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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 675
Committee: Commerce/Ways and Means
Floor Manager: Representative Chip Baltimore
Date: July 30, 2011
Staff: Brad Trow (1-3471)/Dustin Blythe (1-3452)

Mechanics Lien/State Construction Registry

House File 675 revises the process by which mechanic's liens on residential construction are filed in the state of Iowa. Currently, a lien is filed with clerk of court in the county where the property is located. Under the bill, the Secretary of State's office would operate a statewide Construction Registry for Residential Construction that all related mechanic's liens would have to be filed to after July 1, 2012. The bill also requires additional filings to the Registry by subcontractors.

Summary of Action

Commerce Committee Action – The Commerce Committee **PASSED** House File 262 on a vote of 23-0 on March 2, 2011.

Ways and Means Committee Action - The Ways and Means Committee **PASSED** House File 633 on a vote of 22-2 on April 5, 2011.

House Action – The House **ADOPTED** House File 675 on a vote of 68-29 on April 13, 2011.

Senate Action – House File 675 was **REFERRED** to the Senate Ways and Means Committee on April 18, 2011.

Section by Section Analysis

Section 1 – The section amends Iowa Code section 207.23 (1) by striking the language requiring a lien statement to be in the form prescribed in section 572.8, which is rewritten in the bill.

Section 2 – The section provides new definitions in Iowa Code section 572.1. Among the newly defined terms are “general contractor”, “owner-builder”, “state construction registry”, and “sub-contractor”. “General Contractor” replaces the references in the existing Code provisions to contractor”

Section 3 – The section amends Iowa Code section 572.2 – *Persons Entitled to Lien* – by including owner-builder and general contractors to the list of parties who have a right to a lien on improvements to real property. The section also adds a new subsection that an owner-builder does not have the right to a lien on work the owner-builder performs prior to transferring title to the buyer.

Section 4 – The section amends Iowa Code section 572.8 – *Perfection of Lien* – by striking the requirement that a mechanic’s lien be filed with the clerk of court in the county where the improvement is situated. Instead, the lien shall be posted to the state construction registry website.

Additional information is added to the list of required details to be part of the lien. They are the address of the property in question or a description of its location and the tax parcel identification number.

The section also clarifies that a lien perfected under the new section is limited to the county where the property is located.

Section 5 – The section amends Iowa Code section 572.9 – *Time of Lien Posting* – to reflect the change in terminology with the general contractor and the switch from filing with the clerk of court to posting on the state construction registry website.

Section 6 – The section amends Iowa Code section 572.10 – *Perfecting Lien After Lapse of Ninety Days* – by adding a requirement that the lien be posted to the state construction registry website and provide notice to the owner. Additionally, the section makes revisions to reflect the change in terminology with the general contractor and the switch from filing with the clerk of court to posting on the state construction registry website.

Section 7 – The section amends Iowa Code section 572.11 – *Extent of Lien Posted after Ninety Days* – by applying the provisions of the section to the owner-builder as well as the general contractor.

Section 8 – The section amends Iowa Code section 572.13 – *General Contractor – Owner Notice – Residential Construction* – by striking the entire section and replacing it. The new section requires a general contractor, that has or will contract with subcontractors to provide labor or materials on the project, to provide the owner of the property with a written notice stating that the subcontractors may enforce a lien upon the improved property if they are not paid, even if they have no direct contractual relationship with the owner. The notice shall also provide information relating to the availability of information posted on the state construction registry established by the bill. A general contractor who fails to provide such notice to the owner is not entitled to a mechanic’s lien and remedies pursuant to Code chapter 572.

Section 9 – The section creates Iowa Code section 572.13A, which deals with the notice of commencement of work by a general contractor or owner-builder. The section bill provides that a general contractor or owner-builder who has contracted or will contract with a subcontractor to provide labor or furnish material for the property shall post a notice of commencement of work, including certain specific information, to the state construction registry internet website. The notice shall be filed within 10 days of work beginning.

The section provides a mechanism for a subcontractor to post notice if the general contractor or owner-builder fails to post the notice. If a general contractor fails to provide notice under the section would not be entitled to a lien or remedy provided by chapter 572. The section only applies to residential construction.

Section 10 – The section creates Iowa Code section 572.13B, establishing a provision for subcontractors to post a preliminary notice on the state construction registry website. The notice shall include the name of the owner, the state construction registry number, and address and contact information for the subcontractor. They must also post the name of the person who has contracted with them for the project, the name of general contractor or owner-builder under whom they will be performing the work, the

address or description of where the work will take place, and any other information the administrator of the registry requires via administrative rule.

A preliminary notice posted before the balance due is paid to the general contractor or owner-builder by the owner is effective as to all labor, service, equipment, or material furnished to the property subsequent to the posting of the notice of commencement of work. A subcontractor who fails to post a preliminary notice shall not be entitled to a lien and remedy provided under Code chapter 572. The section also provides that the provisions relating to the requirement that a general contractor and a subcontractor post notices to the state construction registry apply only to residential construction properties.

