



## HOUSE COMMITTEE ON APPROPRIATIONS

# FISCAL NOTE

HOUSE BILL NO. 1602

PRINTERS NO. 3289

PRIME SPONSOR: Killion

### COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund	\$0	See Fiscal Impact

**SUMMARY:** Amends the Mechanics' Lien Law (Act 497 of 1963). This legislation would take effect in 60 days.

**ANALYSIS:** This legislation amends the Mechanics' Lien Law to eliminate mechanics' lien rights for subcontractors who performed work on an owner-occupied residential property if the owner paid the contractor in full and creates a "Notice of Commencement" process whereby owners can identify subcontractors working on their project.

**Loss of Subcontractors Rights to File Liens on Certain Residential Properties:** The legislation amends the law to state that subcontractors will lose their lien rights with respect to an improvement done to an owner-occupied residential property if the owner or tenant paid the full contract price to the contractor. The law is also amended to state that mechanics' liens on residential properties shall be discharged when the owner or tenant has paid the full contract price to a contractor, or the lien shall be reduced to the amount of unpaid contract price owed by the owner or tenant to the contractor.

This legislation states that the refinance or modification of a purchase money mortgage or open-end mortgage is third on the priority list that has priority over mechanics' liens.

**Creation of State Construction Notices Directory:** The legislation requires that the Department of Labor & Industry establish an internet website to be known as the "State Construction Notices Directory" by July 1, 2013. However, if the department could not meet this deadline, the legislation permits the department to delay the operational date by sending notice to the Labor & Industry Committee Chairmen in the House and Senate. The department could contract with a third party vendor to create, and administer, the Internet Website.

The directory would serve primarily as a central, statewide repository for owners to file Notices of Commencement (NOC), and for contractors and subcontractors to readily locate such notices. The Department would be required to publish notice in the Pennsylvania Bulletin, when appropriate, advising the public of plans for, and existence of the directory. The department would have to take all reasonable measures to inform the general public of directory and its purpose. The website could be funded by fees that owners would pay to file NOCs. There would be no fee charged to subcontractors to access and use the site.

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**Notice of Commencement Requirements:** The legislation establishes a Notice of Commencement process that would be an optional tool that owners of projects could utilize to identify the field of subcontractors on their project. Under the legislation, an owner could file a NOC on the State Construction Notices Directory website prior to commencing any work on a project. The legislation details what items need to be on the NOC.

An owner that files a NOC would have to conspicuously post a copy of the notice at the project site at the time physical work commences on the project. The owner would be responsible for keeping the notice posted for the duration of the project. If the owner received written notification that the notice was not posted, the owner would have 48 hours to repost.

**Notice of Furnishing Requirements for Subcontractors:** If an NOC has been properly filed on the State Construction Notices Directory, a subcontractor would be required to serve a Notice of Furnishing, within 20 days of first starting work/ supplying materials, upon the owner in order to preserve lien rights for all work/ materials supplied to a project. A notice of furnishing delivered outside the 20 days window would only reserve the right to a lien for services/ materials furnished within the 20 day period before the date of the notice and thereafter.

The Notice of Furnishing would have to be filed either by accessing State Construction Notices Directory and filing online, or by certified mail to the owner's address, or personally delivered. If a subcontractor fails to comply with filing a notice of furnishing in the proper time frames, such subcontractor shall be deemed to have forfeited its right to file a mechanics' lien.

**FISCAL IMPACT:** The Department of Labor & Industry indicates that they currently have no role with the Mechanics' Lien Law of 1963 and cannot predict the cost of the State Construction Notices Directory at this point. It is important to note that any costs incurred to administer the Directory could be offset by filing fees on owners assessed by the Department. The remainder of the legislation would have no adverse fiscal impact on Commonwealth funds.

The State of Utah had a State Construction Registry implemented in 2005 and it was estimated that their startup costs for a statewide directory would be between \$275,000 and \$300,000, which was mostly personnel expenses. However, the State of Utah chose to utilize a third party vendor for the project. The vendor covered the entire cost of the registry without charging the state in exchange for assessing transaction fees.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** March 28, 2012

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*