

Legislative Analysis



CONSTRUCTION LIENS FOR ARCHITECTS, ENGINEERS, AND SURVEYORS

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Senate Bill 465 (H-1) as reported from House committee

Sponsor: Sen. Darwin L. Booher

House Committee: Financial Services

(Enacted as Public Act 367 of 2018)

Senate Committee: Banking and Financial Institutions

Complete to 10-5-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

Senate Bill 465 would amend the Construction Lien Act to establish procedures under which liens may be recorded for professional services provided by architects, engineers, or surveyors or their subcontractors. The liens would be effective regardless of whether there had been an actual physical improvement to the property.

FISCAL IMPACT:

Senate Bill 465 would not have a net fiscal impact on any unit of state or local government. Any increase in costs resulting from additional instrument recordings for design professionals would likely be sufficiently covered by recording fees charged for the recording by county registers of deeds.

DETAILED SUMMARY:

Under the Construction Lien Act, workers, contractors, subcontractors, and suppliers have a lien against property for improvements to which they provided work or materials. The lien is for the amount owed them for that work or those materials; it provides an incentive for property owners to see that subcontractors, workers, and suppliers are paid. In general, a construction lien becomes effective upon the first *actual physical improvement* to the property. The act provides conditions and procedures for recording, claiming, enforcing, vacating, and discharging the liens.

Actual physical improvement means the actual physical change in real property as a result of labor provided under contract by a contractor, subcontractor, or worker. The change must be readily visible, so that a person would see upon reasonable inspection that there has been an improvement. Work provided by architects, engineers, and surveyors is specifically excluded from the definition.

Senate Bill 465 would establish a construction lien for *design professionals* whose *professional services* related to the improvement of the property are often provided during the planning stages of a project, and whose work and services might be rendered in full before there is any *actual physical improvement* to the property at all.

Design professional would mean a licensed or registered architect, professional engineer, or professional surveyor or a corporation, partnership, or other legal entity that is authorized under the Occupational Code to engage in the practice of any of those professions.

Professional services would mean services customarily performed by or under the supervision of a design professional, such as, for instance, planning, programming, design, preparation of drawings and specifications, site investigation, surveying, and construction administration services.

Under the bill, a design professional who enters into a written contract to provide professional services related to the proposed or actual construction, alteration, repair, or removal of a structure or other improvement to real property could record a notice of the contract with the county register of deeds at any time after the contract is executed. A person who provides professional services under a written subcontract with a design professional could record a notice of the subcontract with the register of deeds, as long as the design professional has recorded a notice of the contract and the engagement of the subcontractor is approved in writing by the property owner.

Notices described above could be recorded regardless of whether the professional services, or the project to which they relate, were started or finished, but could not be recorded more than 90 days after the professional services were last performed. Notices would be valid for one year, but subsequent notices could be recorded with respect to a contract or subcontract. If an actual physical improvement were made to the property after a notice has been recorded as described above, the notice would only be effective from the date of the first actual physical improvement.

The bill would integrate these proposed new liens into the existing framework for claiming, enforcing, vacating, and discharging construction liens under the act. Because, unlike most construction liens, these new liens would take effect before any actual physical improvement, the bill would specify that a construction lien can arise either at the time of first actual physical improvement or at the time a notice is filed as described above. The bill would stipulate that claims of lien have equal priority regardless of whether they arose at the time of the first actual physical improvement or at the time a notice was filed. In several places where the current law uses the phrase “[before/after] the first actual physical improvement” as a marker of time regarding the status or priority of a lien, the bill would instead use the phrase “[before/after] the construction lien arises.”

Repealer

When the Construction Lien Act took effect on January 1, 1982, it replaced and repealed Public Act 179 of 1891, which had governed construction liens up to that time. Section 301 of the Construction Lien Act contains now-outdated provisions that facilitated the transition from one act to the other by making clear which act applied to construction projects undertaken or underway in 1982. The bill would repeal this section.

MCL 570.1104 et al.

HOUSE COMMITTEE ACTION:

The House Committee on Financial Services reported an H-1 substitute for the bill. The substitute changed the description of a person with whom a design professional could enter into a contract from “a person acting for, on behalf of, or with the consent of the owner” to “a person acting as an agent of the owner.”

POSITIONS:

Representatives of the following entities testified in support of the bill (9-5-18):

Abonmarche Consultants
American Council of Engineering Companies
Michigan Society of Professional Surveyors

The following entities indicated support for the bill (9-15-18):

American Institute of Architects
Michigan Society of Professional Engineers

The following entities indicated a neutral position regarding the bill:

Building Owners and Managers (9-26-18)
Michigan Bankers Association (10-1-18)

Representatives of Redico testified in opposition to the bill. (9-15-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.