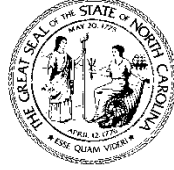


# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



April 7, 2014

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2014 Regular Session of the 2013 General Assembly. This report was prepared by the Legislative Research Commission's House Committee on Mechanics Liens and Leasehold Improvements, pursuant to G.S. 120-30.17(1).

---

Representative Sarah Stevens  
Co-Chair

---

Representative Dean Arp  
Co-Chair

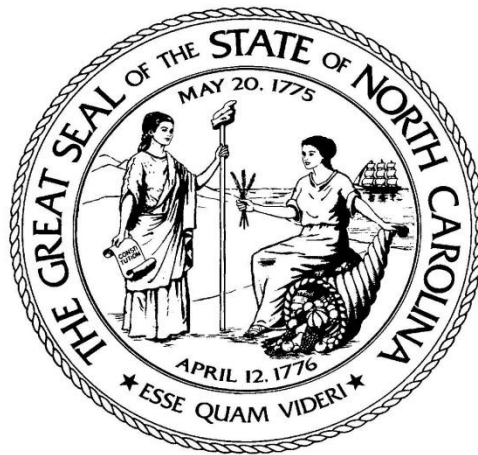
House Committee on Mechanics Liens and Leasehold Improvements  
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION

**HOUSE COMMITTEE ON MECHANICS  
LIENS AND LEASEHOLD  
IMPROVEMENTS**

**NORTH CAROLINA GENERAL ASSEMBLY**



**REPORT TO THE  
2014 SESSION  
of the  
2013 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

**APRIL 2014**

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## TRANSMITTAL LETTER

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April 7, 2014

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TO THE MEMBERS OF THE 2014 REGULAR SESSION  
OF THE 2013 GENERAL ASSEMBLY

**The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2014 Regular Session of the 2013 General Assembly. The report was prepared by the Legislative Research Commission's House Committee on Mechanics Liens and Leasehold Improvements, pursuant to G.S. 120-30.17(1).**

Respectfully submitted,

---

Senator Thomas M. Apodaca

---

Representative Timothy K. Moore

Co-Chairs  
Legislative Research Commission

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# LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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**2013 – 2014**

Senator Thomas M. Apodaca  
Co-Chair

Representative Timothy K. Moore  
Co-Chair

Senator Dan Blue  
Senator Harry Brown  
Senator Martin L. Nesbitt, Jr.

Representative John M. Blust  
Representative Justin P. Burr  
Representative Becky Carney  
Representative Mike D. Hager

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# PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner." (G.S. 120-30.17(1))

The Legislative Research Commission authorized the House study of **Mechanics Liens and Leasehold Improvements**, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative Sarah Stevens and Representative Dean Arp, Co-Chairs of the Committee. The full membership of the Committee is listed under [Committee Membership](#). A Committee notebook containing the Committee minutes and all information presented to the Committee will be filed in the Legislative Library by the end of the **2013-2014** biennium.

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# COMMITTEE PROCEEDINGS

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The Legislative Research Commission's House Committee on Mechanics Liens and Leasehold Improvements met four times after the 2013 Regular Session. The Committee's Charge can be found [here](#). The electronic documents accompanying the presentations can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

## January 21, 2014

The first meeting was held on Tuesday, January 21, 2014, at 10:00 AM in Room 415 of the Legislative Office Building. Committee Counsel Bill Patterson relayed the Committee Charge to the Committee.

Next, the Committee received a presentation by David Ferrell, Counsel to the North Carolina Land Title Association (NCLTA), on the current status of the LiensNC Web site, and its current capability to receive a notice of cancellation of a potential lien claimant's notice once it has been paid in full.

Committee Counsel Shelly DeAdder presented the Committee with a summary of the current law pertaining to liens on leasehold interests, with a focus on an appellate court decision, *Pete Wall Plumbing Co., Inc. v. Sandra Anderson Builders, Inc.*, 215 N.C. App. 220, 721 S.E.2d 663 (2011).

