



On the heels of the recent failure of Proposed NC Senate Bill 803, there is now a renewed attempt to revise North Carolina's lien and bond laws. These proposed revisions, would have drastic impact on the lien and bond rights of subcontractors and suppliers. The main objectives of the proposed revisions are to address so called "hidden" lien and bond claims on construction projects, to overrule by statute some recent "bad" case law and to provide notice to general contractors and owners of the presence of certain lower tier suppliers on the project in hopes of ensuring all tiers are paid prior to using liens and lawsuits to resolve disputes. While the entirety of the proposed legislation can be found [here \[http://www.ncbar.org/media/11114657/lienLawRevisionDraft_021\]\(http://www.ncbar.org/media/11114657/lienLawRevisionDraft_021\)](http://www.ncbar.org/media/11114657/lienLawRevisionDraft_021) the key provisions are below.

Summary of Major Changes for Private Construction Projects

Determination of Priority: Priority of claims of lien on real property on private construction projects will no longer be determined by the date of the subcontractor's or supplier's first date of furnishing. Under these proposed revisions, priority will be determined by the date of the filing of either the Notice of Commencement, the subcontractor/supplier's Notice to the Owner, or the filing date of

the actual Claim of Lien On Real Property.

Notice of Commencement: Before the commencement of any project or the recommencement of the project after a termination/abandonment by the general contractor, the owner of the project must file a Notice of Commencement with the Clerk of Superior Court for the county where the construction project is located, and post it on the job site adjacent to the building permit. The Notice of Commencement is required to be filed and posted by the owner. Any failure to file and post the Notice of Commencement may result in the owner and/or general contractor being unable to obtain governmental inspections of the project.

Notice to Owner: Within 30 days of beginning provision of labor and/or materials to any construction project, a lower-tier subcontractor or supplier must file a Notice to Owner in the county where the project is located, and serve it on everyone in their contractual chain. Failure to properly file and serve a Notice to Owner within this time period will result in a termination of the subcontractor's/supplier's right to a subrogated Claim of Lien on Real Property.

However, a supplier or subcontractor may file a Notice to Owner after the expiration of the above referenced 30 day period, but said late filing will result in the supplier's/subcontractor's lien rights against the real property being limited to the value of the labor and/or materials provided 30 days prior to the late filed Notice to Owner.

Failure of a supplier/subcontractor to file and serve a Notice to

Owner does not impact the subcontractor's or supplier's ability to make a claim of lien on funds, but they will have no right to make a claim on the real property and thus will forfeit any argument regarding priority or the relevance of their first date of furnishing of labor or material to the project.

Impacts on Public Projects

Notice of Subcontract/Protection from Double Payments: The proposed revisions to N.C.G.S. § 44A-27 (the payment bond statute applicable to public construction projects) would provide the project general contractor and surety protection from liability for “double payments”. Lower tier subcontractors would be required to serve a Notice of Subcontract within 30 days of their first provision of materials or labor. If the subcontractor or supplier requests a copy of the payment bond, the general contractor or the owner must provide it within 7 days. Failure to do so will result in the general contractor's loss of protections for double payment for materials and labor already paid to the first tier subcontractor.

If the general contractor does provide the bond within 7 days, it is only liable to the claiming subcontractor for the materials and/or labor provided 30 days prior to the service of the Notice of Subcontract.

Standardized Partial and Final Lien Waivers: The proposed revisions will provide standardized lien waivers. Use of any other lien waivers may be ruled insufficient to cut off lien rights.

Biggest Legal Issues

- This proposed legislation would eliminate North Carolina's long held "relation-back doctrine" for lien claims;
- It allows owners and general contractors to retain the benefit of the Notice of Commencement with no penalty for not complying with the statute;
- Failure of the subcontractor or supplier to comply with the proposed Notice to Owner provisions will result in the termination of or a severe limitation on the extent of the claiming subcontractor's rights to lien the real property;
- Payment to lower tier subcontractors and suppliers on public construction projects is no longer guaranteed. If the first tier subcontractor has been paid, those suppliers and subcontractors below the first tier subcontractor are at risk of having no claim on the payment bond.

If you have questions or concerns regarding the proposed legislation, please feel free to contact John Sperati at (919) 250-2122 (or jsperati@smithdebnamlaw.com) or Byron Saintsing (919) 250-2118 (or bsaintsing@smithdebnamlaw.com) in our firm's Construction Law department.

SHARE:



RELATED PRACTICE AREA

LITIGATION

RELATED SERVICES

FILING AND PERFECTING LIEN AND BOND CLAIMS

LIENHOLDER PETITIONS

RELATED ARTICLES



What Small Businesses Need to Know About the Corporate

Transparency Act

March 01, 2024

by

Connie Elder Carrigan



It's Déjà Vu All Over Again: US Department of Labor Announces Intent To Revise Overtime Rule

September 11, 2023

by

Connie Elder Carrigan





What are the Most Common Types of Alternative Dispute Resolution (ADR)?

May 31, 2023

by

Michael J. Denning

[VIEW ALL RELATED ARTICLES](#)

ABOUT THE AUTHORS



Byron L. Saintsing

PARTNER

bsaintsing@smithdebnamlaw.com

919.250.2118

Byron Saintsing leads a practice group focused on matters involving construction law, commercial and business litigation, representation of equipment lessors, charter schools, and education law, and commercial creditor bankruptcy. Byron has written and lectured on many topics pertaining to construction and equipment leasing, including editing materials on North Carolina's adoption of Article 2A of the Uniform Commercial Code.



John M. Sperati

PARTNER

jsperati@smithdebnamlaw.com

919.250.2122

John Sperati is a partner in the firm and member of the firm's Creditors' Rights Practice group. He concentrates his practice in commercial creditor bankruptcy, foreclosure and real estate litigation, structured settlement transfer, judgment domestication and enforcement, construction litigation, commercial litigation, equipment leasing and finance and creditors' rights. John is listed as a Rising Star in North Carolina Super Lawyers® that recognizes accomplished, young attorneys.

Contact Us Today

Name

Business Name

Contact Phone

Contact Email

Question or Message

☐

Smith Debnam welcomes your emails and we look forward to assisting you. By clicking this checkbox, you agree that contacting Smith Debnam does not establish an attorney-client relationship and sensitive information should not be sent until an attorney-client relationship has been established.

SUBMIT

CONTACT US

919.250.2000

mail@smithdebnamlaw.com



SMITH DEBNAM RALEIGH

4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000

Fax: 919.250.2100

SMITH DEBNAM CHARLESTON

171 Church Street, Suite 120C
Charleston, SC 29401

Phone: 843.714.2530

Fax: 843.714.2541

[Careers](#)

[Privacy Policy](#)

[Disclaimer](#)

[Sitemap](#)

