

AN ACT

To amend sections 153.54, 153.57, 1311.01, 1311.011, 1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1311.13, 1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1311.29, 1311.32, 4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.101, 4740.12, 5309.57, and 5525.16 and to enact section 4740.15 of the Revised Code to specify that an owner, part owner, or lessee of real property, with respect to a home construction contract, must record a notice of commencement only if required by a lending institution, to stipulate that a notice of commencement for a home construction contract expires six years after it is recorded, to permit court costs and reasonable attorney fees to be included in damages an owner may recover from a lienholder who refuses to release the lien after the owner makes full payment and to stipulate for all types of liens that a mortgage is considered filed first if a mortgage and notice of commencement are filed on the same day, to modify procedures and requirements for contractor licensure by the Ohio Construction Industry Licensing Board, to require that any political subdivision, district, or agency of the state that requires contractor registration and fee payment must require licensure in the contractor's trade by the Construction Industry Licensing Board, and to establish a procedure and penalty when checks in payment of fees are returned unpaid to the Construction Industry Licensing Board.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 153.54, 153.57, 1311.01, 1311.011, 1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1311.13, 1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1311.29, 1311.32, 4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.101, 4740.12, 5309.57, and 5525.16 be amended and section 4740.15 of the Revised Code be enacted to read as follows:

Sec. 153.54. (A) Each person bidding for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for any public improvement shall file with the bid, a bid guaranty in the form of either:

(1) A bond in accordance with division (B) of this section for the full amount of the bid;

(2) A certified check, cashier's check, or letter of credit pursuant to Chapter 1305. of the Revised Code, in accordance with division (C) of this section. Any such letter of credit is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten per cent of the bid.

(B) A bid guaranty filed pursuant to division (A)(1) of this section shall be conditioned to:

(1) Provide that, if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. If for any reason, other than as authorized by section 9.31 of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder and the surety on the bidder's bond are liable to the state, political subdivision, district, institution, or agency for the difference between the bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bond, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract and the surety on the bidder's bond, except as provided in division (G) of this section, are liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission of printing new contract documents, required advertising, and printing and

mailing notices to prospective bidders, whichever is less.

(2) Indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of subcontractors, ~~materialmen~~ material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor, ~~materialman~~ material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(C)(1) A bid guaranty filed pursuant to division (A)(2) of this section shall be conditioned to provide that if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the contracting authority designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. If for any reason, other than as authorized by section 9.31 of the Revised Code or division (G) of this section, the bidder fails to enter into the contract, and the contracting authority awards the contract to the next lowest bidder, the bidder is liable to the state, political subdivision, district, institution, or agency for the difference between the bidder's bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bid, whichever is less. If the state, political subdivision, district, institution, or agency does not award the contract to the next lowest bidder but resubmits the project for bidding, the bidder failing to enter into the contract, except as provided in division (G) of this section, is liable to the state, political subdivision, district, institution, or agency for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

If the bidder enters into the contract, the bidder, at the time the contract is entered to, shall file a bond for the amount of the contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by failure to perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material therefor and to pay all lawful claims of subcontractors, ~~materialmen~~ material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract; and agree and assent that this undertaking is for the benefit of any subcontractor,

~~materialman~~ material supplier, or laborer having a just claim, as well as for the state, political subdivision, district, institution, or agency.

(2) A construction manager who enters into a contract pursuant to sections 9.33 to 9.333 of the Revised Code, if required by the public owner at the time the construction manager enters into the contract, shall file a letter of credit pursuant to Chapter 1305. of the Revised Code, bond, certified check, or cashier's check, for the value of the construction management contract to indemnify the state, political subdivision, district, institution, or agency against all damage suffered by the construction manager's failure to perform the contract according to its provisions, and shall agree and assent that this undertaking is for the benefit of the state, political subdivision, district, institution, or agency. A letter of credit provided by the construction manager is revocable only at the option of the beneficiary state, political subdivision, district, institution, or agency.

(D) Where the state, political subdivision, district, institution, or agency accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material within ten days after the awarding of the contract, the bidder and the surety on any bond, except as provided in division (G) of this section, are liable for the amount of the difference between the bidder's bid and that of the next lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Where the state, political subdivision, district, institution, or agency then awards the bid to such next lowest bidder and such next lowest bidder also fails or refuses to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material within ten days after the awarding of the contract, the liability of such next lowest bidder, except as provided in division (G) of this section, is the amount of the difference between the bids of such next lowest bidder and the third lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Liability on account of an award to any lowest bidder beyond the third lowest bidder shall be determined in like manner.

(E) Notwithstanding division (C) of this section, where the state, political subdivision, district, institution, or agency resubmits the project for bidding, each bidder whose bid was accepted but who failed or refused to enter into a proper contract, except as provided in division (G) of this section, is liable for an equal share of a penal sum in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, but no bidder's liability shall exceed the amount of the bidder's bid guaranty.

(F) All bid guaranties filed pursuant to this section shall be payable to

the state, political subdivision, district, institution, or agency, be for the benefit of the state, political subdivision, district, institution, or agency or any person having a right of action thereon, and be deposited with, and held by, the board, officer, or agent contracting on behalf of the state, political subdivision, district, institution, or agency. All bonds filed pursuant to this section shall be issued by a surety company authorized to do business in this state as surety approved by the board, officer, or agent awarding the contract on behalf of the state, political subdivision, district, institution, or agency.

(G) A bidder for a contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the Ohio department of transportation, for a public improvement costing less than one-half million dollars may withdraw the bid from consideration if the bidder's bid for some other contract with the state or any political subdivision, district, institution, or other agency thereof, excluding therefrom the department of transportation, for the public improvement costing less than one-half million dollars has already been accepted, if the bidder certifies in good faith that the total amount of all the bidder's current contracts is less than one-half million dollars, and if the surety certifies in good faith that the bidder is unable to perform the subsequent contract because to do so would exceed the bidder's bonding capacity. If a bid is withdrawn under authority of this division, the contracting authority may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding, and neither the bidder nor the surety on the bidder's bond are liable for the difference between the bidder's bid and that of the next lowest bidder, for a penal sum, or for the costs of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders.

(H) Bid guaranties filed pursuant to division (A) of this section shall be returned to all unsuccessful bidders immediately after the contract is executed. The bid guaranty filed pursuant to division (A)(2) of this section shall be returned to the successful bidder upon filing of the bond required in division (C) of this section.

(I) For the purposes of this section, "next lowest bidder" means, in the case of a political subdivision that has adopted the model Ohio and United States preference requirements promulgated pursuant to division (E) of section 125.11 of the Revised Code, the next lowest bidder that qualifies under those preference requirements.

(J) For the purposes of this section and sections 153.56, 153.57, and 153.571 of the Revised Code, "public improvement," "subcontractor," "~~materialman~~ material supplier," "laborer," and "materials" have the same

meanings as in section 1311.25 of the Revised Code.

Sec. 153.57. (A) The bond provided for in division (C)(1) of section 153.54 of the Revised Code shall be in substantially the following form, and recovery of any claimant thereunder shall be subject to sections 153.01 to 153.60 of the Revised Code, to the same extent as if the provisions of those sections were fully incorporated in the bond form:

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as principal and as sureties, are hereby held and firmly bound unto in the penal sum of dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of, ..

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the day of, .., enter into a contract with, which said contract is made a part of this bond the same as though set forth herein;

Now, if the said shall well and faithfully do and perform the things agreed by to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, ~~materialmen~~ material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any ~~materialman~~ material supplier or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond."

(B) The bond provided for in division (C)(2) of section 153.54 of the Revised Code shall be in substantially the following form:

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned as principal and as sureties, are hereby held and firmly bound unto in the penal sum of dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this day of,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal did on the day of,, entered into a contract with which said contract is made a part of this bond the same as though set forth herein;

Now, if the said shall well and faithfully do and perform the things agreed by to be done and performed according to the terms of the said contract; we agreeing and assenting that this undertaking shall be for the benefit of the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of the obligation as herein stated.

The surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the contract shall in any way affect the obligation of the surety on its bond."

Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the Revised Code:

(A) "Owner," "part owner," or "lessee" includes all the interests either legal or equitable, which such person may have in the real estate upon which the improvements are made, including the interests held by any person under contracts of purchase, whether in writing or otherwise.

(B) ~~"Materialman" or "material~~ Material supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(C) "Laborer" includes any mechanic, worker, artisan, or other individual who performs labor or work in furtherance of any improvement.

(D) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with any person other than the owner, part owner, or lessee.

(E) "Original contractor," except as otherwise provided in section 1311.011 of the Revised Code, includes a construction manager and any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with an owner, part owner, or lessee.

(F) "Construction manager" means a person with substantial discretion and authority to manage or direct an improvement, provided that the person is in direct privity of contract with the owner, part owner, or lessee of the improvement.

(G) "Notice of commencement" means the notice specified in section

1311.04 of the Revised Code.

(H) "Notice of furnishing" means the notice specified in section 1311.05 of the Revised Code.

(I) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of an improvement.

(J) "Improvement" means constructing, erecting, altering, repairing, demolishing, or removing any building or appurtenance thereto, fixture, bridge, or other structure, and any gas pipeline or well including, but not limited to, a well drilled or constructed for the production of oil or gas; the furnishing of tile for the drainage of any lot or land; the excavation, cleanup, or removal of hazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any shrubs, trees, plants, vines, small fruits, flowers, or nursery stock of any kind; and the grading or filling to establish a grade.

(K) "Wages" means the basic hourly rate of pay and all other contractually owed benefits.

Sec. 1311.011. (A) As used in this section:

(1) "Home construction contract" means a contract entered into between an original contractor and an owner, part owner, or lessee for the improvement of any single- or double-family dwelling or portion of the dwelling or a residential unit of any condominium property that has been submitted to the provisions of Chapter 5311. of the Revised Code; an addition to any land; or the improvement of driveways, sidewalks, swimming pools, porches, garages, carports, landscaping, fences, fallout shelters, siding, roofing, storm windows, awnings, and other improvements that are adjacent to single- or double-family dwellings or upon lands that are adjacent to single- or double-family dwellings or residential units of condominium property, if the dwelling, residential unit of condominium property, or land is used or is intended to be used as a personal residence by the owner, part owner, or lessee.

(2) "Home purchase contract" means a contract for the purchase of any single- or double-family dwelling or residential unit of a condominium property that has been subjected to the provisions of Chapter 5311. of the Revised Code if the purchaser uses or intends to use the dwelling, a unit of a double dwelling, or the condominium unit as ~~his~~ the purchaser's personal residence.

(3) "Lending institution" means any person that enters into a contract with the owner, part owner, purchaser, or lessee to provide financing for a

home construction contract or a home purchase contract, which financing is secured, in whole or in part, by a mortgage on the real estate upon which the improvements contemplated by the home construction contract are to be made or upon the property that is the subject of the home purchase contract, and that makes direct disbursements under the contract to any original contractor or the owner, part owner, purchaser, or lessee.

(4) "Original contractor" includes any person with whom the owner, part owner, lessee, or purchaser under a home purchase contract or a home construction contract has directly contracted.

