

HOUSE No. 3721

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Lawn, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to private constuction contracts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/25/2017</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/3/2017</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>2/8/2017</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/8/2017</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/3/2017</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>2/6/2017</i>

HOUSE No. 3721

By Mr. Lawn of Watertown, a petition (subject to Joint Rule 12) of John J. Lawn, Jr. and others relative to liens on certain construction contracts. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to private constuction contracts.

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

1 Section 1. Chapter 254, Section 4 is hereby amended by adding at the end thereof the
2 following new text:

3 If the person claiming a lien under this section has a direct contractual relationship with
4 the original contractor but no direct contractual relationship with the owner, except for liens for
5 labor by persons defined in section 1 of this chapter, the amount of such lien shall not exceed the
6 amount due or to become due under the original contract as of the date such person files his
7 notice of contract and gives actual notice to the owner of such filing, unless the person claiming
8 such lien has, within thirty days of commencement of his performance, given written notice of
9 identification by certified mail return receipt requested to the owner in substantially the
10 following form:

11 Notice of Identification

12 Notice is hereby given to _____, as owner, that _____,
13 as subcontractor/vendor/design professional, has entered into a written contract with _____
14 to furnish labor or materials, or labor and materials, or rental equipment, appliances or tools to,
15 or to perform professional services for a certain construction project located at ___ (Street
16 Address), ___ (Town or City), Massachusetts. The amount or estimated amount of said contract
17 is \$ _____. (No amount need be stated for contracts for the rental of equipment, appliances
18 or tools).

19 This notice is to advise you of your rights under Massachusetts law in connection with
20 the improvement to your property. If we are not paid by your contractor, we can file a lien
21 against your property for the price of our labor or materials. You have the right to pay us directly
22 and deduct this amount from the contract price, or withhold the amounts due from your
23 contractor until 90 days after completion of the improvement unless your contractor gives you a
24 lien waiver signed by me (us).

25 The amount stated in any such notice of identification shall not limit the amount of the
26 lien. Any inaccuracy in the naming of the contractor or other information in such notice shall not
27 affect its validity provided there shall be actual notice.

28 If said notice of identification is given by the person claiming the lien to the owner, the
29 amount of the lien shall not exceed the amount due or to become due under the original contract
30 as of the date the owner receives the notice of identification.

31 Any person asserting that a lien under this section exceeds the amount due or to become
32 due as defined in section 2A, whether under the original contract or a subcontract, shall have the
33 burden of proving the amount due or to become due.

34 Section 2. Chapter 254 is hereby further amended by inserting after Section 4, the
35 following new Section:

36 254:4A: Notice by Contractor to Property Owner of Subcontractors Lien Rights

37 Section 4A. Every person who enters into a contract with the owner for the
38 improvement of real property for the construction of 1 to 4 units of housing and who has
39 contracted or will contract with any subcontractors or material suppliers to provide labor, skill or
40 materials for the improvement shall include in any written contract with the owner the notice
41 required in this section. The notice must be in at least 10-point bold type, if printed, or in capital
42 letters, if typewritten and must state as follows:

43 "(a) Any person or company supplying labor or materials for this improvement to your
44 property may file a lien against your property if that person or company is not paid for the
45 contributions.

46 (b) You have the right to pay persons who supplied labor or materials for this
47 improvement directly and deduct this amount from our contract price, or withhold the amounts
48 due them from us until 90 days after completion of the improvement unless we give you a lien
49 waiver signed by persons who supplied any labor or material for the improvement and who gave
50 you timely notice of identification and/or notice of contract as required under this section."

51 The notice required by this section is not required of any person who is an owner of the
52 improved real estate, to any corporate contractor of which the owner of the improved real estate
53 is an officer or controlling shareholder, to any contractor who is an officer or controlling
54 shareholder of a corporation which is the owner of the improved real estate, or to any corporate

55 contractor managed or controlled by substantially the same persons who manage or control a
56 corporation which is the owner of the improved real estate.

57 A contractor who contracts with any subcontractors or material suppliers to provide
58 labor, skill or materials for the improvement shall upon written request provide the subcontractor
59 or material supplier with the name and address of the owner within 10 days of the initial written
60 request. Any contractor who fails to supply the information requested pursuant to this section, is
61 liable for any actual damages sustained or expenses incurred by the subcontractor or material
62 supplier because of the contractor's failure to provide the information.