	p. 1769

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