HOUSE DOCKET, NO. FILED ON: 1/12/2009

**HOUSE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Joyce A. Spiliotis**

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*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 passage of the accompanying bill:

An Act Relative to Construction Supervisor Services.

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PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Joyce A. Spiliotis | 12th Essex |

Section 1. This Act may be cited as the Construction Supervisor Act

Chapter 143 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by inserting after section 94 the following section:-

Section 94A. Licensed Construction Supervisors Services

Section 2. Definitions

For the purposes of this section the following words shall have the following meanings unless the context clearly requires otherwise—:

“Contract for construction supervisor services “ .Every agreement to perform contracting services requiring a construction supervisor shall be in writing and include the following documents and information including but not limited to educational materials for distribution to property owners prepared by the Board of Building Regulations and Standards.

“Licensed construction supervisor” any individual directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition involving any activity regulated by any provision of Mass Code of Regulations(CMR) such terms shall also apply to persons supervising themselves. A licensed construction supervisor shall be required for the installation of all manufactured one and two family homes. as defined in 780 CMR R.5.

“Payment Bond” is a bond, defined by requirements set forth in section 12, chapter 254 of the General Laws.

Section 3. The Board of Building Regulations and Standards hereinafter known as the Board shall establish a Licensed Construction Supervisor Advisory Committee, comprised of no less than 5 members as follows: not less than one member of the Board of Building Regulations and Standards (BBRS); not less than one licensed construction supervisor; two representatives, of residential property owner organizations, nominated by residential property owners organization; one representative from sub trade work designated in section 44f of chapter 149 of the General Laws

Board shall have the right to reappoint all members each year and each advisory committee member may serve indefinitely.

1. Licensed Construction Supervisor Advisory Committee shall have the following powers and duties:

a. To act as a liaison to the board on issues regarding licensed construction supervisors, including contractual disputes.

b. To report to the board annually on issues relating to licensed construction supervisors and property owners.

c. To identify common disputes between licensed construction supervisors and property owners, including contractual disputes and present these common disputes in a committee report to the board.

d. To prepare educational materials, using consumer friendly language for distribution to all licensed construction supervisors for distribution to property owners contracting for construction services, including but not limited to: Chapter 254, specifically sections 4 and 12.

Defining a mechanic’s lien, and the effects it may have on an owner’s property in the Commonwealth. Defining a payment bond, under chapter 254, section 12. Establishing a “Payment Bond Option Form” providing property owners a means to elect as part of a contract for construction supervisor services, a payment bond, pursuant to chapter 254 section 12,

2. The advisory committee shall ensure that the Payment Bond Option Form:

Requires the property owner’s signature and date signifying receipt of the educational materials, prior to signing a contract for construction services.

Requires the property owner to “elect” or “not elect” to require a payment bond, indicated by the property owner’s signature next to either choice

States that the construction supervisor must file this form in the registry of deeds where the property lies

States the amount of the proposed contract for construction services

Describes the property subject of the proposed contract for construction services

Requires the construction supervisor’s signature acknowledging that if the property owner requires a bond then the construction supervisor must obtain a bond as described in chapter 254 section 12, upon entering into the construction contract.

Requires the construction supervisors’ signature acknowledging the fact that failure to obtain a payment bond required by the property owner upon entry into the contract will constitute a willful violation of the “Payment Bond Option Requirement,” subject to prosecution by the attorney general and punishment of a maximum fine of two thousand dollars or maximum term of imprisonment of one year or both.

3. Additional board duties

The board shall provide every licensed construction supervisor with:

* 1. Educational materials for distribution to property owners.
  2. Payment Bond Option Form for distribution to property owners.
  3. Notice of this amendment to chapter 143.
  4. require construction supervisors to:
     1. Provide the educational materials described in b(iv)a to any property owner the construction supervisor intends to contract with for construction services.
     2. Provide the materials prior to entry into any contract for construction services and obtain the property owner’s signature on the bond option form indicating such receipt.
     3. File at least one copy of the “Payment Bond Option form” in the registry of deeds for the county or district where such land lies that is the subject of the contract between a property owner and the construction supervisor to receive construction supervisor services.
  5. Provide the following section as penalty for violation of any of the above provisions of the section entitled “Payment Bond Option Requirement”
     1. The attorney general or the district attorney may prosecute any person who knowingly and willfully violates any of the provisions of this chapter, with a maximum fine of two thousand dollars or maximum term of imprisonment of one year, or both. If a greater penalty is provided by the provisions of this chapter or by any other law, then the greater penalty applies.
     2. Such fines and imprisonment shall be in addition to any penalty given by the board.

