

HOUSE No. 1730

By Ms. Spiliotis of Peabody, petition of Joyce A. Spiliotis relative to Mechanics Liens. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO MECHANICS LIENS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act may be cited as the Construction Super-
2 visor Act.

1 SECTION 2. Chapter 143 of the General Laws, as appearing in
2 the 2002 Official Edition is hereby amended by inserting after
3 section 94 the following section:—

4 Section 94A. Licensed Construction Supervisors Services.

5 (a) Definitions.

6 For the purposes of this section the following words shall have
7 the following meanings unless the context clearly requires other-
8 wise:—

9 “Contract for construction supervisor services” Every agreement
10 to perform contracting services requiring a construction supervisor
11 shall be in writing and include the following documents and infor-
12 mation including but not limited to educational materials for distrib-
13 ution to property owners prepared by the Board of Building
14 Regulations and Standards.

15 “Licensed construction supervisor” any individual directly super-
16 vising persons engaged in construction, reconstruction, alteration,
17 repair, removal or demolition involving any activity regulated by
18 any provision of Mass Code of Regulations such terms shall also
19 apply to persons supervising themselves. A licensed construction
20 supervisor shall be required for the installation of all manufactured
21 one and two family homes. as defined in 780 CMR R.5.

22 “Payment Bond” is a bond, defined by requirements set forth in
23 section 12, chapter 254 of the General Laws.

24 (b) The Board of Building Regulations and Standards hereinafter
25 known as the Board shall establish a Licensed Construction Super-
26 visor Advisory Committee, comprised of no less than 5 members as
27 follows

- 28 1. Not less than one member of the Board of Building Regulations
29 and Standards (BBRS)
- 30 2. Not less than one licensed construction supervisor
- 31 3. Two representatives, of residential property owner organiza-
32 tions, nominated by residential property owners organizations
- 33 4. One representative from sub trade work designated in
34 section 44f of chapter 149 of the General Laws

35 Board shall have the right to reappoint all members each year and
36 each advisory committee member may serve indefinitely.

37 (c) Licensed Construction Supervisor Advisory Committee shall
38 have the following powers and duties:

39 a) To act as a liaison to the board on issues regarding licensed
40 construction supervisors, including contractual disputes.

41 b) To report to the board annually on issues relating to licensed
42 construction supervisors and property owners.

43 c) To identify common disputes between licensed construction
44 supervisors and property owners, including contractual dispute and
45 present these common disputes in committee report to the board.

46 d) To prepare educational materials, using consumer friendly
47 language for distribution to all licensed construction supervisors for
48 distribution to property owners contracting for construction services,
49 including but not limited to:

50 (1) Chapter 254, specifically sections 4 and 12.

51 (2) Defining a mechanic’s lien, and the effects it may have on an
52 owner’s property in the Commonwealth

53 (3) Defining a payment bond, under chapter 254, section 12.

54 (4) Payment Bond Option Form providing property owners a
55 means to elect as part of a contract for construction supervisor serv-
56 ices, a payment bond, pursuant to chapter 254 section 12,

57 The advisory committee shall ensure that the Payment Bond
58 Option Form:

59 a. requires the property owner’s signature and date signifying
60 receipt of the educational materials, prior to signing a contract for
61 construction services.

62 b. requires the property owner to “elect” or “not elect” to require
63 a payment bond, indicated by the property owner’s signature next to
64 either choice

65 c. states that the construction supervisor must file this form in the
66 registry of deeds where the property lies

67 d. states the amount of the proposed contract for construction
68 services

69 e. describes the property subject of the proposed contract for con-
70 struction services

71 f. requires the construction supervisor’s signature acknowledging
72 that if the property owner requires a bond then the construction
73 supervisor must obtain a bond as described in chapter 254
74 section 12, upon entering into the construction contract.

75 g. requires the construction supervisors’ signature acknowledging
76 the fact that failure to obtain a payment bond required by the prop-
77 erty owner upon entry into the contract will constitute a willful vio-
78 lation of the “Payment Bond Option Requirement,” subject to
79 prosecution by the attorney general and punishment of a maximum
80 fine of two thousand dollars or maximum term of imprisonment of
81 one year or both.

82 (d) Additional board duties.

83 The board shall provide every licensed construction supervisor
84 with:

85 a. Educational materials for distribution to property owners.

86 b. Payment Bond Option Form for distribution to property
87 owners.