(B) Notwithstanding sections 1311.02 to 1311.22 of the Revised Code, all liens, except mortgage liens, that secure payment for labor or work performed or materials furnished in connection with a home construction contract or in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract are subject to the following conditions:

(1) No original contractor, subcontractor, ~~materialman~~ material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the contractor, subcontractor, ~~materialman~~ material supplier, or laborer, in connection with a home construction contract between the original contractor and the owner, part owner, or lessee or in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, if the owner, part owner, or lessee paid the original contractor in full or if the purchaser has paid in full for the amount of the home construction or home purchase contract price, and the payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code.

An owner, part owner, or lessee may file with the county recorder of the county in which the property that is the subject of a home construction contract or a home purchase contract is situated an affidavit that the owner, part owner, or lessee has made payment in accordance with this division. Except if the owner, part owner, or lessee is guilty of fraud, any lien perfected on the property by any subcontractor, ~~materialman~~ material supplier, or laborer for labor or work performed or for materials furnished is void and the property wholly discharged from the lien, if the lien was perfected after full payment was made in accordance with this division. The recorder shall index and record the affidavit in the same manner that releases of mortgages and other liens are indexed and recorded, and shall receive the same fees for indexing and recording the affidavit that are provided for the recording of leases.

Nothing in this section shall adversely affect a mechanics' lien claimed against a prior owner if the lien is perfected prior to a conveyance under a home purchase contract.

(2) If the original contractor has not been paid in full as provided in division (B)(1) of this section, no subcontractor, ~~materialman~~ material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the subcontractor, ~~materialman~~ material supplier, or laborer for an amount greater than the amount due under the home construction contract that has not been paid to the original contractor for the work, labor, or materials or for an amount greater than the amount of the home purchase contract price that has not been paid to the original contractor. The total amount of all liens for labor or work performed or for materials furnished in connection with a home construction contract that may be enforced in lien foreclosure proceedings shall not exceed the amount due under the home construction contract that has not been paid to the original contractor or the amount due under the home purchase contract that has not been paid to the original contractor.

If the amount due under the home construction contract or under the home purchase contract to the original contractor is insufficient to secure the mechanics' liens of all lien claimants that arose out of the home construction contract or that arose out of a contract in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, each mechanics' lien shall be secured by a pro rata share of the amount due to the original contractor, except that mechanics' liens filed by laborers have priority. The pro rata share shall be equal to the monetary amount of the amount due to the original contractor that is subject to all valid mechanics' liens on the property that is the subject of the home purchase contract or all valid mechanics' liens under the home construction contract multiplied by a fraction in which the denominator is the total monetary amount of all valid mechanics' liens on the property that is the subject of the home purchase contract or of all valid mechanics' liens that arose out of the home construction contract, and the numerator is the amount claimed to be due by the lien claimant under a contract in connection with a dwelling or residential unit of condominium property, that is the subject of the home purchase contract or under the home construction contract.

For the purpose of this section, the amount due under a home construction contract or a home purchase contract is the unpaid balance under the home construction contract or the home purchase contract, minus the cost to complete the contract according to its terms and conditions, including any warranty or repair work.

(3) If, after receiving written notice from an owner, part owner, purchaser, or lessee that full payment has been made by the owner, part owner, purchaser, or lessee to the original contractor for the amount of the home construction or home purchase contract and that payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code, the lienholder fails within thirty days after receipt of the notice to cause the lien securing payment for the work, labor, or materials to be released of record, the lienholder is liable to the owner, part owner, or lessee for all damages arising from the lienholder's failure to cause the lien to be released. Damages shall include, but are not limited to, court costs and reasonable attorney fees incurred during any litigation between the owner and a lien claimant or lien claimants who have refused to release their liens after receiving a copy of the affidavit referred to in division (B)(1) of this section, or evidence that the cost of completing a home construction contract exceeded, or is reasonably expected to exceed, the balance due the original contractor under the home construction contract as provided in division (B)(2) of this section.

(4) No lending institution shall make any payment to any original contractor until the original contractor has given the lending institution the original contractor's affidavit stating:

(a) That the original contractor has paid in full for all labor and work performed and for all materials furnished by the original contractor and all subcontractors, ~~materialmen~~ material suppliers, and laborers prior to the date of the closing of the purchase or during and prior to the payment period, except such unpaid claims as the original contractor specifically sets forth and identifies both by claimant and by amount claimed;

(b) That no claims exist other than those claims set forth and identified in the affidavit required by division (B)(4) of this section.

(5) When making any payment under the home construction contract or on behalf of the owner or part owner under a home purchase contract, the lending institution may accept the affidavit of the original contractor required by division (B)(4) of this section and act in reliance upon it, unless it appears to be fraudulent on its face. The lending institution is not financially liable to the owner, part owner, purchaser, lessee, or any other person for any payments, except for gross negligence or fraud committed by the lending institution in making any payment to the original contractor.

After receipt of a written notice of a claim of a right to a mechanic's lien by a lending institution, failure of the lending institution to obtain a lien release from the subcontractor, ~~materialman~~ material supplier, or laborer

who serves notice of such claim is prima-facie evidence of gross negligence.

(6) Any owner, part owner, purchaser, or lessee, who requests an original contractor to supply the affidavit required by division (B)(4) of this section, may withhold any payment that is due under the home construction contract or under the home purchase contract until the original contractor provides the owner, part owner, purchaser, or lessee with the affidavit. The owner's, part owner's, purchaser's, or lessee's remedies and rights under this section shall not be prejudiced by the owner's, part owner's, purchaser's, or lessee's failure to request or to obtain the affidavit provided for in division (B)(4) of this section.

(7) An owner, part owner, purchaser, lessee, or lending institution may make payment jointly to the original contractor and to a subcontractor, ~~materialman~~ material supplier, or laborer as a condition to their giving lien releases.

(8) If a subcontractor, ~~materialman~~ material supplier, or laborer refuses to supply a lien release to the original contractor, owner, part owner, lessee, or lending institution because the amount of money that the original contractor owes the subcontractor, ~~materialman~~ material supplier, or laborer is in dispute, the owner, part owner, lessee, and lending institution shall withhold from payment to the original contractor an amount of money equal to the amount of money claimed by the subcontractor, ~~materialman~~ material supplier, or laborer. If a subcontractor, ~~materialman~~ material supplier, or laborer refuses within ten days after receipt of a written request from either the original contractor or the lending institution to state the amount due and the last date that the lien claimant performed any labor or work or furnished any material in furtherance of the improvement which gives rise to the lien claimant's lien claim, the amount and the last date shall be stated by the original contractor. The owner, part owner, lessee, and lending institution shall pay the withheld amount of money to the original contractor when any of the following occur:

(a) The subcontractor, ~~materialman~~ material supplier, or laborer gives written notice to the owner, part owner, lessee, or lending institution that the amount of money claimed to be due has been paid.

(b) The subcontractor, ~~materialman~~ material supplier, or laborer delivers a lien release to the original contractor, owner, part owner, lessee, or lending institution.

(c) The original contractor provides the subcontractor, ~~materialman~~ material supplier, or laborer with a bond, in a form that is satisfactory to the owner, part owner, lessee, or lending institution and in an amount equal to the amount of money claimed to be due.

(d) The time for filing a lien by the subcontractor, ~~materialman~~ material supplier, or laborer has expired and no affidavit of lien has been recorded pursuant to section 1311.06 of the Revised Code.

(9) Any lien release given pursuant to this section is valid and enforceable without separate consideration for the release.

Sec. 1311.02. Every person who performs work or labor upon or furnishes material in furtherance of any improvement undertaken by virtue of a contract, express or implied, with the owner, part owner, or lessee of any interest in real estate, or ~~his~~ the owner's, part owner's, or lessee's authorized agent, and every person who as a subcontractor, laborer, or material ~~man~~ supplier, performs any labor or work or furnishes any material to an original contractor or any subcontractor, in carrying forward, performing, or completing any improvement, has a lien to secure the payment therefor upon the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

Sec. 1311.021. (A) Every person who performs any labor or work upon or furnishes material for digging, drilling, boring, operating, completing, or repairing, any well drilled or constructed for the production of oil or gas or any injection well which furthers the production of oil and gas or which disposes of waste products generated by oil and gas operations, or for altering, repairing, or constructing any oil derrick, oil tank, or leasehold production pipe line by virtue of a contract, express or implied, with the owner or part owner, or ~~his~~ the owner's or part owner's authorized agent, of any oil and gas lease or leasehold estate or, in the event there is no lease or estate, any mineral estate, and every subcontractor, laborer, and ~~materialman~~ material supplier who performs any labor or work or furnishes material to an original contractor or any subcontractor, in carrying forward, performing, or completing the contract, has a lien to secure the payment thereof upon the oil and gas lease or leasehold estate or, in the event there is no lease or estate, any mineral estate, the oil or gas produced therefrom and the proceeds thereof, and upon all material located thereon or used in connection therewith.

(B) The lien, insofar as it extends to oil or gas or the proceeds of the sale of oil or gas, is not effective against any purchaser or pipe line carrier of such oil or gas until a copy of the affidavit provided for in section 1311.06 of the Revised Code is delivered to such purchaser or pipe line carrier by certified mail.

(C) To the extent not inconsistent with this section, the lien provided by this section is governed by this chapter, and shall be perfected and enforced

as other liens as provided by this chapter, except as follows:

(1) No owner, part owner, or lessee who contracts for labor or work to be performed or materials furnished for an improvement need prepare, provide, or record a notice of commencement pursuant to section 1311.04 of the Revised Code.

(2) No subcontractor or ~~materialman~~ material supplier who performs work or labor upon or furnishes material in furtherance of an improvement need prepare, provide, or serve a notice of furnishing pursuant to section 1311.05 of the Revised Code.

(3) The affidavit required to be made and filed by an original contractor, subcontractor, ~~materialman~~ material supplier, or laborer under section 1311.06 of the Revised Code to claim a lien under this section need not include the first date that the lien claimant performed any labor or work or furnished any material to the improvement giving rise to ~~his~~ the claimant's lien.

(4) For the purpose of determining issues of priority, liens created under this section are effective from the date the first visible work or labor is performed or the first materials are furnished at the site of the improvement.

(5) An owner, part owner, or lessee may request from an original contractor an affidavit setting forth the name and address of, a description of labor or work performed or materials furnished by, and the total amount of the contract and the balance owed to, all unpaid laborers, subcontractors, and ~~materialmen~~ material suppliers providing labor or work or furnishing material for the improvement, and the serving of the affidavit after such a request shall be a condition precedent to any right by the original contractor to file a lien under this section. If an owner, part owner, or lessee has not made a request under this division, the original contractor need not serve an affidavit as provided in this division to file a lien under this section.

(6)(a) An owner, part owner, or lessee who receives an affidavit pursuant to division (C)(5) of this section or a notice pursuant to division (C)(6)(c) of this section may make payment jointly to the original contractor and any laborers, subcontractors, and ~~materialmen~~ material suppliers who are listed in such an affidavit or who serve such a notice for the amount shown to be unpaid by such affidavit and notices or may require the original contractor to obtain lien waivers from any such persons prior to making payment to the original contractor.

