

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 597

Judiciary I Committee Substitute Adopted 4/30/91

House Committee Substitute Favorable 7/4/91

House Committee Substitute #2 Favorable 6/25/92

Short Title: Statutory Lien Actions/Study.

(Public)

Sponsors:

Referred to:

April 15, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY SUBCONTRACTORS' LIENS AND DIRECT THE GENERAL STATUTES COMMISSION TO CONDUCT A STUDY OF STATUTORY LIENS OF MECHANICS, LABORERS AND MATERIALMEN AND MODEL PAYMENT AND PERFORMANCE BONDS AS SET FORTH IN ARTICLES 2 AND 3 OF CHAPTER 44A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-23 reads as rewritten:

"§ 44A-23. Contractor's lien; perfection of subrogation rights of subcontractor.

(a) First tier subcontractor -- A first, second or third tier subcontractor, who gives notice as provided in this Article, may, to the extent of his claim, enforce the lien of the contractor created by Part 1 of Article 2 of this Chapter. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12. Upon the filing of the notice and claim of lien and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

(b) Second or third subcontractor. --

- (1) A second or third tier subcontractor, who gives notice as provided in this Article, may, to the extent of his claim, enforce the lien of the contractor created by Part 1 of Article II of the Chapter except when:
  - i. The contractor, within 30 days following the date of the building permit is issued for the improvement of the real property involved, posts on the property in a visible location adjacent to the posted building permit and files in the office of the Clerk of Superior Court in each county wherein the real property to be improved is located, a completed and signed Notice of Contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed Notice of Subcontract form by the same means of service as described in G.S. 44A-19(d); or
  - ii. After the posting and filing of a signed Notice of Contract and the service of a signed Notice of Subcontract, the contractor serves upon the second or third tier subcontractor, within 5 days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the Notice of Subcontract form set forth herein.
- (2) The form of the Notice of Contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the Clerk of Superior Court shall be the same as charged for filing a Claim of Lien:

**‘NOTICE OF CONTRACT**

‘(1) Name and address of the Contractor:

‘(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

‘(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

‘(4) Name and address of the person, firm or corporation filing this Notice of Contract:

‘Dated:\_\_\_\_\_

‘Contractor

1 'Filed this the —day of —, 19—.

2  
3 \_\_\_\_\_  
4 Clerk of Superior Court'

5 (3) The form of the Notice of Subcontract to be so utilized under this  
6 section shall be substantially as follows:

7  
8 **'NOTICE OF SUBCONTRACT**

9  
10 '(1) Name and address of the subcontractor:

11  
12 '(2) General description of the real property where the labor was performed  
13 or the material was furnished (street address, tax map lot and block number, reference to  
14 recorded instrument, or any description that reasonably identifies the real property):

15  
16 (3)

17 (i) General description of the subcontractor's contract, including  
18 the names of the parties thereto:

19  
20 (ii) General description of the labor and material performed and  
21 furnished thereunder:

22  
23 (4) Request is hereby made by the undersigned subcontractor that he be  
24 notified in writing by the contractor of, and within 5 days following, each subsequent  
25 payment by the contractor to the first tier subcontractor for labor performed or material  
26 furnished at the improved real property within the above descriptions of such in  
27 paragraph (2) and subparagraph (3) (ii), respectively, the date payment was made and  
28 the period for which payment is made.

29  
30 'Dated: \_\_\_\_\_

31  
32 Subcontractor'

33  
34 (4) The manner of such enforcement shall be as provided by G.S. 44A-7  
35 through G.S. 44A-16. The lien is perfected as of the time set forth in  
36 G.S. 44A-10 upon the filing of a Claim of Lien pursuant to G.S. 44A-  
37 12. Upon the filing of the notice and claim of lien and the  
38 commencement of the action, no action of the contractor shall be  
39 effective to prejudice the rights of the second or third tier  
40 subcontractor without his written consent."

41 Sec. 2. The General Statutes Commission shall conduct a study of statutory  
42 lien rights of contractors and subcontractors and payment and performance bonds under  
43 Articles 2 and 3 of Chapter 44A of the General Statutes and recommend to the General  
44 Assembly changes, modifications and revisions to those statutes as deemed appropriate,

1 including, but not limited to, the matters addressed in the Third Edition to Senate Bill  
2 597 (House Committee Substitute, adopted July 4, 1991), of the 1991 Session of the  
3 General Assembly and the interpretation of the law as set forth by the North Carolina  
4 Supreme Court in **Electric Supply Co. v. Swain Electrical Co.**, 328 NC 651 (1991),  
5 and to report its recommendations to the 1993 Session of the General Assembly.

6           Sec. 3. This act is effective upon ratification and applies to actions filed on or  
7 after the date of ratification.