



# Mechanic's Lien Law for Design Professionals

***Consensus language to modify language before the Joint Committee on the Judiciary)***  
**[HB. 1769 Sponsor: Rep. James E. Vallee; SB. 1806 Sponsor: Sen. Karen Spilka]**

## ISSUE

A consensus amendment to the existing Mechanic's Lien Law, supported by design professionals, contractors and subcontractors, would allow licensed design professionals, architects, engineers, land surveyors and licensed site professionals, to lien property when the owner and/or developer fails to pay for agreed-upon services. Many of these design firms are small businesses whose day to day operations are severely impacted when owners and developers fail to pay invoices.

## KEY POINTS

**History:** During this legislative session, the Joint Committee on Judiciary heard HB 1769 and SB 1806. During those public hearings, Associated Subcontractors of MA (ASM) raised concerns regarding the proposed language. During subsequent meetings with the Joint Committee leaders, House Chair Eugene O'Flaherty and Senate Chair Cynthia Creem, agreed that our design professionals coalition should work with ASM to develop consensus language. On April 27, we submitted consensus language to the Joint Committee on Judiciary and requested that the consensus language replace the existing bills (HB 1769 and SB 1806), and that the committee report the consensus language out of committee favorably.

- The consensus language has wide and deep support from design and construction industry groups, including ACEC/MA, BSCES, MALSCE, the Mass. Chapter of the American Institute of Architects and the Boston Society of Landscape Architects, and has been approved by Associated Subcontractors of MA.
- The consensus language gives licensed design professionals (architects, landscape architects, engineers, land surveyors and licensed site professionals) two distinctly separate opportunities to lien a property when the owner and/or developer fails to pay for agreed-upon services.
- The first of the two lien opportunities would occur during the design phase when the designer, if it wasn't receiving payment, would file a notice of contract before the construction mortgage goes on record. This lien would enable designers to serve as "the canary in the coal mine" – an early warning to other project participants, such as contractors and trades, where an owner/developer fails and refuses to pay invoices.
- The second of the two opportunities would occur after the construction mortgage goes on record. In this instance the designer lien is subordinated to the general contractor and subcontractor lien.
- This amendment leaves unchanged the current process for general contractors and subcontractors, such as plumbing and electrical trades, to place a lien on property when the owner/developer has not paid for their work.
- There would be no impact on owners/developers who pay their bills. Nothing in consensus language would affect public properties or projects in any way.
- This amendment would bring Massachusetts in line with at least thirty-seven other states which allow licensed design professionals to place a lien on property when owners and developers fail to pay the invoices.
- Most contractors, subcontractors and design firms are small businesses whose day to day operations are severely impacted when owners and developers fail to pay invoices.
- This amendment has no financial impact upon the state budget.

## ACTIONS REQUESTED

***Support: Adding Design Professionals to the Mechanics Lien Law with the consensus language.***