Next, the Committee heard presentations from the following persons speaking in favor of amendments to G.S. 44A-7 and 44A-9:

- Henry W. Jones, Jr., counsel to Carolinas Electrical Contractors Association and NC Association of Plumbing & Mechanical Contractors, Raleigh
- Jeff Voss, President, Jeff's Plumbing & Repair, Inc., Boone
- Rick Whitaker, President, Brown's Brothers Plumbing & Heating Company, Inc., Durham

The presenters favored amendments that would do the following:

- Deem improvements authorized by the owner of a leasehold interest in real property or his agent to be improvements authorized by the record owner of the real property; and
- Extend a lien claim for improvements to leasehold real property authorized by the owner of a leasehold interest or his agent to the fee simple interest of the record owner of the real property.

Co-Chair Stevens told the Committee that the NC REALTORS were not able to attend this meeting because of a schedule conflict but would be given the opportunity to make a presentation in opposition to this proposal at the Committee's next meeting, together with any other stakeholders wishing to be heard.

Next, Mr. Patterson reported to the Committee that Staff had received no requests from anyone seeking the opportunity to be heard on the issue of whether the current lien laws should be changed to require persons who have previously given notice to a lien agent to cancel that notice once they have been paid in full. Co-Chair Stevens told the Committee that anyone desiring to be heard on that issue would have the opportunity to do so at the Committee's second meeting.

### **February 3, 2014**

The second meeting was held on Monday, February 3, 2014, at 1:00 PM in Room 415 of the Legislative Office Building. Presiding Co-Chair Arp recognized the following persons to present their positions on the proposal to strengthen lien rights arising from leasehold improvements:

- Nathan Batts, Senior Vice President and Counsel, North Carolina Bankers Association, Raleigh
- John Linderman, Managing Director, Avison Young, Raleigh

Speaking on behalf of the North Carolina Bankers Association, Mr. Batts expressed concerns about broadening the scope of agency and stated that doing so would have a chilling effect on commercial leasing given the large amount of money that is typically involved when a tenant renovates a commercial property for a specific use.

Speaking as a commercial property manager, Mr. Linderman told the Committee that no change is needed to the current laws. Mr. Linderman stressed that contractors who make improvements to leased commercial property have a choice whether or not to assume the risk of the tenant not paying them, and this is a business decision that each contractor must make in deciding whether or not to perform such work.

The following individuals presented on a proposal to require notice of payment in full by potential lien claimants on the LiensNC Web site:

- Nellie Shipley, Partner, Womble Carlyle Sandridge & Rice, LLP, Raleigh
- Jay Stem, Executive Director, North Carolina Aggregates Association, Raleigh
- William L. Arent P.E., Executive Vice President, The Carolinas Ready Mixed Concrete Association, Charlotte

Ms. Shipley supported having such a requirement but did not advocate for the imposition of a penalty on a contractor or subcontractor who fails to do so.

At the request of Co-Chair Arp, David Ferrell spoke to the Committee on behalf of the NCLTA and said that the LiensNC system has a feature that allows the person who files the notice of potential lien claimant to go back into the system and provide notice that he has been paid in full. It is a feature that is not currently online but could be activated; however, it will take some time to iron out some concerns with the software.

Mr. Stem spoke in opposition of any legislation that would require a contractor or subcontractor to file a notice of payment in full as it would impose an additional responsibility on these individuals, many of whom operate out of the their trucks and do not have easy access to computers. Echoing many of Mr. Stem's objections, Mr. Arent claimed that the system is working well in its current form and that adding this requirement would increase the paperwork and manpower of the contractors and subcontractors with no apparent benefit to them.

### **March 7, 2014**

The third meeting was held on Friday, March 7, 2014, at 1:00 PM in Room 415 of the Legislative Office Building. Committee Counsel Bill Patterson explained the draft legislation before the Committee:

Section 1 of the bill draft would add a new section 44A-8.1 to Chapter 44A of the General Statutes to codify the existing common law rule that a tenant who orders improvements to the leased real property is not deemed to be acting as the agent of the landlord with respect to the improvements simply because of the landlord-tenant relationship. Section 1 would also clarify that a contractor seeking to enforce a claim of lien for improvements to the leased real property may offer the terms of any lease or other agreement between a landowner and the tenant to establish that the improvements were ordered by the tenant as agent for the landowner or that the improvements were made pursuant to a joint venture or other partnership between the landowner and the tenant.