(b) No person who fails to serve the owner, part owner, or lessee with a notice pursuant to division (C)(6)(c) of this section and who is omitted from an affidavit provided to the owner, part owner, or lessee pursuant to division (C)(5) of this section shall have a right to file a lien pursuant to this section

if the owner has paid the full amount due on the contract, including payment to the parties listed on the affidavit or from whom notices were received either in the full amount due to such parties or in such lesser amount as represents their pro-rata portion of the full amount of the contract with the original contractor.

(c) Any laborer, subcontractor, or ~~materialman~~ material supplier may serve upon the owner, part owner, or lessee a notice in writing, which notice shall be such as will inform the owner, part owner, or lessee of the improvement, of the nature of the work performed or to be performed, the materials furnished or to be furnished, the amount due or to become due therefor, the identity of the person with whom such laborer, subcontractor, or ~~materialman~~ material supplier has contracted, and the identity of the well, oil derrick, oil tank, or leasehold production pipe line, the permit number, and the county upon which such work was or is to be performed or materials were or are to be furnished.

(7) The provisions of division (B) of section 1311.15 of the Revised Code shall be applicable with respect to payments to any subcontractors, ~~materialmen~~ material suppliers, or laborers identified on the affidavit provided in division (C)(5) of this section.

Sec. 1311.03. Any person who performs labor or work or furnishes material, for the construction, alteration, or repair of any street, turnpike, road, sidewalk, way, drain, ditch, or sewer by virtue of a private contract between ~~him~~ the person and the owner, part owner, or lessee of lands upon which the same may be constructed, altered, or repaired, or of lands abutting thereon, or as subcontractor, laborer, or ~~materialman~~ material supplier, performs labor or work or furnishes material to such original contractor or to any subcontractor in carrying forward or completing such contract, has a lien for the payment thereof against the lands of the owner, part owner, or lessee, upon which the street, turnpike, road, sidewalk, way, drain, or sewer is constructed or upon which any such street, turnpike, road, sidewalk, way, drain, ditch, or sewer abuts, as provided in section 1311.02 of the Revised Code.

Sec. 1311.04. (A)(1) Prior to the performance of any labor or work or the furnishing of any materials for an improvement on real property which may give rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code, the owner, part owner, or lessee who contracts for the labor, work, or materials shall record in the office of the county recorder for each county in which the real property to be improved is located a notice of commencement in substantially the form specified in division (B) of this section.

(2) Only one notice of commencement is required to be filed for a single improvement and if more than one notice of commencement is filed for a single improvement, all notices filed after the original notice shall be deemed to be amendments to the original notice. If an owner, part owner, or lessee contracts with additional original contractors, lenders, or sureties not identified in the original notice of commencement filed for the improvement, the owner, part owner, or lessee shall amend the original notice of commencement to identify the additional original contractors, lenders, and sureties. The date of the filing of the amended notice is the date of the filing of the original notice of commencement.

(B) The notice of commencement required under division (A) of this section shall contain, in affidavit form, all of the following information:

(1) The legal description of the real property on which the improvement is to be made. For purposes of this division, a description sufficient to describe the real property for the purpose of conveyance, or contained in the instrument by which the owner, part owner, or lessee took title, is a legal description.

(2) A brief description of the improvement to be performed on the property containing sufficient specificity to permit lien claimants to identify the improvement;

(3) The name, address, and capacity of the owner, part owner, or lessee of the real property contracting for the improvement;

(4) The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee;

(5) The name and address of the owner's, part owner's, or lessee's designee, if any;

(6) The name and address of all original contractors, except that if the notice of commencement is recorded for an improvement involving a single- or double-family dwelling and if more than one original contractor is involved, instead of listing each original contractor, the owner shall state that multiple original contractors are involved in the improvement;

(7) The date the owner, part owner, or lessee first executed a contract with an original contractor for the improvement;

(8) The name and address of all lending institutions which provide financing for the improvements, if any;

(9) The name and address of all sureties on any bond which guarantee payment of the original contractor's obligations under the contract for the improvement, if any;

(10) The following statement:

"To Lien Claimants and Subsequent Purchasers:

Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanics' lien may preserve the lien by providing a notice of furnishing to the above-named designee and the above-named designee's original contractor, if any, and by timely recording an affidavit pursuant to section 1311.06 of the Revised Code.

A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee, or the person with whom you have contracted."

(11) The name and address of the person preparing the notice;

(12) An affidavit of the owner, part owner, or lessee or the agent of the owner, part owner, or lessee which verifies the notice.

(C) If the notice of commencement furnished by or for an owner, part owner, or lessee contains incorrect information, the owner, part owner, or lessee is liable for any loss of lien rights of a lien claimant and any actual expenses incurred by the lien claimant in maintaining lien rights, including attorney's fees, if the loss and expenses incurred are a direct result of the lien claimant's reliance on the incorrect information.

Any lien claimant who has included incorrect information in the claimant's affidavit for a lien under section 1311.06 of the Revised Code, as a result of incorrect information contained in the notice of commencement, may file for record an amended affidavit for a lien. The amended affidavit shall contain all of the information required by section 1311.06 of the Revised Code for an original affidavit. The lien claimant shall serve a copy of the amended affidavit on the owner, part owner, or lessee as provided in section 1311.07 of the Revised Code. The lien claimant may file the amended affidavit for record at any time during the time that the lien acquired by the original affidavit continues in effect under section 1311.13 of the Revised Code. In no event shall the amended affidavit extend such time period. The filing of an amended affidavit does not constitute a waiver of the rights granted by this division.

(D) Within ten days after the date a subcontractor, material supplier, or laborer serves a written request upon the owner, part owner, or lessee, or designee for a copy of the notice of commencement, the owner, part owner, lessee, or designee shall serve a copy of the notice of commencement to the requesting subcontractor, material supplier, or laborer.

(E) Within ten days after the date a subcontractor, material supplier, or laborer serves a written request for a copy of the notice of commencement upon the original contractor who has been provided with a notice of commencement from the owner, part owner, or lessee, or designee and with

whom the subcontractor, material supplier, or laborer has a direct contract, the original contractor shall serve a copy of the notice of commencement to the requesting subcontractor, material supplier, or laborer.

(F) Within ten days after the date a subcontractor, material supplier, or laborer serves a written request for a copy of the notice of commencement upon the subcontractor who has been provided with a notice of commencement from the owner, part owner, lessee, designee, or original contractor and with whom the subcontractor, material supplier, or laborer has a direct contract, the subcontractor shall serve a copy of the notice of commencement upon the requesting subcontractor, material supplier, or laborer.

(G)(1) Except as provided in division (G)(2) of this section, the owner, part owner, lessee, or designee shall post and maintain posted a copy of the notice of commencement in a conspicuous place on the real property described in the notice during the course of the actual physical improvement to the real property.

(2) No owner, part owner, lessee, or designee, has to post a copy of the notice of commencement on the real property described in the notice for an improvement that is the subject of a home purchase contract.

(H) The owner, part owner, lessee, or designee shall serve a copy of the notice of commencement upon the original contractor. If the owner, part owner, lessee, or designee fails to serve a copy of the notice of commencement upon the original contractor, the owner, part owner, or lessee is liable to the original contractor for all actual expenses incurred by the original contractor in obtaining the information otherwise provided by the notice of commencement.

(I) If the owner, part owner, lessee, or designee fails to record the notice of commencement in accordance with this section, the time within which a subcontractor or material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement has been recorded. A subcontractor or material supplier need not serve a notice of furnishing to preserve lien rights for the period before the notice of commencement is recorded.

(J) If the owner, part owner, lessee, or designee fails to serve, upon written request, the notice of commencement in accordance with this section, the time within which a subcontractor or material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement actually has been served to the subcontractor or material supplier. The

owner, part owner, or lessee who fails to serve the notice pursuant to this section is liable to any subcontractor or material supplier who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information that would have been contained in the notice.

(K) If an owner, part owner, lessee, or designee fails to post or maintain a copy of the notice of commencement as required by division (G)(1) of this section, the owner, part owner, or lessee is liable to a subcontractor, material supplier, or laborer who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information otherwise provided by the posting.

(L) If an original contractor or subcontractor who has been provided with a notice of commencement fails to serve a copy of the notice of commencement to any subcontractor, material supplier, or laborer who requests it, the original contractor or subcontractor who fails to serve the copy of the notice is liable to the subcontractor, material supplier, or laborer who made the request for all costs incurred by the subcontractor, material supplier, or laborer in obtaining the information contained in the notice of commencement, provided that an original contractor or subcontractor who fails to provide the notice upon request is not liable under this division to any subcontractor, material supplier, or laborer with whom the original contractor or subcontractor is not in direct privity of contract.

(M)(1) If after the first work, labor, or material has been performed on or furnished to the improvement, the owner, part owner, lessee, or designee fails to serve, record, or post a notice of commencement as required by this section, the original contractor may, in writing, request the owner, part owner, lessee, or designee to serve, record, or post the notice. If an owner, part owner, lessee, or the designee of an owner, part owner, or lessee fails or refuses to serve, record, or post a notice of commencement within ten days of receipt of a request, the owner, part owner, or lessee is liable for the owner's, part owner's, or lessee's failure or refusal and for the designee's failure or refusal, without recourse to the original contractor for all damages, costs, and expenses which result from the filing of a valid mechanics' lien to the extent that the lien, damages, costs, and expenses could have been avoided through proper payment.

(2) Nothing in this division shall be interpreted as to either of the following:

(a) Relieving an original contractor from the duty to pay the original contractor's subcontractors, material suppliers, and laborers for labor or work performed or materials furnished pursuant to a contract directly with the original contractor;

(b) Obligating an owner, part owner, or lessee to pay for work or labor performed or materials furnished by subcontractors, material suppliers, or laborers pursuant to direct contracts with the original contractor.

(N)(1) If the owner, part owner, or lessee fails to record a notice of commencement or an amended notice, any person holding a mortgage on the real property to be improved may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee. If the owner, part owner, or lessee fails to record a notice of commencement or an amended notice within the later of ten days after the performance of any labor or work or the furnishing of any material for an improvement on real property which gives rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code or three days after service of a demand to record the notice or amended notice by the original contractor, the original contractor may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee.

(2) If the original contractor or a mortgage holder has recorded a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the owner, part owner, or lessee is liable to the original contractor or mortgage holder for all costs and expenses incurred in obtaining the information contained in the notice of commencement or an amended notice and all costs incurred in the preparation and recording of the notice of commencement or an amended notice.

(3) Unless required to file the notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the party filing a written notice of commencement or amended notice on behalf of the owner, part owner, or lessee is not liable to the owner, part owner, or lessee for any errors contained in the notice of commencement or amended notice.

(4) If a mortgage holder or an original contractor records a notice of commencement or amended notice on behalf of an owner, part owner, or lessee, such fact must be included on the notice or amended notice.

(O) This section does not apply to ~~any improvement made pursuant to~~ a home construction contract as defined in section 1311.011 of the Revised Code, except that when a lending institution as defined in division (A)(3) of section 1311.011 of the Revised Code requires that a notice of commencement be recorded as part of the financing for a home construction contract, which is secured in whole or in part by a mortgage on real estate upon which the improvements are to be constructed, the owner, part owner, or lessee may file a notice of commencement pursuant to this section by recording the notice of commencement in the county recorder's office of the county where the owner, part owner, or lessee's property is located. If the

property is located in more than one county, the owner, part owner, or lessee shall record the notice of commencement in the county recorders' office of each county in which the property is located.

