

ARIZONA HOUSE OF REPRESENTATIVES

MEMO

COMMERCE COMMITTEE

**To: Members of the Joint Legislative
Mechanics' and Materialmen's Lien Law Study Committee**
From: Diana O'Dell, Research Analyst [542-3745]
Subject: Final Report of Committee Recommendations
Date: February 12, 1998

Attached is a copy of the final report of the Joint Legislative Mechanics' and Materialmen's Lien Law Study Committee. Copies of the report have been distributed to the following individuals and state agencies:

GOVERNOR OF ARIZONA
Honorable Jane Dee Hull

PRESIDENT OF THE SENATE
Senator Brenda Burns

SPEAKER OF THE HOUSE
Representative Jeff Grosco

COMMITTEE MEMBERS

Senator John Wettaw, Co-Chair
Senator Chris Cumiskey
Senator David Petersen

Representative Dean Cooley, Co-Chair
Representative Linda Aguirre
Representative Tom Horne

Michael Goldwater, Registrar of Contractors
Diane Dunwoody, Tanner Cos./United Metro
Jerry Barret, Ward, Keenan and Barret
Ron Carmichael, Carmichael and Powell
Richard Cohen, Cohen Contracting
Patricia Ihnat, Fidelity National Title
David Martin, Associated General Contractors

Donna Barnes, State Savings Bank
Arthur Brooks, Brooks, Hersey Assoc. Inc.
Vicki Canen, Van Rylin Associates
Patrick Downey, Hardison Downey
Dawn Kough, TL Steimel Associates
Craig Steele, Schuck & Sons Construction

SENATE STAFF

Brian Townsend, Senate Staff
Senate Majority Staff
Minority Staff

HOUSE STAFF

Diana O'Dell, House Staff
House Majority Staff
Minority Staff

OTHER

Secretary of the Senate, Chief Clerk's Office, House Research Librarian, Library and Archives

**JOINT LEGISLATIVE
MECHANICS' AND MATERIALMEN'S LIEN LAW
STUDY COMMITTEE**

Final Report

I. Establishment

The Joint Legislative Mechanics' and Materialmen's Lien Law Study Committee was established by Laws 1997, Chapter 24; House Bill 2414.

II. Purpose

The enabling legislation required the 19-member committee to review the current lien laws and their effectiveness to ensure payment to employees, materialmen, contractors and other persons who provide construction services, labor and materials to construction projects. In addition, the purpose clause outlined the construction industry's vital importance to the Arizona economy as follows: employing 125,000 people; generating an annual payroll of \$3.25 billion; providing \$320 million in annual state/use taxes; providing \$50 million in city and county annual sales/use taxes.

III. Report

A report of the final recommendations shall be submitted to the Legislature on or before December 15, 1997.

IV. Membership

The Committee consisted of the following members:

Legislative Members:

Representative Dean Cooley, Co-chair
Representative Linda Aguirre
Representative Tom Horne

Senator John Wettaw, Co-chair
Senator Chris Cummiskey
Senator David Petersen

Others:

Michael Goldwater, Registrar of Contractors
Diane Dunwoody, Tanner Cos./United Metro
Jerry Barret, Ward, Keenan and Barret
Ron Carmichael, Carmichael and Powell
Richard Cohen, Cohen Contracting
Patricia Ihnat, Fidelity National Title
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V. *Meetings*

The Joint Legislative Mechanics' and Materialmen's Lien Law Study Committee held five public hearings to discuss specific issues and receive public testimony.

The initial meeting on September 25, 1997, consisted of a staff overview and explanation of current law with regard to lien rights for those involved in the construction industry. A short synopsis of other states' lien laws was also provided to members.

Representatives of the various specialties within the industry outlined their objections to the various provisions of current law, and provided rationale for necessary changes. Representative Cooley requested that committee members submit their specific concerns to his office so that a master list could be compiled for discussion purposes. In addition, Co-chair Cooley suggested that members provide draft amendment language to the current provisions of law that would address their issues and concerns, if possible.

A master list of 14 proposed recommendations within various sections of the lien statutes was compiled by staff, and reviewed at the October 21, November 6, and December 4 meetings. In addition, Richard J. Wittbrodt, Esq., a partner in the California law firm of Gibbs, Locher & Acret, presented information on the "*stop notice*," which has served as an additional and unique remedy that is utilized by the construction industry in California. Members exchanged ideas and discussed the ramifications of the stop notice and the other proposals suggested by members.

The last hearing on December 17, 1997, culminated in the final recommendations for legislation. Specifically, the recommendations included the following:

- ▶ Eliminate the requirement for a person who furnishes professional services to have a *written* agreement with either the owner of the property or with an architect, engineer or contractor who has a written agreement with the owner, in order to enforce lien rights.
- ▶ Modify the provisions of law relating to "*commencement of construction*" to allow registered professionals to foreclose on liens when their goods or services have enhanced the value of the property, even though work may never actually commence on the project site. Address the issue of "*improvements*" to the site prior to commencing construction.
- ▶ Establish separate priority for individual dwellings within a project or subdivision that are being constructed for separate and individual sale.
- ▶ Require the notice and claim of lien to include the claimant/lienor's license type and number, or a statement that the person is exempt from licensure.
- ▶ Modify the "*notice of completion*" requirements and time frames.
- ▶ Eliminate any reference to the timing or dating of the payment bond or execution of the contract.
- ▶ Authorize the use of the "*Stop Notice*" - a separate and unique lien measure similar to the California model.

All minutes and attachments of the committee hearings may be obtained from the Chief Clerk's Office.

Prepared by: Diana O'Dell
Research Analyst, House Commerce Committee
Date: December 31, 1997