Section 11 – The section amends Iowa Code section 572.14 by striking the language of the existing section and replacing it with a new section pertaining to the liability to the subcontractor after the general contractor or owner-builder has been paid. The new section provides that payment to the general contractor or owner-builder by the owner of any part or all of the contract price of the building or improvement within 90 days after the date on which the last of the materials was furnished or the last of the labor was performed by a subcontractor, does not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon the building, land, or improvement if the subcontractor files a lien within 90 days after the date on which the last of the materials was furnished or the last of the labor was performed.

Section 12 – The section amends Iowa Code section 572.15, dealing with the discharge of a mechanic's lien. The section removes the references to filing a bond with the clerk of court, and instead has the bond submitted to the administrator of the registry.

Section 13 – The section amends Iowa Code section 572.16 – *Rule of construction* – by changing the references to reflect the change in terminology with the general contractor and the switch from filing with the clerk of court to posting on the state construction registry website.

Section 14 – The section amends Iowa Code section 572.17 – *Priority of Mechanics' Liens Between Mechanics* – by changing the references to reflect the change in terminology with the general contractor and the switch from filing with the clerk of court to posting on the state construction registry website.

Section 15 – The section amends Iowa Code section 572.18 by revising the language to reflect the change from filing a mechanics' lien with the clerk of court to posting in on the registry website.

Section 16 – The section amends Iowa Code section 572.22 – *Record of Claim* – by revising the language of the section to reflect the change in terminology with the general contractor and the switch from filing with the clerk of court to posting on the state construction registry website. The section also adds the tax parcel identification number to the list of required information that is to be on the claim, and the address or description of the property if it cannot be reasonably identified by an address.

Section 17 – The section amends Iowa Code section 572.23 – *Acknowledgment of Satisfaction of Claim* – by changing the language of the section to reflect the change to a web-based system for mechanics' liens.

Section 18 – The section amends Iowa Code section 572.24 (2), by changing where a court provides notice of changes made to a mechanics' lien. Instead of recording the changes in the mechanics' lien book, the court shall submit its ruling to the registry administrator for posting the information on the registry website.

Section 19 – The section amends Iowa Code section 572.28(2), by requiring the demand notice be served on the registry administrator instead of the clerk of court. The section also changes the dating of the information from being file-stamped to being date-stamped.

Section 20 – The section amends Iowa Code 572.30 – *Actions by Subcontractor or Owner against Contractor* – by revising the references to “general contractor” and adding “owner-builder” to the parties covered by the section.

Section 21 – The section amends Iowa Code section 572.31 - *Cooperative and Condominium Housing* – by striking the references to “owner-occupied dwelling”.

Section 22 – The section amends Iowa Code section 572.32 – *Attorney Fees – Remedies* – by striking the requirement that a plaintiff provide labor or materials directly to a defendant in order to be awarded reasonable attorney fees. The section also revises the language to account for the change in the way liens would be filed and changes “owner-occupied dwelling” to “residential construction property”.

Section 23 – The section amends Iowa Code section 572.33 – *Requirement of Notification for Commercial Construction* – by changing the references to contractors to reflect the new terminology used in the bill and revises the language in section stating that its notification provisions do not apply to residential construction.

Section 24 – The section creates a new subsection 572.33A, which lays out the liability of an owner of commercial property to a general contractor. Under the new section, an owner of a piece of commercial property on which a mechanics’ lien is filed upon is not required to pay the general contractor until 90 days after completion of the project unless the general contractor provides one of the following:

- Receipts and waivers of claims for mechanics’ liens that are signed by all parties who provided labor or material on the project; or
- A “good and sufficient” bond to be approved by the owner of the property, on the condition that the owner is held harmless from any loss due to mechanics’ liens filed by subcontractors.

Section 25 – The section creates the State Construction Registry for Residential Construction. The registry is created in the Secretary of State’s office and shall be web-based. The registry will be available to the public via the internet. The administrator is authorized to collect fees for administration and maintenance of the registry, as provided for by administrative rule. The filing fee shall not exceed the cost of sending notice via certified mail with restricted delivery and return receipt. The fee may not exceed \$40.

Notices to the registry may be posted in a variety of methods. Mechanics’ liens may also be submitted electronically or via mail. Liens received via mail shall be posted within 3 days. A party is not required to be registered under Iowa Code chapter 91C in order to file a lien.

Section 26 – The section amends Iowa Code section 602.8102 by striking the reference to chapter 572 from the clerk of court’s duties related to liens.

Section 27 – **EFFECTIVE DATE AND APPLICABILITY** – The section makes the bill effective on July 1, 2012. Mechanics’ liens filed prior to that date remain the responsibility of the clerk of court for the county in which the property is located. The notice provisions in the bill only apply to material furnished or labor provided after July 1, 2012.