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BILL



ANALYSIS

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Senate Bill 487 (as reported without amendment)
Sponsor: Senator Valde Garcia
Committee: Economic Development and Regulatory Reform

(as enrolled)

Date Completed: 5-15-07

RATIONALE

Under the Construction Lien Act, a contractor, subcontractor, supplier, or laborer has a lien on the interest of the owner or lessee of real property who contracts for an improvement to the property. In order to create and enforce the lien, the parties involved in the construction project must provide various notices, statements, and claims of lien. Some of the procedures differ if the property is residential, rather than commercial. Until 2006, the Act had not been significantly amended since it took effect in 1982. Public Acts 497 and 572 of 2006 made a number of amendments to update the statute and address concerns about the solvency of the Homeowner Construction Lien Recovery Fund (which pays claims of subcontractors, suppliers, and laborers, if an owner or lessee of residential property can show that he or she paid the contractor for services). Among other things, Public Act 572 added a requirement that an owner or lessee notify subcontractors, suppliers, and laborers upon receiving a sworn statement, which is a document that a contractor must give to the owner or lessee when requesting payment. The Act also added a provision that an owner or lessee may not accept a waiver of lien from a person other than the lien claimant without verifying the waiver. Apparently, there now is some confusion as to whether these provisions apply to commercial, as well as residential, property. It has been suggested that the provisions should be clearly limited to residential construction projects, in order to avoid imposing an unnecessary burden on those involved in commercial projects.

CONTENT

The bill would amend the Construction Lien Act to limit the following to residential structures:

- **Requirements that an owner or lessee notify subcontractors, suppliers, and laborers upon receiving a contractor's sworn statement and, upon request, give them a copy of the statement.**
- **A provision under which an owner or lessee may not rely on a waiver of lien provided by someone other than the lien claimant without verifying the waiver.**

Sworn Statement

The Act requires a contractor to provide a sworn statement to an owner or lessee when payment is due to the contractor from the owner or lessee, or the contractor requests payment from the owner or lessee, and when a demand for a sworn statement has been made by or on behalf of the owner or lessee. (A sworn statement is a notarized document showing every subcontractor, supplier, and laborer who provided labor and materials for the project.)

Upon receiving a sworn statement, an owner, lessee, or designee must give notice of its receipt to each subcontractor, supplier, or laborer who has provided a notice of furnishing or, if a notice of furnishing is excused under the Act, to each subcontractor, supplier, and laborer named in the sworn statement. If a subcontractor, supplier, or laborer who has provided a notice of furnishing or who is named in the

sworn statement requests a copy of the sworn statement, the owner, lessee, or designee must give the requester a copy within 10 business days.

Under the bill, the requirement to give notice of the receipt of a sworn statement would apply when an owner, lessee, or designee received a sworn statement regarding an improvement to a residential structure. Upon request, the owner, lessee, or designee would have to give a copy to a subcontractor, supplier, or laborer who was entitled to notice under these provisions.

The bill also would modify the language of the sworn statement in the Act to reflect these changes. In addition, this language would have to include a warning that an owner or lessee "shall not", rather than "may not", rely on the sworn statement to avoid the claim of a subcontractor, supplier, or laborer who has provided a notice of furnishing.

(A subcontractor or supplier must provide a notice of furnishing after furnishing the first labor or material. A laborer must provide a notice of furnishing when wages are due but not paid. The document must be given to the owner, lessee, or designee, and the contractor.)

Waiver of Lien

The Act requires a lien claimant who receives full payment for his or her contract to give the owner, lessee, or designee a full unconditional waiver of lien. Upon request, a lien claimant who receives partial payment must give the owner, lessee, or designee a partial unconditional waiver of lien for the amount received. A waiver of lien is effective when a person makes a payment relying on the waiver. (A waiver of lien is an agreement by a subcontractor, supplier, or laborer that he or she will not file a claim of lien against the property because he or she has been paid the amount indicated in the waiver.)

The Act prohibits an owner, lessee, or designee from relying on a full or partial unconditional or conditional waiver of lien provided by a person other than the lien claimant named in the waiver if the lien claimant has filed, or is excused from filing, a notice of furnishing, unless the owner, lessee, or designee has first verified the

authenticity of the lien waiver with the lien claimant.

Under the bill, this would apply if the improvement were provided to property that was a residential structure.

The bill would modify the language of the waivers in the Act to reflect this change.

MCL 570.1110 & 570.1115

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Construction Lien Act is designed to ensure that those who perform labor or supply material or equipment for a construction project receive proper payment. The Act also protects homeowners from having to pay twice for labor or materials or risk losing their home, if they already paid for contracted services. In a number of different ways, the recent amendments enhance the protections for all of the parties to a construction project. The requirement that an owner, lessee, or designee (e.g., a mortgage lender) notify subcontractors, suppliers, and laborers upon receiving a sworn statement lets these parties know that the contractor is requesting payment from the owner or lessee. They then may seek to recover from the contractor, rather than unnecessarily perfecting a lien (taking steps to enforce it) or suing the property owner for payment. Similarly, by requiring an owner, lessee, or designee to verify the authenticity of a waiver of lien received from someone other than the person named in it, the Act ensures that the proper party is paid and helps prevent litigation. Additionally, if a subcontractor, supplier, or laborer receives payment from the contractor, he or she will not make a claim from the Homeowner Construction Lien Recovery Fund.

Evidently, when these requirements were enacted in 2006, it was understood that they would apply to only residential property improvements, and not commercial projects as well. That limitation was not spelled out in the amendments, however. As a result, parties contracting for a commercial construction project now have an obligation

to comply with the requirements to give notice and verify waivers of lien, or they could face liability for failure to comply. Given the scope of commercial projects, compliance could be extremely burdensome. The bill would avoid this outcome by clarifying the language of the Act and limiting the requirements in question to residential structures.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.