If the owner, part owner, or lessee files a notice of commencement pursuant to this division, the attachment, continuance, and priority provisions of section 1311.13 of the Revised Code apply to that improvement, but the notice of furnishing requirements specified in section 1311.05 of the Revised Code do not apply to that improvement.

(P) The county recorder of the county where a notice of commencement is filed for record shall endorse the date and hour of its filing and cause it to be recorded as mechanics' liens are recorded, and collect the same fees for recording the notice of commencement as are provided in section 317.32 of the Revised Code. The recorder shall index the real property described in the notice of commencement and shall index the names of all owners, part owners, lessees, and land contract vendees in the direct index and the names of all original contractors in the reverse index as provided for in section 317.18 of the Revised Code.

(Q) Notwithstanding this section, if the owner, part owner, or lessee is a telephone company, an electric light company, a gas company, a water works company, all as defined in section 4905.03 of the Revised Code, or a subsidiary or affiliate thereof, the owner, part owner, or lessee may, but is not required to, record a notice of commencement pursuant to division (A) of this section, and is not required to serve, post, and provide copies of a notice of commencement pursuant to divisions (D), (G), and (H) of this section unless such owner, part owner, or lessee elects to record the notice of commencement. If the owner, part owner, or lessee elects to record the notice of commencement and the improvement extends beyond one parcel of real property or one county, the owner, part owner, or lessee may, in lieu of using the legal description required in division (B)(1) of this section, use a description which reasonably describes the real property on which the improvement is to be made. Any description used other than the description specified in division (B)(1) of this section shall refer to the township and county in which the improvement is located, the name and route number of any local, state, or federal highway near the improvement, if any, the post office address of the real property, if any, and the name by which the owner, part owner, or lessee refers to the improvement.

If an owner, part owner, or lessee elects not to record, serve, post, or provide copies of a notice of commencement pursuant to divisions (A), (D), (G)(1), and (H) of this section, the owner, part owner, or lessee is subject to all applicable liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N)

of this section.

(R) If an owner, part owner, lessee, or designee fails to record a notice of commencement in accordance with this section, no subcontractor or material supplier who performs labor or work upon or furnishes material in furtherance of that improvement has to serve a notice of furnishing in accordance with section 1311.05 of the Revised Code in order to preserve the subcontractor's or material supplier's lien rights.

(S) A notice of commencement filed as provided herein expires six years after its filing date unless the notice of commencement or amendments made to the notice of commencement specify otherwise.

Sec. 1311.05. (A) Except as provided in section 1311.04 of the Revised Code and this section, a subcontractor or ~~materialman~~ material supplier who performs labor or work upon or furnishes material in furtherance of an improvement to real property and who wishes to preserve ~~his~~ the subcontractor's or material supplier's lien rights shall serve a notice of furnishing, if any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code, upon the owner's, part owner's, or lessee's designee named in the notice of commencement or amended notice and the original contractor under the original contract pursuant to which ~~he~~ the subcontractor or material supplier is performing labor or work or furnishing materials, as named in the notice of commencement or amended notice and at the address listed in the notice or amended notice at any time after the recording of the notice of commencement or amended notice but within twenty-one days after performing the first labor or work or furnishing the first materials or within the extended time period provided for in division (I) or (J) of section 1311.04 of the Revised Code. If an owner, part owner, or lessee has not named a designee in the notice of commencement or amended notice or if the designee has died or otherwise has ceased to exist, the subcontractor or ~~materialman~~ material supplier shall serve the notice of furnishing upon the owner, part owner, or lessee named in the notice of commencement. If no designee is named or if the designee has died or otherwise has ceased to exist, and if more than one owner is named in the notice of commencement, service of the notice of furnishing to the first owner, part owner, or lessee named in the notice of commencement is sufficient. No original contractor has to serve a notice of furnishing to preserve lien rights arising from a contract with an owner, part owner, or lessee. No ~~materialman~~ material supplier who is in direct privity of contract with an owner, part owner, or lessee has to serve a notice of furnishing upon the owner, part owner, or lessee or designee in order to preserve ~~his~~ the material supplier's lien rights.

No subcontractor or ~~materialman~~ material supplier who is in direct privity of contract with the original contractor has to serve a notice of furnishing upon the original contractor in order to preserve ~~his~~ the subcontractor's or material supplier's lien rights.

If any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code for an improvement involving a single- or double-family dwelling and if that notice states that multiple original contractors are involved in the improvement, a subcontractor or ~~materialman~~ material supplier does not have to serve a notice of furnishing upon any original contractor in order to preserve ~~his~~ the subcontractor's or material supplier's lien rights.

A subcontractor or ~~materialman~~ material supplier who serves a notice of furnishing in conformity with this section does not have to serve an amended notice of furnishing on any party if ~~he~~ the subcontractor or material supplier receives an amended notice of commencement subsequent to service of ~~his~~ the subcontractor's or material supplier's notice of furnishing. If a subcontractor or ~~materialman~~ material supplier serves a notice of furnishing based upon information contained in any notice of commencement or amended notice of commencement relative to the improvement for which ~~he~~ the subcontractor or material supplier performs labor or work or furnishes material, the notice of furnishing is deemed effective even if the notice of commencement already has been amended or is amended in the future.

If a lender is named in the notice of commencement or amended notice, a subcontractor or ~~materialman~~ material supplier may serve a copy of the notice of furnishing upon the lender at the address listed in the notice or amended notice, provided that no subcontractor or ~~materialman~~ material supplier is required to serve a copy of the notice of furnishing upon the lender to preserve ~~his~~ the subcontractor's or material supplier's lien rights. The receipt of a notice of furnishing by a lender imposes no duty upon the lender by implication or otherwise with respect to the disbursement of any loan proceeds or the payment to any subcontractor, ~~materialman~~ material supplier, or any other person.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with improvements
to property other than public improvements)

To:

(Name of owner, part owner, or lessee or designee
from the notice of commencement)

.....
(Address from the notice of commencement)

To:

(Name of original contractor from notice of commencement)

(Address of original contractor from notice of commencement)

Please take notice that the undersigned is performing certain labor or work or furnishing certain materials to
.....(name and address of other contracting party)..... in connection with the improvement to the real property located at The labor, work, or materials were performed or furnished first or will be performed or furnished first on (date).

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

.....
(Name and address of lien claimant)

By

(Name and capacity of party signing for lien claimant)

.....
(Address of party signing)

Date:"

(C) The description of the location of the property required in the notice of furnishing is sufficient if it reasonably identifies the real property upon which the labor or work is performed or for which the material is furnished.

(D)(1) Except as provided in division (D)(2) of this section, a notice of furnishing served more than twenty-one days after a subcontractor or ~~materialman~~ material supplier who is required by this section to serve a notice of furnishing, first performed labor or work or furnished material at the site of the improvement preserves the subcontractor's or ~~materialman's~~ material supplier's lien rights for amounts owing for labor and work performed and materials furnished within the twenty-one-day period immediately preceding service of the notice of furnishing and thereafter, but does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(2) A notice of furnishing served within the applicable period provided for in section 1311.04 of the Revised Code preserves the subcontractor's or ~~materialman's~~ material supplier's lien rights for amounts owing for labor and work performed and materials furnished from the date the labor or work was first performed or materials were first furnished through the date of service of the notice of furnishing and thereafter. A notice of furnishing served after the applicable period provided for in section 1311.04 of the Revised Code does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(E) This section does not apply to any improvement made pursuant to a home construction contract as defined in section 1311.011 of the Revised Code.

(F) A notice of furnishing, even if served upon a mortgagee of real property to be improved, does not constitute a written notice of a lien or encumbrance under section 5301.232 or a written notice of a claim of a right to a mechanics' lien under division (B)(5) of section 1311.011 of the Revised Code.

(G) No laborer must serve a notice of furnishing in accordance with this section to preserve lien rights.

(H) No subcontractor or ~~materialman~~ material supplier who performs labor or work upon or furnishes material in furtherance of an improvement has to serve a notice of furnishing in accordance with this section in order to preserve ~~his~~ the subcontractor's or material supplier's lien rights if the owner, part owner, or lessee who contracted for the labor, work, or materials fails to record a notice of commencement in accordance with section 1311.04 of the Revised Code.

(I) If a notice of commencement is filed as provided in division (O) of section 1311.04 of the Revised Code, the subcontractors and material suppliers working on or providing materials to the improvement shall not be required to serve notices of furnishing as provided in division (A) of section 1311.05 of the Revised Code hereinabove in order to preserve lien rights.

Sec. 1311.12. (A) A mechanic's lien for furnishing materials arises under sections 1311.01 to 1311.22 of the Revised Code only if the materials are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site by the claimant or at the claimant's direction, or by other evidence, that the materials be used in the course of the improvement with which the lien arises;

(2) Incorporated in the improvement or consumed as normal wastage in

the course of the improvement;

(3) Specifically fabricated for incorporation in the improvements and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the improvement;

(4) Used for the improvement or for the operation of machinery or equipment used in the course of the improvement and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(5) Tools or machinery used on the particular improvement, subject to division (C) of this section.

(B) The delivery of materials to the site of the improvement, whether or not by the claimant, creates a conclusive presumption that the materials were used in the course of the improvement or were incorporated into the improvement.

(C) A mechanics' lien for furnishing tools or machinery which arises under division (A)(5) of this section is limited to either of the following:

(1) If the tools or machinery are rented, the lien is for the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract.

(2) If the tools or machinery are purchased, the lien is for the price, but the lien only arises if the tools or machinery were purchased for use in the course of the particular improvement and have no substantial value to the purchaser after the completion of the improvement on which they were used.

(D) All of the deliveries or the sales, or both, by a ~~lien claimant~~ material supplier of materials, including tools and machinery to or for an improvement, as ordered or purchased by an owner, original contractor, or subcontractor, shall give rise to one mechanics' lien for the unpaid portion of the sales to that owner, original contractor, or subcontractor. Nothing in this division shall prohibit the filing of more than one lien if a material supplier sold materials to more than one owner, original contractor, or subcontractor for the same improvement.

Sec. 1311.13. (A)(1) ~~Liens~~ All liens under sections 1311.01 to 1311.22 of the Revised Code for labor or work performed or materials furnished to the same improvement prior to the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code are effective from the date the first visible work or labor is performed or the first materials are furnished by the first original contractor, subcontractor, ~~materialman~~ material supplier, or laborer at the site of to work, labor on, or provide materials to the improvement.

(2) Except as provided in division (A)(3) of this section, liens under sections 1311.01 to 1311.22 of the Revised Code for labor or work performed or materials furnished after the recording of a notice of commencement pursuant to section 1311.04 of the Revised Code are effective from the date of the recording of the notice of commencement.

