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BILL ANALYSIS

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Senate Bill 487 (as introduced 5-9-07)

Sponsor: Senator Valde Garcia

Committee: Economic Development and Regulatory Reform

Date Completed: 5-9-07

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.**

(Under the Act, a contractor, subcontractor, supplier, or laborer has a construction 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.)

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 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.

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.

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

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt
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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.