Section 2 of the bill adds three new subsections to G.S. 44A-26 (payment and performance bond requirements for public construction projects) intended to prevent the use of contractual arrangements to evade Article 3 bond requirements:

- New subsection (c) makes lease or contract provisions that exempt projects from this section's bond requirements void as against public policy.
- New subsection (d) is designed to prevent a public contracting body from evading bond requirements by leasing the property to a lessee and requiring the lessee to contract with the contractors, instead of the public body contracting directly with the contractors itself. If the bond requirements would have applied to a direct contracting arrangement, then the lessee required to carry out that responsibility must also require bonds from the contractors.
- New subsection (e) provides that new subsections (c) and (d) do not apply to a project that falls under the public-private partnership requirements of G.S. 143-128.1C.

Section 3 of the bill draft adds a new section to Chapter 42 dealing with landlord-tenant law and invalidates any lease provision that terminates the lease upon the filing of a mechanics and laborer's lien against the property arising from improvements to the leased premises made with the implied or express consent of the lessor. This change would preserve the contractor's right to enforce the lien against the tenant's leasehold interest, which would be the only lien right available to the contractor if he or she is unable to prove that the tenant acted as the landowner's agent in ordering the improvements.

Co-Chair Stevens allowed feedback from the various stakeholders present at the meeting. Some individuals spoke in favor of the bill as a whole, while others opposed either Section 1 or Section 3. There was no opposition to Section 2.

Additional stakeholder comments were provided via presentations from the following:

- Brian Schoolman, Safran Law Offices, Raleigh (American Subcontractors Association of the Carolinas)
- Edward McNaughton, McNaughton and Associates, PLLC, Raleigh (NC Subcontractors Alliance, Inc.)
- Cady Thomas, North Carolina Association of REALTORS, Raleigh
- Nick Long, Legislative Chair, NC Land Title Association, Raleigh
- Connie Wilson, Connie Wilson Consulting, Raleigh (Carolinas Ready Mixed Concrete Association)
- Larry Adams, Southern Building Material Association, Inc., Charlotte
- Mac Boxley, Boxley Bolton Garber & Haywood, Raleigh (NC Aggregates)
- Allison Cooper, Bailey Dixon, Raleigh (National Association of Credit Managers)

Co-Chair Stevens stated that because there was not a consensus on Sections 1 and 3 of the bill draft, stakeholders would have the opportunity to meet with Committee Counsel to discuss desired revisions to those sections. She further stated that if no agreement could be reached, those two sections would be included in the final report for Committee approval as drafted.

Brian Schoolman presented in favor of the proposed amendments submitted previously by Henry Jones to address the leasehold lien issue by defining "owner" in G.S. 44A-7(6) to include any person acting for, on behalf of, or with the consent of the owner, and to provide a mechanism by which a contractor contracting with a lessee could serve the fee simple owner with a Notice of Potential Lien Claimant, and, if the owner did not serve a Notice of Nonresponsibility within a prescribed time, the contractor's lien would extend to the fee simple interest of the owner. Co-Chair Stevens polled the Committee, and there was not sufficient support to include these proposals in any draft legislation recommended by the Committee.

Nick Long presented proposals of the NCLTA for amendments to G.S. 44A-11.1 and G.S. 44A-1.1. Technical changes to the requirements for the notice to lien agent form

were unopposed. Other changes more substantive in nature engendered substantial opposition from stakeholders representing contractors. Co-Chair Stevens recommended that the stakeholders meet to determine whether or not their differences could be resolved and indicated that the Committee would not take up matters left unresolved after such meeting.

#### **April 7, 2014**

The final meeting was held on Monday, April 7, 2014, at 1:00 PM in Room 415 of the Legislative Office Building. Committee Counsel Bill Patterson reported to the Committee the results of the stakeholders meeting held to discuss the draft bill, and the changes to the proposed legislation that were made as a result of that meeting, with no objection by those attending. The Committee approved the final report.