(3) Notwithstanding division (A)(2) of this section, if there is a valid and recorded lien with an effective date described in division (A)(1) of this section which has not been released at the time a lien is filed by a laborer after the recording of the notice of commencement or if a valid lien against the improvement pursuant to division (A)(1) of this section is filed subsequent to the filing of a laborer's lien, the lien of the laborer is effective from the date the first visible labor or work was performed or materials were furnished by the original contractor, subcontractor, ~~materialman~~ material supplier, or laborer at the site of the improvement.

(B)(1) Except for the liens of laborers as provided in division (B)(2) of this section, a lien securing the claim of a claimant who has performed labor or work or furnished materials both prior to and after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code has two effective dates. That portion of the lien which arises from labor or work performed or materials furnished prior to the filing of the notice of commencement has the effective date described in division (A)(1) of this section and that portion of the lien which arises from labor or work performed or materials furnished on or after the filing of the notice of commencement has the effective date described in division (A)(2) of this section. Any payment received by the lien claimant both before and after the filing of a lien shall be applied first to the labor or work performed or materials furnished prior to the filing of the notice of commencement, and then to labor or work performed or materials furnished on and after the filing of the notice of commencement.

(2) A lien filed by a laborer for labor or work performed both prior to and after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code has one effective date as described in division (A)(1) of this section.

(C) Liens under sections 1311.01 to 1311.22 of the Revised Code continue in force for six years after an affidavit is filed in the office of the county recorder under section 1311.06 of the Revised Code. If an action is brought to enforce the lien within that time, the lien continues in force until final adjudication thereof.

(D) If several liens are obtained by several persons upon the same improvement they have no priority among themselves, except as follows:

(1) Liens which have an effective date described in division (A)(1) of this section have priority over all other liens, except for liens described in divisions (A)(3), (B)(2), or (D)(2) of this section, to the extent of the value of the work and labor performed and materials furnished prior to the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code.

(2) Liens filed by laborers have priority over all other liens whether the labor or work was performed before or after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code.

(E)(1) Except as provided in division (E)(2) of this section, liens which have an effective date described in division (A)(1) of this section shall be preferred to the extent of the value of the labor or work performed or materials furnished prior to the recording of the notice of commencement, to all other titles, liens, or encumbrances which may attach to or upon the improvement or to or upon the land upon which it is situated, which either shall be given or recorded subsequent to the effective date of the liens described in division (A)(1) of this section.

(2) Liens recorded by laborers which have an effective date described in division (A)(1) or (3) of this section shall be preferred to all other titles, liens, or encumbrances which may attach to or upon the improvement or to or upon the land upon which it is situated which are given or recorded subsequent to the effective date of such laborers' liens.

(F) Liens which have an effective date described in division (A)(2) of this section shall be preferred to all other titles, liens, or encumbrances which may attach to or upon such improvement or to or upon the land upon which it is situated, which either are given or recorded subsequent to the recording of the notice of commencement.

(G) Unless otherwise stipulated in a mortgage securing financing for the construction of an improvement, if a mortgage securing financing for the construction of an improvement and notice of commencement for said improvement are recorded on the same day, the mortgage shall be considered recorded before the notice of commencement for purposes of priority described in this section.

(H) The recorder may destroy the record of all mechanics' liens which have been recorded for a period of ten years or longer.

Sec. 1311.14. (A) Except as provided in this section, the lien of a mortgage given in whole or in part to improve real estate, or to pay off prior encumbrances thereon, or both, the proceeds of which are actually used in the improvement in the manner contemplated in sections 1311.02 and 1311.03 of the Revised Code, or to pay off prior encumbrances, or both, and

which mortgage contains therein the correct name and address of the mortgagee, together with a covenant between the mortgagor and mortgagee authorizing the mortgagee to do all things provided to be done by the mortgagee under this section, shall be prior to all mechanic's, ~~materialmen's~~ material supplier's, and similar liens and all liens provided for in this chapter that are filed for record after the improvement mortgage is filed for record, to the extent that the proceeds thereof are used and applied for the purposes of and pursuant to this section. Such mortgage is a lien on the premises therein described from the time it is filed for record for the full amount that is ultimately and actually paid out under the mortgage, regardless of the time when the money secured thereby is advanced.

Any laborer or ~~materialman~~ material supplier who claims or at any time can claim a right of lien on the premises for any labor or work performed or to be performed or for material furnished or to be furnished for the improvement, may serve a written notice on the mortgagee, which notice shall show the kind and nature of the labor or work performed or to be performed, or both, and of the material furnished or to be furnished, or both, and the amount claimed or to be claimed therefor, and a description of the premises upon which the labor or work has been or is to be performed or to which the material has been or is to be furnished, and the amount claimed therefor.

(B) The mortgagee need not pay out any of the mortgage fund for fifteen days after filing the mortgage. At the end of such period, ~~he~~ the mortgagee may refuse to go forward with the loan or to pay out the fund, in which case, if no funds have been advanced, ~~he~~ the mortgagee shall make, execute, and deliver to the mortgagor, or to the county recorder to be recorded, a proper release of the mortgage, but if the mortgagee elects to complete the loan, ~~he~~ the mortgagee shall, in order to obtain the priority set forth in this section, distribute the mortgage fund in the following order:

~~(A)~~(1) The mortgagee may at any time pay off the prior encumbrance, or withhold the amount thereof for that purpose.

~~(B)~~(2) Out of the residue of the fund, the mortgagee may at any time retain sufficient funds to complete the improvement, according to the original plans, specifications, and contracts, and within the original contract price.

~~(C)~~(3) The mortgagee may from time to time pay out on the owner's order, directly to the original contractor or subcontractor, or directly to the owner ~~himself~~ if ~~he~~ the owner is ~~his~~ the owner's own contractor, such sums as the owner certifies to be necessary to meet and pay labor payrolls for the improvement.

~~(D)~~(4) The mortgagee shall pay on the order of the owner, the accounts of the ~~materialmen~~ material suppliers and laborers who have filed with the mortgagee a written notice as provided in this section, the amounts due for labor or work then performed and material then furnished for the improvement; and shall retain out of the mortgage fund such money to become due as is shown by the notice served and shall hold such money, and shall pay on the order of the owner, the amounts due to such persons who have served such notices, if the mortgagee has sufficient money in ~~his~~ the mortgagee's hands to do so and also to complete the improvement; but if the mortgagee has funds in ~~his~~ the mortgagee's hands insufficient to pay all such laborers and ~~materialmen~~ material suppliers in full and to complete the improvement, ~~he~~ the mortgagee shall retain sufficient money to complete the improvement and to distribute the balance pro rata among the ~~materialmen~~ material suppliers and laborers who have filed such notices.

~~(E)~~(5) If the owner refuses to issue an order to pay the amount of the notice filed, the mortgagee shall retain the whole amount claimed until the proper amount has been agreed upon or judicially determined, provided that the mortgagee may withhold sufficient funds to complete the improvement.

~~(F)~~(6) The mortgagee shall pay out on the owners' order, directly to ~~materialmen~~ material suppliers or laborers who have performed labor or work or furnished material for the improvement.

~~(G)~~(7) The mortgagee shall pay the balance of the mortgage fund after the improvement is completed to the owner, or to whomsoever the owner directs.

In case the mortgagee pays out the fund otherwise than as provided in this section, then the lien of the mortgage to the extent that the funds had been otherwise paid, is subsequent to liens of original contractors, subcontractors, ~~materialmen~~ material suppliers, and laborers; but in no case is such a mortgagee obligated to pay or liable at law for more than the principal of the mortgage.

All payments and distributions made by the mortgagee as provided in this section shall be considered the same as if paid to the owner, part owner, lessee, or mortgagor under the mortgage, and as if paid to the original contractor, and when paid pursuant to this section there is no further liability on the part of the mortgagee. This chapter does not require the mortgagee to ascertain by affidavit or otherwise the respective claims of original contractors, subcontractors, laborers, or ~~materialmen~~ material suppliers, or to determine priorities among lien claimants.

The mortgagee is not responsible for a mistake of the owner in determining priorities, or for any failure of the payee properly to distribute

funds paid on the written order of the owner.

(C) Any original contractor, subcontractor, ~~materialman~~ material supplier, or laborer may at any time serve on any mortgagee a written request demanding to know the exact balance of the mortgage fund in ~~his~~ the mortgagee's possession and the aggregate amount included in the notices filed with the mortgagee at the time of the receipt of such notice. The mortgagee shall correctly inform the person serving the notice of the exact balance and the aggregate amount included in the notices filed. If the mortgagee fails to inform the original contractor, subcontractor, ~~materialman~~ material supplier, or laborer serving the written demand of the exact balance of the mortgage fund in ~~his~~ the mortgagee's possession at the time of the receipt of the notice, the mortgagee is liable to the original contractor, subcontractor, ~~materialman~~ material supplier, and laborer making such demand, each time ~~he~~ the mortgagee fails to comply with such demand, in the sum of one hundred dollars.

This section, as to mortgages contemplated by this section, controls over all other sections of the Revised Code relating to mechanic's, ~~materialmen's~~ material supplier's, contractor's, subcontractor's, laborer's, and all liens that can be had under this chapter, and shall be liberally construed in favor of such mortgagees, a substantial compliance by such mortgagees being sufficient.

Sec. 1311.15. (A) The lien of a subcontractor is superior to any already taken or to be taken by the original contractor in respect of the same labor, work, or material, and the liens of laborers, ~~materialmen~~ material suppliers, and subcontractors to an original contractor or subcontractor, are superior to any lien already taken or to be taken by such original contractor or subcontractor indebted to them in respect of such labor, work, or material. An assignment or transfer by the original contractor or subcontractor, of ~~his~~ the contract with the owner or original contractor, as well as all proceedings in attachment, or otherwise, against the original contractor or subcontractor, to subject or encumber ~~his~~ the original contractor's or subcontractor's interest in such contract, is subject to the claims of every laborer, subcontractor, or ~~materialman~~ material supplier who performs any labor or work or furnishes any material in furtherance of any improvement in accordance with this chapter.

(B)(1) An owner, part owner, lessee, or public authority may pay directly the claim of any subcontractor or ~~materialman~~ material supplier who serves a notice of furnishing pursuant to section 1311.05 or 1311.261 of the Revised Code, or the claim of any laborer. If the owner, part owner, lessee, or public authority pays such claim, ~~he~~ the owner, part owner, lessee,

or public authority has a right to a setoff or credit, in an amount equal to the amount paid, against the original contractor or principal contractor who employed the subcontractor, ~~materialman~~ material supplier, or laborer paid by the owner, part owner, lessee, or public authority under division (B)(1) of this section.

(2) A principal contractor, an original contractor, or a subcontractor may pay directly the claim of any subcontractor or ~~materialman~~ material supplier who serves a notice of furnishing pursuant to section 1311.05 or 1311.261 of the Revised Code, or the claim of any laborer. ~~If the A~~ A principal contractor, original contractor, or subcontractor who pays such a claim, ~~he~~ has a right to a setoff or credit, in an amount equal to the amount paid, against the subcontractor who employed the subcontractor, ~~materialman~~ material supplier, or laborer paid by the principal contractor, original contractor, or subcontractor under division (B)(2) of this section.

