

12-10-15

COMMITTEE ON MODERNIZING THE 20-DAY NOTICE PROCESS

Report of Interim Committee Meeting
Wednesday, December 9th, 2015
House Hearing Room 1 -- 1:30 P.M.

Convened 1:30 P.M.

Recessed

Reconvened

Adjourned 3:24 P.M.

Members Present

Representative Diego Espinoza
Representative Warren Petersen
David Godlewski
Michael Holden
Spencer Kamps
David Martin
Matt Sager
Representative Karen Fann, Chairman

Members Absent

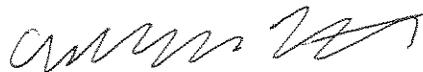
Agenda

Original Agenda – Attachment 1

Request to Speak

Report – Attachment 2

<u>Name</u>	<u>Organization</u>	<u>Attachments (Handouts)</u>
Michael Hans	Staff	3
Rob Dalager	NIC AZ	4



Adrian Luth, Chairman Assistant
12/10/2015

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

ARIZONA HOUSE OF REPRESENTATIVES

CONV: 1:30 P.M.
ADJ: 3:24 P.M.

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

HOUSE AD HOC COMMITTEE ON MODERNIZING THE 20-DAY NOTICE PROCESS

Date: Wednesday, December 9, 2015

Time: 1:30 P.M.

Place: HHR 1

AGENDA

1. Call to Order
2. Discussion of Pros and Cons of Modernizing the 20-Day Notice Process
3. Discussion of Other Suggested Changes to the 20-Day Lien Law
4. Public Testimony
5. Committee Recommendation
6. Announcements
7. Adjourn

Members:

Representative Karen Fann, Chair
Representative Diego Espinoza
Representative Warren H. Petersen
David Godlewski

Michael Holden
Spencer Kamps
David Martin
Matt Sager

12/7/15
RA

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Summary of Committee Pros, Cons and Questions to Modernizing the 20-Day Notice Process

Pros

- “Minimize Paperwork and Improve Efficiency”
- “Save costs (mailing, copying, and record keeping)”
 - “The online registry should reduce costs as there would be the need to file one preliminary notice instead of having to mail several preliminary notices”
- Take advantage of technological advances
 - “The method by which a notice is delivered – via mail or in person – is antiquated in today’s digital age”
- “Lack of transparency in the current process to provide notice”

Cons

- Arizona’s Current System “runs smoothly”/ is “very good already” / “works”
 - “May be ‘an answer in search of a problem’”
 - “The practice of mailing a preliminary notice is well established and has been in place for several years”
- Accuracy of Information
 - “A couple of other states have a registry and for those of us that use it, know there is no quality or accuracy with the information contained in the filings”
 - This “leads to loss of lien rights”
 - “The downfall could be the lost lien rights due to the time and manpower it would take to monitor their jobs.”
 - “If parcel numbers don’t match you may have trouble finding” [a specific job].
- Court fees
 - “Cost of uncertainty in the construction industry as the courts interpret the new lien procedure. This would be the most costly aspect of the change”
 - “The industry would have to pay additional monies to the legal community. All new situations would need to be challenged to set a precedent”
- Government Involvement
 - “The layers of government already involved in the Arizona lien law far outreach any of the other states”

Questions

- Who would be required to use a registry?
 - “Who would bear the responsibility to enter the project?”
 - “How would unsophisticated owners (who currently receive mailed copies of notices) be advised to check the registry for potential lien claimants?”

- Accuracy
 - “Who guarantees the accuracy of information? / “Who is going to monitor the site?”
- Privacy
 - “Who can look at the list?”
- Costs
 - “How much would it cost to file notices with the registry?”
 - Potential legal fees

“Electronic 20-Day Notice Solution” Questions

- Accuracy
 - “What is the liability if the information is incorrect?”
 - “What appeal rights does a contractor have if the information does not accurately represent what was submitted? If two parties (contractor, subcontractor, supplier) dispute information on online filing then how is it resolved?”
 - “Inaccurate information on the registry leads to a lack of lien rights. Who guarantees the accuracy of information?”
 - Reliability
 - “What liability is on the web vender to assume that it works? What happens to the contractor or trade if the online filing site does not perform?”
 - “Will the online filing be able to handle the projected number of 20 day filings on an annual basis?”
 - “What happens if the owner or contractor does not add the project to the online system?”
 - Cost
 - “What amount of fee will be charged?”
 - “Cost of uncertainty in the construction industry as the courts interpret the new lien procedure. This would be the most costly aspect of the change and it may go on for many, many years”
 - Fairness
 - “How will this apply to small and medium-sized projects?”
 - “How will unsophisticated homeowners know about this system?”
 - “How do we protect the scores of owners who do not understand lien law?”
 - Relevance
 - “If this is a solution – Where is the Problem? Who in the Construction Industry needs this *Solution?*”
 - “If the system works as effectively as described, there will be no need for services to send notice”
-

Electronic 20-Day Notice Filing Solution

This proposal only changes the delivery method of 20 day notices so that it is modernized (it does not change the lien statutes themselves).

An online filing page would be established to allow new construction projects to be listed via a secure login to the system. Each job would be assigned a unique identification number, which the contractor would pass along to any sub-contractors, suppliers, the owner, and if necessary, the bank and title company for closing. Information captured would be the exact same information that is needed for the twenty-day notice today.

The process would be very simple. The owner or contractor would add the project to the online system. The owner or contractor would then give the job identifier to anyone who provides labor or materials to the job. This would allow the material-men to login from their phone, computer or tablet and enter their contact information; thus providing their notice of work. Upon entry this new information could be formatted in the form of a report and sent to the owner, contractor and bank and/or title insurance company (if provided). All entities would receive the 20-Day notice electronically via text message or email. At any time they could go directly to the project in the system to see all project details, including any updated information.

The data collected for each job would be secure and confidential so that a contractor would have access ONLY to their own projects within the system. At the end of the project the contractor would provide the closing entity with the unique ID so they could poll the potential lien claimants listed on the job to assure they were paid and do not have lien claim.

The data on this system would be kept into perpetuity, including:

- The contractors to easily query and see a summary of all the projects they had worked on and who their subs/suppliers were.
- The sub-contractors to easily query and see a summary of all the projects they had worked on and who their subs/suppliers were.
- The owners to easily see who worked on their projects and contact them if they had a question about a component of the project.
- The industry to see the number of projects filed over a given timeframe, including which ones had been completed or were still in process and see specifically the timeframe from project establishment to completion.

The system would be developed, delivered and supported by a third party who would collect a nominal fee at the time the project was initiated, which would ultimately be paid for by the owner.

Lien service companies would still be able to provide their service to customers. Rather, instead of filling out paper forms and mailing them via Certified Mail, these

Issue One: How is "construction project" or "each job" defined?

Issue Two: Although the process may be "very simple" for sophisticated owners, how do we protect the scores of owners who do not understand lien law? (Under the current system, they are alerted to potential lien claims when they receive 20-day notices in the mail)

Issue Three: What happens if the owner or contractor does not "add the project to the online system?"

Issue Four: What if the owner or contractor fails to give the "job identifier" to subs or suppliers?

Issue Five: All parties on a project, including subcontractors, would also need access.

Issue Six: Many construction projects do not have a "closing entity." What if the contractor fails to provide the info?

Issue Seven: If the system works as effectively as described, there will be no need for services to send notices.