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## FINDINGS AND RECOMMENDATIONS

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Based on its investigation of the issues brought before it, the Committee makes the following findings and recommendations to the 2014 Regular Session of the 2013 General Assembly:

1. Under current North Carolina law, and the law of most if not all other states, the interest in real property acquired by a contractor who enforces a mechanics and laborer's lien is no greater than the interest owned by the person with whom the lienholder contracted for the work. If a lienholder contracts with the fee simple owner, the lien extends to the fee simple interest. If a lienholder contracts only with a lessee, then the lien extends only to the leasehold interest.
2. However, current State law also permits a contractor who contracted with a lessee to recover from the owner of the real property if the facts support a finding that the lessee was acting as the owner's agent in ordering the improvements.
3. Contractors presenting to the Committee indicated that the lien against the leasehold estate does not effectively secure payment for their work in the event that the lessee does not pay.
4. In some cases, lease contracts provide that the lease is terminated in the event that a mechanics lien is filed for improvements made to the leased premises. The Committee finds that such contract provisions, if enforced, would negate the lien rights of contractors making improvements to the leased premises under a contract with the lessee, contrary to the public policy expressed in Article 2 of Chapter 44A of the General Statutes.
5. In a recent appellate case, *Pete Wall Plumbing Co., Inc. v. Sandra Anderson Builders, Inc.*, 215 N.C. App. 220, 721 S.E.2d 663 (2011), the North Carolina Court of Appeals decided an appeal involving a public contracting body that had leased the land to a lessee who was responsible for developing the project. The developer in turn subleased each lot on the tract to the builder who constructed single family dwellings for sale. Upon the sale of each improved lot, the leases automatically terminated. In addition, the leases provided that they would automatically terminate in the event that a lien were to be asserted against the leased property under Article 2 of Chapter 44A. The contractor was not paid by the developer and attempted to enforce a lien against the land. The Court of Appeals, applying established common law principles, held that the contractor's interest was no greater than that of the party with whom it had contracted, which was the developer. The developer's interest in the land was



a leasehold interest, which automatically terminated upon the sale of each house. As a consequence, there was no interest upon which the contractor's lien could be enforced. In his concurring opinion, Judge Steelman recommended legislative action to address this situation.

6. The Committee finds that there is a need for legislative action to provide greater protection to contractors who have contracted only with the lessee under circumstances involving a complex sequence of transactions structured in a way that prevents the enforcement of a mechanics lien against the property under Article 2 of Chapter 44A while simultaneously circumventing the payment bond requirements otherwise applicable to public projects under Article 3.
7. For private construction projects subject to a contractor's Article 2 lien rights, the identity of the owner of the improved real property can be ascertained from a search of the records of the register of deeds. This information is ordinarily available 24/7 using the register's online database. Consequently, a contractor has the ability to determine whether it is dealing with the owner of the property to be improved before taking on the project.
8. If the improvements are being requested by a lessee, the contractor must decide whether to do the work without requiring the landowner to guarantee payment or without requiring a deposit from the lessee.
9. If the lessee is unwilling or unable to provide a deposit, and the landowner does not guarantee payment either because it is unwilling to do so or because the circumstances are such that the requested work must be done before the landowner can be contacted (as, for example, in the case of emergency repairs), the contractor must make a business decision whether the risk of nonpayment by the lessee is too great to perform the work without such additional assurance of payment.
10. Legislative proposals to address this problem by making the lessee the agent of the landlord in all cases would expose owners to the risk of having to pay for work to which the owner did not agree and of which the owner had no knowledge. The implications for the leasing industry of such a change could be far-reaching, and it could lead to significant increases in the rental rates as the risk of liability for a tenant's improvements is factored into leasing decisions.
11. There is no consensus among the stakeholders regarding the proposal to require a potential lien claimant to notify the lien agent when it has received payment in full. Additional time is needed to attempt to reach consensus on this requirement and on what penalty, if any, would result from failure to comply with the requirement. Additional time is also needed for updates to the

LiensNC Web site's software to prepare for implementation of any such requirement.

On the basis of the information presented to the Committee and its findings, as stated above, the Committee makes the following recommendations:

1. The Committee recommends that a new G.S. 44A-8.1 be enacted, as shown in the enclosed Bill Draft 2013-MNz-15A, to codify the current common law under which the landlord-tenant relationship does not automatically make a tenant the agent of the landlord for tenant-ordered improvements, but which permits a contractor to enforce a lien against the fee simple interest of the owner by proving that the tenant was acting as the owner's agent in ordering the improvements.
2. The Committee recommends preventing the contractual circumvention of payment bond requirements for public projects by amending G.S. 44A-26, as shown in the enclosed Bill Draft 2013-MNz-15B, in order to address the problem that was highlighted in the *Pete Wall Plumbing* case.
3. The Committee recommends making lease provisions terminating the lease upon the filing of a mechanics lien for improvements to the leased property ordered by the lessee void as against public policy by enacting a new G.S. 42-3.1, as shown in the enclosed Bill Draft 2013-MNz-15C, in order to provide greater protection to persons who make improvements to leased real property under a contract with a lessee.
4. The Committee recommends clarifying the requirements for notices to lien agents by amending G.S. 44A-11.1(a) and G.S. 44A-11.2(i) and (j) as shown on the enclosed Bill Draft 2013-MNz-15D.
5. The Committee recommends further study on requiring a potential lien claimant to provide notice of payment in full on the LienNC Web site.

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## COMMITTEE MEMBERSHIP

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2013-2014

**Speaker of the House of Representatives Appointments:**

Representative Sarah Stevens, Co-Chair  
Representative Dean Arp, Co-Chair

Representative Hugh Blackwell  
Representative Mark Brody  
Representative Richard Catlin  
Representative N. Leo Daughtry  
Representative Duane Hall  
Representative Susi Hamilton  
Representative Darren Jackson  
Representative Jacqueline Schaffer  
Representative Phillip Shepard

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## COMMITTEE CHARGE

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**Mechanics Liens and Leasehold Improvements** - The LRC's House Committee on Mechanics Liens and Leasehold Improvements shall study the need to modify existing laws to better protect the rights of contractors, subcontractors, and suppliers to be paid for the furnishing of labor, materials, rental equipment, and/or professional design or surveying services under a contract with the tenant who holds a leasehold interest in the improved real property.

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## STATUTORY AUTHORITY

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### NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

#### **Legislative Research Commission.**

##### **§ 120-30.17. Powers and duties.**

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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## LEGISLATIVE PROPOSALS

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

BILL DRAFT 2013-MNz-15A [v.3] (02/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
3/20/2014 5:06:41 PM

Short Title: Mechanics Liens - Tenant as Owner's Agent. (Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO LIENS ARISING FROM  
LEASEHOLD IMPROVEMENTS UNDER ARTICLE 2 OF CHAPTER 44A OF  
THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Part 1 of Article 2 of Chapter 44A of the General Statutes is amended by adding a new section to read:

**"§ 44A-8.1. Tenant or subtenant as agent for landowner.**

(a) The relationship of landlord and tenant does not by itself cause a tenant who orders improvements to real property leased by the tenant to be an agent of the landlord with respect to the improvements.

(b) A contractor or subcontractor seeking to claim or enforce a lien under this Article may nevertheless use the terms of a lease or other agreement between a landowner and a tenant, or any other evidence permitted by law, to establish that the tenant was acting as the landowner's agent in ordering the improvements. For purposes of this subsection, "tenant" includes subtenants.

(c) Nothing in this section is intended to alter or otherwise affect the law of this State regarding principals and agents."

**SECTION 2.** This act becomes effective October 1, 2014, and applies to actions to enforce a claim of lien or a claim of lien on funds filed on or after that date.

21

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

BILL DRAFT 2013-MNz-15B [v.5] (02/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
3/12/2014 10:31:06 AM

Short Title: Mechanics Liens - Leased Public Property. (Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION PROVIDED TO PERSONS MAKING  
IMPROVEMENTS TO LEASED REAL PROPERTY UNDER ARTICLE 3 OF  
CHAPTER 44A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-26 reads as rewritten:

**"§ 44A-26. Bonds required.**

(a) When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000); provided that, for State departments, State agencies, and The University of North Carolina and its constituent institutions, a performance and payment bond is required in accordance with this subsection if the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars (\$500,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract.



Appendix D

1     (c) No lease or other contract provision shall be effective to exempt, from the  
2 requirements of this Article, a project otherwise subject to the requirements of  
3 subsection (a) of this section, and any contract provision that purports to do so is void  
4 and unenforceable as against public policy.

5     (d) A person that leases real property from a contracting body shall require  
6 performance and payment bonds meeting the requirements of subdivisions (a)(1) and  
7 (a)(2) of this section for construction, reconstruction, alteration, or repair of any public  
8 building or public work on the leased real property if all of the following apply:

9             (1) The contracting body requires the lessee to construct, reconstruct,  
10             alter, or repair any public building or public work on the leased real  
11             property.