(C) The failure of an original or principal contractor, subcontractor, ~~materialman~~ material supplier, or laborer to properly exercise ~~his~~ the rights ~~under provided by~~ this chapter does not limit ~~his~~ the right to pursue any other legal or equitable remedy.

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the Revised Code:

(A) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature by a public authority.

(B) "Public authority" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof.

(C) ~~"Materialman" or "material~~ Material supplier" includes any person by whom any materials are furnished in furtherance of a public improvement.

(D) "Laborer" includes any mechanic, worker, artisan, or other individual who performs labor or work in furtherance of any public improvement.

(E) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with any person other than the public

authority.

(F) "Principal contractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with a public authority.

(G) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of a public improvement.

(H) "Wages" has the same meaning as "prevailing wage" in division (E) of section 4115.03 of the Revised Code.

(I) "Notice of commencement" means the notice specified in section 1311.252 of the Revised Code.

(J) "Notice of furnishing" means the notice specified in section 1311.261 of the Revised Code.

Sec. 1311.26. Any subcontractor, ~~materialman~~ material supplier, or laborer who is performing or has performed labor or work or is furnishing or has furnished material for any public improvement provided for in a contract between the public authority and a principal contractor, and under a contract between the subcontractor, ~~materialman~~ material supplier, or laborer and a principal contractor or subcontractor, at any time, not to exceed one hundred twenty days from the performance of the last labor or work or furnishing of the last material, may serve the public authority an affidavit stating the amount due and unpaid for the labor and work performed and material furnished, when the last of the labor or work was performed and when the last of the material was furnished with all credits and setoffs thereon, and the post-office address of the claimant. If a claimant serves an affidavit under this section, ~~he~~ the claimant shall serve the affidavit to the representative of the public authority named in the notice of commencement.

One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

Sec. 1311.261. (A)(1) Every subcontractor and ~~materialman~~ material supplier who wishes to exercise ~~his~~ the subcontractor's or material supplier's rights under sections 1311.25 to 1311.32 of the Revised Code regarding claims for labor or work performed or materials furnished in furtherance of a public improvement shall serve a notice of furnishing, in accordance with division (B) of this section, on the principal contractor whose contract with

the public authority is the contract under which the subcontractor or ~~materialman~~ material supplier is performing labor or work or furnishing materials within twenty-one days after the date that the subcontractor or ~~materialman~~ material supplier first performed labor or work or furnished materials on the site of the public improvement, except that no subcontractor or ~~materialman~~ material supplier who is in direct privity of contract with the principal contractor need provide the notice.

(2) A subcontractor or ~~materialman~~ material supplier may serve the principal contractor with a notice of furnishing pursuant to this section more than twenty-one days after the subcontractor or ~~materialman~~ material supplier first performed labor or work or furnished materials on the site of the public improvement. If a subcontractor or ~~materialman~~ material supplier serves the notice, the subcontractor or ~~materialman~~ material supplier shall have the rights of sections 1311.25 to 1311.32 of the Revised Code with regard to only amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with public improvements)

To:

(Name of principal contractor)

.....

Address of principal contractor)

The undersigned notifies you that ~~he~~ the undersigned has furnished or performed or will furnish or perform (describe labor, work, or materials) for the improvement of real property identified as (property description or address) under order given by (name of subcontractor or ~~materialman~~ material supplier). The labor, work, or materials were first furnished or performed or will be furnished or performed on (date).

.....
(Signature of subcontractor or ~~materialman~~ material supplier)

.....
(Address of subcontractor or ~~materialman~~ material supplier)

.....
(Date)."

(C) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or ~~materialman~~ material supplier, shall provide, in writing, to the subcontractor or ~~materialman~~ material supplier, the name and address of the public authority.

(D) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or ~~materialman~~ material supplier, shall provide, in writing, to the subcontractor or ~~materialman~~ material supplier, the name and address of the principal contractor.

(E) If the principal contractor or subcontractor fails to provide the name and address of the public authority or the principal contractor to those in direct privity of contract and that failure results in the loss of rights under this section, the affected person may bring an action in any court of common pleas which would otherwise have jurisdiction over the action against the person who failed to furnish the information for any damages resulting from the loss of rights under this section.

(F) No laborer must serve a notice in accordance with this section to preserve lien rights under sections 1311.25 to 1311.32 of the Revised Code.

Sec. 1311.28. Upon receiving the affidavit required by section 1311.26 of the Revised Code, the public authority shall detain from the principal contractor or from the balance of the funds remaining in the contract with the principal contractor, an amount, up to the balance remaining in the contract, that does not in the aggregate exceed the claim or claims.

The public authority shall not detain any amount requested by a claimant who is required by section 1311.261 of the Revised Code to serve a notice of furnishing, unless the claimant has provided to the public authority a copy of the notice of furnishing and a sworn statement as to the date the notice of furnishing was served to the principal contractor, or by a claimant who is a laborer, unless the laborer serves an affidavit upon the public authority pursuant to section 1311.26 of the Revised Code.

The public authority shall place any detained funds in an escrow account as provided for under section 153.63 of the Revised Code, to be released at the times, in the amounts, and to the persons ordered by a court of competent jurisdiction or by agreement of the principal contractor and the subcontractor, ~~materialman~~ material supplier, or laborer who filed the affidavit provided for in section 1311.26 of the Revised Code or upon a failure to commence suit as provided in section 1311.311 of the Revised Code.

Sec. 1311.29. A subcontractor, ~~materialman~~ material supplier, laborer, or person who serves the affidavit pursuant to section 1311.26 of the Revised Code, in order to notify other subcontractors, ~~materialmen~~ material suppliers, and laborers, within thirty days thereafter, shall file for record a copy of the affidavit with the county recorder of the county where the public improvement is situated or with the county recorder of each of the counties where the public improvement is situated if the public improvement is

situated in more than one county. The filing for record of the affidavit with the county recorders gives such subcontractor, ~~materialman~~ material supplier, laborer, or person filing the affidavit as provided in section 1311.26 of the Revised Code, a preference, as to payments subsequently due from the public authority, over such of ~~his~~ the other subcontractors, ~~materialmen~~ material suppliers, and laborers who have failed, prior to the date any such payment is due, to file the affidavit provided for in section 1311.26 of the Revised Code, and to file for record the copy thereof with the county recorders as provided in this section. On detained funds, such claimants have no priority among themselves, but payment thereon shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each. The failure of any claimant to file for record a copy of the affidavit with the county recorders does not affect the validity of ~~his~~ the claimant's amount claimed with respect to persons other than such of ~~his~~ the claimant's other subcontractors, ~~materialmen~~ material suppliers, and laborers who have filed for record copies of their affidavits with the county recorders, and, against detained funds, such claimants who have failed to make such filing for record with the county recorders have no priority among themselves, but, after all claims having preference over theirs have been paid, payment shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each.

The recorder shall endorse upon every affidavit the date and hour of its filing, and record every affidavit filed for record. For recording or making a copy of the affidavit or certificate of the date of such filing for record, the recorder is entitled to the same fees as are provided for in section 317.32 of the Revised Code.

Sec. 1311.32. The duty to pay to claimants the amounts and in the order of preference, as provided in sections 1311.29 and 1311.31 of the Revised Code, may be enforced by an action in the court of common pleas or the subcontractor, ~~materialman~~ material supplier, or laborer may, when the amounts are due, recover through the public authority in the court of common pleas the whole or a pro rata amount of ~~his~~ the subcontractor's, material supplier's, or laborer's claim or estimate, not exceeding in any case the balance due to the principal contractor. Either of these actions shall be brought in the county in which the public property involved is situated, except that actions against state officers shall be brought only in Franklin county. The court shall resolve all disputes concerning whether the affidavit filed pursuant to section 1311.26 of the Revised Code has been perfected and concerning priorities, that may arise from enforcement of the affidavit or the bond that secures the affidavit, pursuant to section 1311.311 of the

Revised Code.

Sec. 4113.61. (A)(1) If a subcontractor or ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a contractor in sufficient time to allow the contractor to include the application, request, or invoice in ~~his~~ the contractor's own pay request submitted to an owner, the contractor, within ten calendar days after receipt of payment from the owner for improvements to property, shall pay to the:

(a) Subcontractor, an amount that is equal to the percentage of completion of the subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) ~~Materialman~~ Material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the ~~materialman~~ material supplier.

The contractor may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the contractor and the subcontractor or ~~materialman~~ material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the subcontractor or ~~materialman~~ material supplier.

If the contractor fails to comply with division (A)(1) of this section, the contractor shall pay the subcontractor or ~~materialman~~ material supplier, in addition to the payment due, interest in the amount of eighteen per cent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest to the subcontractor or ~~materialman~~ material supplier.

(2) If a lower tier subcontractor or lower tier ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier in sufficient time to allow the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier to include the application, request, or invoice in ~~his~~ the subcontractor's, material supplier's, or other lower tier subcontractor's or lower tier material supplier's own pay request submitted to a contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier, the subcontractor, ~~materialman~~ material supplier, or other lower tier subcontractor or lower tier ~~materialman~~ material supplier, within ten calendar days after receipt of payment from the contractor, other subcontractor, ~~materialman~~ material supplier, lower tier

subcontractor, or lower tier ~~materialman~~ material supplier for improvements to property, shall pay to the:

(a) Lower tier subcontractor, an amount that is equal to the percentage of completion of the lower tier subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) Lower tier ~~materialman~~ material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the lower tier ~~materialman~~ material supplier.

The subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier and the lower tier subcontractor or lower tier ~~materialman~~ material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the lower tier subcontractor or lower tier ~~materialman~~ material supplier.

If the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier fails to comply with division (A)(2) of this section, the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier shall pay the lower tier subcontractor or lower tier ~~materialman~~ material supplier, in addition to the payment due, interest in the amount of eighteen per cent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the contractor, other subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier and ending on the date of full payment of the payment due plus interest to the lower tier subcontractor or lower tier ~~materialman~~ material supplier.

(3) If a contractor receives any final retainage from the owner for improvements to property, the contractor shall pay from that retainage each subcontractor and ~~materialman~~ his material supplier the subcontractor's or material supplier's proportion of the retainage, within ten calendar days after receipt of the retainage from the owner, or within the time period provided in a contract, invoice, or purchase order between the contractor and the subcontractor or ~~materialman~~ material supplier, whichever time period is shorter, provided that the contractor has determined that the subcontractor's or ~~materialman's~~ material supplier's work, labor, and materials have been satisfactorily performed or furnished and that the owner has approved the subcontractor's or ~~materialman's~~ material supplier's work, labor, and

materials.

If the contractor fails to pay a subcontractor or ~~materialman~~ material supplier within the appropriate time period, the contractor shall pay the subcontractor or ~~materialman~~ material supplier, in addition to the retainage due, interest in the amount of eighteen per cent per annum of the retainage due, beginning on the eleventh day following the receipt of the retainage from the owner and ending on the date of full payment of the retainage due plus interest to the subcontractor or ~~materialman~~ material supplier.

