

C O N S T R U C T I O N

A L E R T

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## NOTICE! PENDING CHANGES TO PENNSYLVANIA'S MECHANICS' LIEN LAW

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In order to promote full disclosure and identification of subcontractors (defined as both first and second tier subcontractors) who potentially might have a lien claim on a commercial construction project in Pennsylvania, State Representatives Thomas H. Killion, Mike Turzai, Ron Miller, and Mark Mustio have introduced House Bill No. 1602, proposing changes to Pennsylvania's Mechanics' Lien Law. The primary gist of the bill is to impose notice requirements on both project owners and subcontractors. The proposed notice requirements are comparable to those that have long-existed in the lien laws of other states.

If the Bill is passed in its current form, an owner desirous of "flushing out" potential subcontractor lien claimants would have the option of filing a "Notice of Commencement" with the Prothonotary of the Court of Common Pleas of the county in which the project is located. The Notice of Commencement would have to be filed with the Prothonotary and conspicuously posted at the project site prior to commencement of construction work. The owner would also be required to deliver a copy of the Notice of Commencement to the project's general contractor within seven days of filing of the Notice of Commencement with the Prothonotary. Should the owner fail to so deliver the notice to the general contractor, then the requirement for a subcontractor to file a "Notice of Furnishing" (as discussed below) in order to retain its lien rights would be voided.

The new law would require a general contractor who has been provided a Notice of Commencement by an owner to provide a copy of that notice to a subcontractor within 10 days of receipt of a written request for the same from the subcontractor. Failure to comply would subject the general contractor to liability for the costs expended by the subcontractor in obtaining the necessary information to enable it to provide a Notice of Furnishing. Similarly, first tier subcontractors provided with a Notice of Commencement would be required to respond to requests from second tier subcontractors.

If a Notice of Commencement was properly filed and posted by the project owner, a subcontractor, as a condition of retaining its lien rights, would be required to file a Notice of Furnishing and serve the same on the owner within 20 days of first performing work or within 20 days after being provided a copy of a Notice of Commencement. In addition to containing a general description of the work furnished by the subcontractor, the Notice of Furnishing would be required to caution the owner regarding its rights under the Mechanics' Lien Law in order to avoid the possibility of having to pay twice for the subcontract work.

The proposed modifications to the law do not change the requirement for a subcontractor who actually intends to file a lien claim to provide formal notice of such intent to the owner at least 30 days prior to filing the claim. Nor does the proposed new law affect an owner's right to extinguish potential subcontractor lien rights altogether by requiring the general contractor to post a payment bond for the project, thereby providing a remedy to an unpaid subcontractor in the form of a bond claim. ♦

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