12             (2) This Article would require the contracting body to require performance  
13             and payment bonds from contractors or construction managers if the  
14             contracting body had entered into a construction contract for the work  
15             required of the lessee.

16     (e) Subsections (c) and (d) of this section do not apply to public-private partnership  
17 construction contracts that are subject to G.S. 143-128.1C."

18     **SECTION 2.** This act becomes effective October 1, 2014, and applies to  
19 leases or other contracts entered into on or after that date.  
20

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

BILL DRAFT 2013-MNz-15C [v.2] (02/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
3/13/2014 3:51:26 PM

Short Title: Mechanics Liens - Certain Lease Terms Void. (Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PREVENT THE CONTRACTUAL CIRCUMVENTION OF  
MECHANICS LIEN RIGHTS ARISING FROM LEASEHOLD IMPROVEMENTS  
UNDER ARTICLE 2 OF CHAPTER 44A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 42 of the General Statutes is amended by  
adding a new section to read:

**"§ 42-3.1. Certain lease provisions void.**

Any provision in a lease or other contract terminating or forfeiting the lease term in  
the event that a lien is filed against the leased premises pursuant to Article 2 of Chapter  
44A of the General Statutes shall be void as against public policy and unenforceable as  
applied to any lien arising from improvements to leased premises not subject to the  
North Carolina Residential Code for One- and Two-Family Dwellings made with the  
implied or express consent of the lessor. This section applies to leases and contracts  
entered into on or after October 1, 2014."

**SECTION 2.** This act becomes effective October 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

BILL DRAFT 2013-MNz-15D [v.6] (02/19)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
3/20/2014 4:45:42 PM

Short Title: Mechanics Liens - Clarify Lien Agent Notice. (Public)

Sponsors: Representative Unknown.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE INFORMATION REQUIRED TO BE PROVIDED IN A  
NOTICE TO LIEN AGENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 44A-11.1(a) reads as rewritten:

"§ 44A-11.1. **Lien agent; designation and duties.**

(a) With regard to any improvements to real property to which this Article is applicable for which the costs of the undertaking are thirty thousand dollars (\$30,000) or more, either at the time that the original building permit is issued or, in cases in which no building permit is required, at the time the contract for the improvements is entered into with the owner, the owner shall designate a lien agent no later than the time the owner first contracts with any person to improve the real property. Provided, however, that the owner is not required to designate a lien agent for improvements to an existing single-family residential dwelling unit as defined in G.S. 87-15.5(7) that is occupied by the owner as a residence, or for the addition of an accessory building or accessory structure as defined in the North Carolina Uniform Residential Building Code, the use of which is incidental to that residence. The owner shall deliver written notice of designation to its designated lien agent by any method authorized in G.S. 44A-11.2(f), and shall include in its notice the street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property for the improvements to which the lien agent has been designated, and the owner's contact information. Designation of a lien agent pursuant to this section does not make the lien agent an agent of the owner for purposes of receiving a Claim of Lien on Real Property, a Notice of Claim of Lien upon ~~Funds-Funds~~, a Notice of Subcontract, or for any purpose other than the receipt of notices to the lien agent required under G.S. 44A-11.2."

**SECTION 2.** G.S. 44A-11.2 reads as rewritten:

"§ 44A-11.2. **Identification of lien agent; notice to lien agent; effect of notice.**

...

(i) The form of the notice to be given under this section shall be legible, shall include the following information unless designated as "if available," and shall be substantially as follows:

NOTICE TO LIEN AGENT

- (1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):
- (2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:
- (3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner:
- (4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Potential Lien Claimant

(j) The service of the Notice to Lien Agent does not satisfy the service or filing requirements applicable to a Notice of Subcontract under Part 2 of Article 2 of this Chapter, a Notice of Claim of Lien upon Funds under Part 2 of Article 2 of this Chapter, or a Claim of Lien on Real Property under Part 1 or Part 2 of Article 2 of this Chapter. A Notice to Lien Agent shall not be combined with or make reference to a Notice of Subcontract or Notice of Claim of Lien upon Funds as described in this subsection.

...."

**SECTION 2.** This act becomes effective October 1, 2014, and applies to Notices to Lien Agent served on or after that date.