(4) If a subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier receives any final retainage from the contractor or other subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ material supplier for improvements to property, the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier shall pay from that retainage each lower tier subcontractor or lower tier ~~materialman~~ his the lower tier subcontractor's or lower tier material supplier's proportion of the retainage, within ten calendar days after receipt of payment from the contractor or other subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ material supplier, or within the time period provided in a contract, invoice, or purchase order between the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier and the lower tier subcontractor or lower tier ~~materialman~~ material supplier, whichever time period is shorter, provided that the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier has determined that the lower tier subcontractor's or lower tier ~~materialman's~~ material supplier's work, labor, and materials have been satisfactorily performed or furnished and that the owner has approved the lower tier subcontractor's or lower tier ~~materialman's~~ material supplier's work, labor, and materials.

If the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier fails to pay the lower tier subcontractor or lower tier ~~materialman~~ material supplier within the appropriate time period, the subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier shall pay the lower tier subcontractor or lower tier ~~materialman~~ material supplier, in addition to the retainage due, interest in the amount of eighteen per cent per annum of the retainage due, beginning on the eleventh day following the receipt of the retainage from the contractor or other subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ material supplier and ending on the date of full payment of the retainage due plus

interest to the lower tier subcontractor or lower tier ~~materialman~~ material supplier.

(5) A contractor, subcontractor, or lower tier subcontractor shall pay a laborer wages due within ten days of payment of any application or request for payment or the receipt of any retainage from an owner, contractor, subcontractor, or lower tier subcontractor.

If the contractor, subcontractor, or lower tier subcontractor fails to pay the laborer wages due within the appropriate time period, the contractor, subcontractor, or lower tier subcontractor shall pay the laborer, in addition to the wages due, interest in the amount of eighteen per cent per annum of the wages due, beginning on the eleventh day following the receipt of payment from the owner, contractor, subcontractor, or lower tier subcontractor and ending on the date of full payment of the wages due plus interest to the laborer.

(B)(1) If a contractor, subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier has not made payment in compliance with division (A)(1), (2), (3), (4), or (5) of this section within thirty days after payment is due, a subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, lower tier ~~materialman~~ material supplier, or laborer may file a civil action to recover the amount due plus the interest provided in those divisions. If the court finds in the civil action that a contractor, subcontractor, ~~materialman~~ material supplier, lower tier subcontractor, or lower tier ~~materialman~~ material supplier has not made payment in compliance with those divisions, the court shall award the interest specified in those divisions, in addition to the amount due. Except as provided in division (B)(3) of this section, the court shall award the prevailing party reasonable attorney fees and court costs.

(2) In making a determination to award attorney fees under division (B)(1) of this section, the court shall consider all relevant factors, including but not limited to the following:

(a) The presence or absence of good faith allegations or defenses asserted by the parties;

(b) The proportion of the amount of recovery as it relates to the amount demanded;

(c) The nature of the services rendered and the time expended in rendering the services.

(3) The court shall not award attorney fees under division (B)(1) of this section if the court determines, following a hearing on the payment of attorney fees, that the payment of attorney fees to the prevailing party would be inequitable.

(C) This section does not apply to any construction or improvement of any single-, two-, or three-family detached dwelling houses.

(D)(1) No provision of this section regarding entitlement to interest, attorney fees, or court costs may be waived by agreement and any such term in any contract or agreement is void and unenforceable as against public policy.

(2) This section shall not be construed as impairing or affecting, in any way, the terms and conditions of any contract, invoice, purchase order, or any other agreement between a contractor and a subcontractor or a ~~materialman~~ material supplier or between a subcontractor and another subcontractor, a ~~materialman~~ material supplier, a lower tier subcontractor, or a lower tier ~~materialman~~ material supplier, except that if such terms and conditions contain time periods which are longer than any of the time periods specified in divisions (A)(1), (2), (3), (4), and (5) of this section or interest at a percentage less than the interest stated in those divisions, then the provisions of this section shall prevail over such terms and conditions.

(E) Notwithstanding the definition of lower tier ~~materialman~~ material supplier in this section, a person is not a lower tier ~~materialman~~ material supplier unless the materials supplied by ~~him~~ the person are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site, or by other evidence that the materials are to be used on a particular structure or improvement;

(2) Incorporated in the improvement or consumed as normal wastage in the course of the improvement; or

(3) Specifically fabricated for incorporation in the improvement and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the improvement.

(F) As used in this section:

(1) "Contractor" means any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of a structure or improvement under a contract with an owner, or a "construction manager" as that term is defined in section 9.33 of the Revised Code.

(2) "Laborer," "~~materialman~~ material supplier," "subcontractor," and "wages" have the same meanings as in section 1311.01 of the Revised Code.

(3) "Lower tier subcontractor" means a subcontractor who is not in privity of contract with a contractor but is in privity of contract with another subcontractor.

(4) "Lower tier ~~materialman~~ material supplier" means a ~~materialman~~ material supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a ~~materialman~~ material

supplier.

(5) "Wages due" means the wages due to a laborer as of the date a contractor or subcontractor receives payment for any application or request for payment or retainage from any owner, contractor, or subcontractor.

(6) "Owner" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof and relates to all the interests either legal or equitable, which a person may have in the real estate upon which improvements are made, including interests held by any person under contracts of purchase, whether in writing or otherwise.

Sec. 4740.01. As used in this chapter:

(A) "License" means a license the Ohio construction industry licensing board issues to an individual as a heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor.

(B) "Contractor" means any individual or business entity that satisfies both of the following:

(1) For compensation, directs, supervises, or has responsibility for the means, method, and manner of construction, improvement, renovation, repair, ~~testing~~, or maintenance on a construction project with respect to one or more trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or business entity is permitted or qualified to perform, direct, supervise, or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a construction project;

(2) Performs or employs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades.

(C) "Licensed trade" means a trade performed by a heating, ventilating, and air conditioning contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor.

(D) "Tradesperson" means an individual employed by a contractor who; ~~for compensation~~, engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance.

(E) "Construction project" means a construction project involving a

building or structure subject to Chapter 3781. of the Revised Code and the rules adopted under that chapter, but not an industrialized unit or a residential building as defined in section 3781.06 of the Revised Code.

Sec. 4740.04. The administrative section of the Ohio construction industry licensing board is responsible for the administration of this chapter and shall do all of the following:

(A) Schedule the contractor examinations each of the other sections of the board directs. Each type of examination shall be held at least four times per year.

(B) Select and contract with one or more persons to do all of the following relative to the examinations:

(1) Prepare, administer, score, and maintain the confidentiality of the examinations;

(2) Be responsible for all the expenses required to fulfill division (B)(1) of this section;

(3) Charge an applicant a fee in an amount the administrative section of the board authorizes for administering the examination;

(4) Design the examination for each type of contractor to determine an applicant's competence to perform that type of contracting.

~~(C) Issue and renew licenses to individuals who have attained at least the minimum score on an examination that the appropriate section authorizes for the licensed trade. Hydronics contractors shall pass the examinations for both the plumbing section and the heating, ventilating, air conditioning, and refrigeration section. The appropriate section shall determine whether the individual also is qualified as required by section 4740.06 of the Revised Code to hold a license as follows:~~

(1) Issue a license to any individual who the appropriate section of the board determines is qualified pursuant to section 4740.06 of the Revised Code to hold a license and has attained a score on the examination that the appropriate section authorizes for the licensed trade.

(a) Each license shall include a license number and an expiration date.

(b) Each license issued to an individual who holds more than one valid license shall contain the same license number and expiration date as the original license issued to that individual.

(2) Renew licenses for individuals who meet the renewal requirements of section 4740.06 of the Revised Code.

(D) Make an annual written report to the director of commerce on proceedings had by or before the board for the previous year and make an annual statement of all money received and expended by the board during the year;

(E) Keep a record containing the name, address, the date on which the board issues or renews a license to, and the license number of, every heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, and hydronics contractor issued a license pursuant to this chapter;

(F) Regulate a contractor's use and display of a license issued pursuant to this chapter and of any information contained in that license;

(G) Adopt rules in accordance with Chapter 119. of the Revised Code as necessary to properly discharge the administrative section's duties under this chapter. The rules shall include, but not be limited to, the following:

(1) Application procedures for examinations;

(2) Specifications for continuing education requirements for license renewal that address all of the following:

~~(a) Criteria for continuing education courses conducted pursuant to this chapter;~~

~~(b)~~ (b) A requirement that ~~individuals holding a~~ an individual who holds any number of valid and unexpired ~~license licenses~~ licenses accrue a total of ten hours of continuing education courses per year;

~~(c)~~ (c) A requirement that persons seeking approval to provide continuing education courses submit the required information to the appropriate section of the board at least thirty days, but not more than one year, prior to the date on which the course is proposed to be offered;

~~(d)~~ (d) A prohibition against any person providing a continuing education course unless the administrative section of the board approved that person not more than one year prior to the date the course is offered;

~~(e)~~ (b) Fees the board charges to persons who provide continuing education courses, in an amount of twenty-five dollars annually for each person approved to provide courses, not more than ten dollars plus one dollar per credit hour for each course offered, and one dollar per credit hour of instruction per attendee;

~~(f)~~ (c) A provision limiting approval of continuing education courses to one year.

(H) Adopt any continuing education curriculum as the other sections of the board establish or approve pursuant to division (C) of section 4740.05 of the Revised Code;

~~(I) Grant approval to a person or entity to offer continuing education courses pursuant to rules the board adopts;~~

~~(J)~~ Keep a record of its proceedings and do all things necessary to carry out this chapter.

Sec. 4740.05. (A) Each section of the Ohio construction industry

licensing board, other than the administrative section, shall do all of the following:

(1) Adopt rules in accordance with Chapter 119. of the Revised Code that are limited to the following:

(a) Criteria for the section to use in evaluating the qualifications of an individual;

(b) Criteria for the section to use in deciding whether to authorize the administrative section to issue, renew, suspend, revoke, or refuse to issue or renew a license;

(c) The determinations and approvals the section makes under the reciprocity provision of section 4740.08 of the Revised Code;

(d) Criteria for continuing education courses conducted pursuant to this chapter;

(e) A requirement that persons seeking approval to provide continuing education courses submit the required information to the appropriate section of the board at least thirty days, but not more than one year, prior to the date on which the course is proposed to be offered;

(f) A prohibition against any person providing a continuing education course unless the administrative section of the board approved that person not more than one year prior to the date the course is offered.

(2) Investigate allegations in reference to violations of this chapter and the rules adopted pursuant to it that pertain to the section and determine by rule a procedure to conduct investigations and hearings on these allegations;

(3) Maintain a record of its proceedings;

(4) Grant approval to a person to offer continuing education courses pursuant to rules the board adopts;

(5) As required, do all things necessary to carry out this chapter.

(B) In accordance with rules they establish, the trade sections of the board shall authorize the administrative section to issue, renew, suspend, revoke, or refuse to issue or renew licenses for the classes of contractors for which each has primary responsibility as set forth in section 4740.02 of the Revised Code.

(C) Each trade section of the board shall establish or approve a continuing education curriculum for license renewal for each class of contractors for which the section has primary responsibility. No curriculum may require ~~that more than five hours out of the ten total required~~ per year be in specific course requirements. No contractor may be required to take more than ten hours per year in continuing education courses. The ten hours shall be the aggregate of hours of continuing education for all licenses the contractor holds.

