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Amending the Mechanics Lien Act To Provide a Lien for Equipment Rental

Introduction

HB 1414 would bring Illinois in line with almost all other states by adding a section to the Mechanics Lien Act (the “Act”) that would afford the same remedy to renters of construction equipment and materials to a construction job site as is now afforded to those who sell materials and equipment consumed in the process of construction.

Currently, the Act protects only those who furnish labor or material used to improve Illinois real estate, by providing a potential security interest in the improved real estate. This potential remedy for non-payment helps builders obtain credit, and by doing so fuels the Illinois construction industry.

Renters Treated Differently than Sellers

Unfortunately, the Illinois Mechanics Lien Act currently does not protect those who **rent** construction equipment and materials for use in construction. As a result, an equipment lessor is an unsecured creditor subject to greater risk of nonpayment. Equipment suppliers must charge higher rates to cover the additional risk, resulting in higher building costs. In addition, higher rental costs can prevent smaller companies from participating in projects requiring rented construction equipment. Extending a mechanics lien remedy for those who rent equipment for Illinois construction projects, therefore, would reduce financial risks to builders and enhance the competitiveness of the state’s construction industry.

Changed Conditions Require this Amendment

For more than one hundred years, Illinois has had a mechanic’s lien act to support those who built its homes and commercial buildings. When the current Act was adopted by the legislature in 1902, sophisticated and expensive construction equipment and machinery did not form an integral part of the building process, as it does today. Today, such machinery is a mainstay of the modern construction process, and it is often more economical to rent than to buy. Affording mechanics lien protection to the renters of equipment and recognizing the importance of rental to the modern construction process would permit Illinois to take benefit from the modern construction processes that freely employ rented equipment and materials.

Few Other States Differentiate between Renters and other Material

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Suppliers

Almost all states, except Illinois, and perhaps four or five other mostly non-industrial states, extend mechanics lien rights for equipment rental, either out of fairness, or to foster economic growth, or both. Illinois already permits liens against funds for rental equipment used on State and local government projects; the Federal Government provides a similar remedy through the Miller Act.

Illinois' discriminatory treatment of the equipment rental business is an unintentional and unreasoned anomaly. It should now take full advantage of the modern economic efficiency from the use of rental equipment by amending the Mechanics Lien Act to permit the same lien rights for renters as for other suppliers.

Conclusion

The proposed amendment is simple, and the rights afforded renters are modestly restricted solely to equipment actually used in the construction, and used at the job site. Thus, there would be no difficulty identifying those who would have lien rights, and the amounts of the lien would be restricted to the actual rental value of the equipment used. Therefore, the Mechanics Lien Act should be amended to encompass equipment and material lessors.

The above was prepared by Jim Rohlfig, for ASA Chicago and the Illinois Mechanical and Specialty Contractor's Association (IMSCA). He would be pleased to answer any questions about the proposal.

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