88 c. Notice of this amendment to chapter 143.

89 d. require construction supervisors to:

90 i. Provide the educational materials described in b(iv)a to any
91 property owner the construction supervisor intends to contract
92 with for construction services.

93 ii. Provide the materials prior to entry into any contract for con-
94 struction services and obtain the property owner’s signature
95 on the bond option form indicating such receipt.

96 iii. File at least one copy of the “Payment Bond Option form” in
97 the registry of deeds for the county or district where such
98 land lies that is the subject of the contract between a property
99 owner and the construction supervisor to receive construc-
100 tion supervisor services.

- 101 e. Provide the following section as penalty for violation of any of
102 the above provisions of the section entitled “Payment Bond Option
103 Requirement”
- 104 i. The attorney general or the district attorney may prosecute
105 any person who knowingly and willfully violates any of the
106 provisions of this chapter, with a maximum fine of two thou-
107 sand dollars or maximum term of imprisonment of one year,
108 or both. If a greater penalty is provided by the provisions of
109 this chapter or by any other law, then the greater penalty
110 applies.
- 111 ii. Such fines and imprisonment shall be in addition to any
112 penalty given by the board.
- 113 (e) To hold public advisory committee meetings after 5 p.m. at
114 least once every six months.
- 115 (f) To establish and maintain records of actions and procedures in
116 according with the public records laws.
- 117 (g) To perform such other functions and duties as may be neces-
118 sary to carry out the provisions of this chapter.
- 119 (h) The Board shall promulgate and enforce the provisions of the
120 chapter as amended.

1 SECTION 3. Chapter 254 of the General Laws, as appearing in
2 the 2002 Official Edition is hereby amended by adding after section
3 12 the following section:—

4 Section 12A. Payment Bond Option Form Presumption.

5 (a) Definitions.

6 For the purposes of this section following words shall have the
7 following meanings unless the context clearly requires otherwise:—

8 “Payment Bond” is defined by requirements set forth in
9 section 12, chapter 254 of the Mass General Laws.

- 10 (1) “Payment Bond Option Form” is defined as the form estab-
11 lished in section 94A,
- 12 a. require construction supervisors to
- 13 i. Provide the educational materials described in a to any prop-
14 erty owner the construction supervisor intends to contract with
15 for construction services.
- 16 ii. Provide the materials prior to entry into any contract for con-
17 struction services and obtain the property owner’s signature
18 on the bond option form indicating such receipt.

- 19 iii. File at least one copy of the “Payment Bond Option form” in
20 the registry of deeds for the county or district where such
21 land lies that is the subject of the contract between a property
22 owner and the construction supervisor to receive construc-
23 tion supervisor services.
- 24 b. Provide the following section as penalty for violation of any of
25 the above provisions of the section entitled “Payment Bond Option
26 Requirement”
- 27 i. The attorney general or the district attorney may prosecute
28 any person who knowingly and willfully violates any of the
29 provisions of this chapter, with a maximum fine of two thou-
30 sand dollars or maximum term of imprisonment of one year,
31 or both. If a greater penalty is provided by the provisions of
32 this chapter or by any other law, then the greater penalty
33 applies.
- 34 ii. Such fines and imprisonment shall be in addition to any
35 penalty given by the board.
- 36 (b) The registry of deeds in the county or district where the land
37 identified in the Payment Bond Option Form lies, shall not allow
38 attachment of any lien under section four of this chapter on the iden-
39 tified land if the property owner contracting for licensed construc-
40 tion supervisor services, as defined in 780 CMR R5, required a bond
41 as described in section 12, chapter 254 by signifying this require-
42 ment on the Payment Bond Option Form.
- 43 (c) If a licensed construction supervisor fails to file a Payment
44 Bond Option Form in conjunction with a contract to provide con-
45 struction services, a presumption arises that the property owner
46 required a bond as described in section twelve, and all such rights as
47 the property owner had under section twelve shall apply.
- 48 (d) If a property owner signifies in a Payment Bond Option Form
49 a requirement of a bond as described in section twelve, but the
50 licensed construction supervisor failed to procure such a bond, the
51 registry of deeds in the county or district where the land identified in
52 the Payment Bond Option Form lies shall not allow attachment of
53 any lien under section four of this chapter on the identified land.
54 The property owner shall receive the benefits of a bond, as described
55 under (b).