Sec. 4740.06. (A) Any individual who applies for a license shall file a written application with the appropriate section of the Ohio construction industry licensing board, accompanied with the application fee as determined pursuant to section 4740.09 of the Revised Code. The individual shall file the application not more than sixty days nor less than thirty days prior to the date of the examination. The application shall be on the form the section prescribes and verified by the applicant's oath. The applicant shall provide information satisfactory to the section showing that the applicant meets the requirements of division (B) of this section.

(B) To qualify to take an examination, an individual shall:

(1) Be at least eighteen years of age;

(2) Be a United States citizen or legal alien who produces valid documentation to demonstrate the individual is a legal resident of the United States;

(3) Either have been a tradesperson in the type of licensed trade for which the application is filed for not less than five years immediately prior to the date the application is filed, be ~~an~~ a currently registered engineer, have in this state with three years of business experience in the construction industry in the trade for which the engineer is applying to take an examination, or have other experience acceptable to the appropriate section of the board;

(4) Maintain contractor's liability insurance, including without limitation, complete operations coverage, in an amount the appropriate section of the board determines;

(5) Not have done any of the following:

(a) Been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or of any felony;

(b) Violated this chapter or any rule adopted pursuant to it;

(c) Obtained or renewed a license issued pursuant to this chapter, or any order, ruling, or authorization of the board or a section of the board by fraud, misrepresentation, or deception;

(d) Engaged in fraud, misrepresentation, or deception in the conduct of business.

(C) When an applicant for licensure as a contractor in a licensed trade meets the qualifications set forth in division (B) of this section and passes the required examination, the appropriate section of the board, within ninety days after the application was filed, shall authorize the administrative section of the board to license the applicant for the type of contractor's license for which the applicant qualifies. A section of the board may withdraw its authorization to the administrative section for issuance of a

license for good cause shown, on the condition that notice of that withdrawal is given prior to the administrative section's issuance of the license.

(D) ~~Each license expires one year after the date of issue. All licenses a contractor holds pursuant to this chapter shall expire annually on the same date, which shall be the expiration date of the original license the contractor holds.~~ An individual holding a valid, unexpired license may renew the license, without reexamination, by submitting an application to the appropriate section of the board not more than ninety calendar days before the expiration of the license, along with the renewal fee the section requires and proof of compliance with the applicable continuing education requirements. The applicant shall provide information in the renewal application satisfactory to demonstrate to the appropriate section that the applicant continues to meet the requirements of division (B) of this section.

Upon application and within one calendar year after a license has expired, a section may waive any of the requirements for renewal of a license upon finding that an applicant substantially meets the renewal requirements or that failure to timely apply for renewal is due to excusable neglect. A section that waives requirements for renewal of a license may impose conditions upon the licensee and assess a late filing fee of not more than double the usual renewal fee. An applicant shall satisfy any condition the section imposes before a license is reissued.

(E) An individual holding a valid license may request the section of the board that authorized that license to place the license in inactive status under conditions, and for a period of time, as that section determines.

(F) Except for the ninety-day extension provided for a license assigned to a business entity under division (D) of section 4740.07 of the Revised Code, a license held by an individual immediately terminates upon the death of the individual.

(G) Nothing in any license issued by the Ohio construction industry licensing board shall be construed to limit or eliminate any requirement of or any license issued by the Ohio fire marshal.

Sec. 4740.07. (A) Except as otherwise provided in this section, the administrative section of the Ohio construction industry licensing board shall issue and renew all licenses under this chapter in the name of the individual who meets the requirements of section 4740.06 of the Revised Code.

(B) Any individual may request, at the time of applying for a license or at any time thereafter, that the individual's license be assigned to a business entity with whom the individual is associated as a full-time officer,

proprietor, partner, or employee. If the individual is issued or holds a license and meets the requirements of this section for the assignment of the license to a business entity, the administrative section shall assign the license to and issue a license in the name of the business entity. The license assigned and issued to a business entity under this division shall state the name and position of the individual who assigned the license to the business entity.

(C) During the period a business entity holds a license issued under division (B) of this section, the administrative section shall not issue another license to the individual who assigned the license to the business entity for the same type of contracting for which the business entity utilizes the assigned license.

(D)(1) If an individual who assigned a license to a business entity ceases to be associated with the business entity for any reason, including the death of the individual, the individual or business entity immediately shall notify the appropriate section of the board of the date on which the individual ceased to be associated with the business entity. A license assigned to a business entity is invalid ninety calendar days after the date on which the individual who assigned the license ceases to be associated with the business entity or at an earlier time to which the business entity and the individual agree.

(2) If a license assigned to a business entity becomes invalid pursuant to division (D)(1) of this section and another individual has assigned a license to the business entity for the same type of contracting for which the invalidated license had been assigned, the business entity may continue to operate under the other assigned license.

(E) Any work a business entity conducts under a license assigned under this section is deemed to be conducted under the personal supervision of the individual named in the license and any violation of any term of the license is deemed to have been committed by the individual named in the license.

For the period of time during which more than one license for the same type of contracting is assigned to a business entity, any work the business entity conducts under any of those licenses is deemed to be conducted under the personal supervision of the individuals named in those licenses and any violation of any term of any license is deemed to have been committed by the individuals named in all of the licenses.

(F) No individual who assigns a license to a business entity shall assign a license for the same type of contracting to another business entity until ~~after ninety days after the individual ceases to be associated with the business entity to which the individual had assigned a license~~ the original license assigned is invalid pursuant to division (D) of this section.

(G) Any individual who assigns a license to a business entity under this section shall be actively engaged in business as the type of contractor for which the license is issued and be readily available for consultation with the business entity to which the license is assigned.

(H) No license assigned under this section shall be assigned to more than one business entity at a time.

Sec. 4740.08. When a written reciprocity agreement between the states exists, and an individual who is registered, licensed, or certified in another state applies to the appropriate section of the Ohio construction industry licensing board submits a copy of the reciprocity agreement, and pays the licensure fee determined pursuant to section 4740.09 of the Revised Code, the appropriate section of the board shall authorize the administrative section to issue, without examination, a license to that individual if the appropriate section of the board determines, pursuant to rules it adopts, that the requirements for registration, licensure, or certification under the laws of the other state are substantially equal to the requirements for licensure in this state and that the other state extends similar reciprocity to persons licensed under this chapter. The appropriate section of the board may withdraw its authorization to the administrative section for issuance of a license for good cause prior to the administrative section's issuance of the license.

Sec. 4740.101. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the construction industry licensing board shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a ~~certificate~~ license issued pursuant to this chapter.

Sec. 4740.12. ~~Nothing~~ (A) No political subdivision, district, or agency of the state may adopt an ordinance or rule that requires contractor registration and the assessment of a registration or license fee unless that ordinance or rule also requires any contractor who registers and pays the registration or license fee to be licensed in the contractor's trade pursuant to this chapter.

(B) Except as provided in division (A) of this section, nothing in this chapter shall be construed to limit the operation of any statute or rule of this state or any ordinance or rule of any political subdivision, district, or agency of the state that does either of the following:

~~(A)~~(1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, hydronics systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;

~~(B)~~(2) Requires the registration and assessment of a registration or

license fee of tradespersons who perform heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics construction, improvement, renovation, repair, or maintenance.

Sec. 4740.15. If a check or other draft instrument used to pay any fee required by this chapter is returned as unpaid for insufficient funds or any other reason, the board secretary shall notify the licensee that the check or other draft instrument was returned and that the licensee's license will be canceled unless the licensee, within fifteen days after the mailing of the notice, submits the fee and a penalty in an amount the board establishes by rules it adopts pursuant to Chapter 119. of the Revised Code. If the licensee does not submit the fee and the penalty within the time specified, or if any check or other draft instrument used to pay either the fee or the penalty is returned to the board secretary for insufficient funds or any other reason, the license shall be canceled immediately without a hearing and the licensee shall cease activity as a licensee under this chapter until both the fee and the penalty have been paid.

Sec. 5309.57. Whenever any attested account to obtain a mechanic's, ~~materialman's~~ material supplier's, or laborer's lien is filed in the office of the county recorder by which a lien is sought to be obtained upon any registered land, the county recorder shall forthwith make notation and enter a memorial thereof upon the folium of the register where the last certificate of title to the land is registered, stating the name of the claimant, amount claimed, volume and folium of the record where recorded, and the exact time when said memorial was entered. No lien shall attach to said land until such notation is entered by the recorder.

The recorder may, upon written application of the registered owner, cancel from any certificate of title, a mechanic's lien which has remained uncanceled for six years and one day from the date of registration of said lien, provided that no notice of any suit affecting said lien has been noted upon the register.

Sec. 5525.16. (A) Before entering into a contract, the director of transportation shall require a contract performance bond and a payment bond with sufficient sureties, as follows:

(1) A contract performance bond in an amount equal to one hundred per cent of the estimated cost of the work, conditioned, among other things, that the contractor will perform the work upon the terms proposed, within the time prescribed, and in accordance with the plans and specifications, will indemnify the state against any damage that may result from any failure of the contractor to so perform, and, further, in case of a grade separation will indemnify any railroad company involved against any damage that may

result by reason of the negligence of the contractor in making the improvement.

(2) A payment bond in an amount equal to one hundred per cent of the estimated cost of the work, conditioned for the payment by the contractor and all subcontractors for labor or work performed or materials furnished in connection with the work, improvement, or project involved.

(B) In no case is the state liable for damages sustained in the construction of any work, improvement, or project under this chapter and Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code.

This section does not require the director to take bonds as described in division (A) of this section in connection with any force account work, but the director may require those bonds in connection with force account work.

If any bonds taken under this section are executed by a surety company, the director may not approve such bonds unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact business in this state, and a copy of the power of attorney of the agent of the company. The superintendent, upon request, shall issue to any licensed agent of such company the certificate without charge.

The bonds required to be taken under this section shall be executed by the same surety, approved by the director as to sufficiency of the sureties, and be in the form prescribed by the attorney general.

(C) Any person to whom any money is due for labor or work performed or materials furnished in connection with a work, improvement, or project, at any time after performing the labor or furnishing the materials but not later than ninety days after the acceptance of the work, improvement, or project by the director, may furnish to the sureties on the payment bond a statement of the amount due the person. If the indebtedness is not paid in full at the expiration of sixty days after the statement is furnished, the person may commence an action in the person's own name upon the bond as provided in sections 2307.06 and 2307.07 of the Revised Code.

An action shall not be commenced against the sureties on a payment bond until sixty days after the furnishing of the statement described in this section or, notwithstanding section 2305.12 of the Revised Code, later than one year after the date of the acceptance of the work, improvement, or project.

(D) As used in this section, "improvement," "subcontractor," "~~materialman~~ material supplier," and "materials" have the same meanings as in section 1311.01 of the Revised Code, and "contractor" has the same meaning as "original contractor" as defined in that section.

Sub. H. B. No. 487

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SECTION 2. That existing sections 153.54, 153.57, 1311.01, 1311.011, 1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1311.13, 1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1311.29, 1311.32, 4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 4740.07, 4740.08, 4740.101, 4740.12, 5309.57, and 5525.16 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____