f. To hold public advisory committee meetings after 5 p.m. at least once every six months.

g . To establish and maintain records of actions and procedures in accordance with the public records laws.

h. To perform such other functions and duties as may be necessary to carry out the provisions of this chapter.

i. The Board shall promulgate and enforce the provisions of the chapter as amended.

Section 4. Chapter 254 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by adding after section 12 the following section:—

Section 12A. Payment Bond Option Form Presumption

For the purposes of this section the following words shall have the following meanings unless the context clearly requires otherwise—:

“Payment Bond” is defined by requirements set forth in section 12, chapter 254 of the Mass General Laws.

1. Payment Bond Option Form” is defined as the form established in section 94A,
   1. require construction supervisors to
      1. Provide the educational materials described in section 1d to any property owner the construction supervisor intends to contract with for construction services.
      2. Provide the materials prior to entry into any contract for construction services and obtain the property owner’s signature on the bond option form indicating such receipt.
      3. File at least one copy of the “Payment Bond Option form” in the registry of deeds for the county or district where such land lies that is the subject of the contract between a property owner and the construction supervisor to receive construction supervisor services.
   2. Provide the following section as penalty for violation of any of the above provisions of the section entitled “Payment Bond Option Requirement”
      1. The attorney general or the district attorney may prosecute any person who knowingly and willfully violates any of the provisions of this chapter, with a maximum fine of two thousand dollars or maximum term of imprisonment of one year, or both. If a greater penalty is provided by the provisions of this chapter or by any other law, then the greater penalty applies.
      2. Such fines and imprisonment shall be in addition to any penalty given by the board.

c. The registry of deeds in the county or district where the land identified in the Payment Bond Option Form lies, shall not allow attachment of any lien under section four of this chapter on the identified land if the property owner contracting for licensed construction supervisor services, as defined in 780 CMR R5, required a bond as described in section 12, chapter 254 by signifying this requirement on the Payment Bond Option Form.

d. If a licensed construction supervisor fails to file a Payment Bond Option Form in conjunction with a contract to provide construction services, a presumption arises that the property owner required a bond as described in section twelve, and all such rights as the property owner had under section twelve shall apply.

e. If a property owner signifies in a Payment Bond Option Form a requirement of a bond as described in section twelve, but the licensed construction supervisor failed to procure such a bond, the registry of deeds in the county or district where the land identified in the Payment Bond Option Form lies shall not allow attachment of any lien under section four of this chapter on the identified land. The property owner shall receive the benefits of a bond, as described under b.

SECTION 1.This Act may be cited as the Construction Supervisor Act

SEPARATE =====================================================================

SECTION 2 Chapter 143 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by inserting after section 94 the following section:-

Section 94A

Licensed Construction Supervisors Services

(a) Definitions

For the purposes of this section the following words shall have the following meanings unless the context clearly requires otherwise—:

“Contract for construction supervisor services “ .Every agreement to perform contracting services requiring a construction supervisor shall be in writing and include the following documents and information including but not limited to educational materials for distribution to property owners prepared by the Board of Building Regulations and Standards.

“Licensed construction supervisor” any individual directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition involving any activity regulated by any provision of Mass Code of Regulations such terms shall also apply to persons supervising themselves. A licensed construction supervisor shall be required for the installation of all manufactured one and two family homes. as defined in 780 CMR R.5.

“Payment Bond” is a bond, defined by requirements set forth in section 12, chapter 254 of the General Laws.

(b) The Board of Building Regulations and Standards hereinafter known as the Board shall establish a Licensed Construction Supervisor Advisory Committee, comprised of no less than 5 members as follows

1. Not less than one member of the Board of Building Regulations and Standards (BBRS)

2. Not less than one licensed construction supervisor

3. Two representatives, of residential property owner organizations, nominated by residential property owners organizations

4. One representative from sub trade work designated in section 44f of chapter149 of the General Laws

Board shall have the right to reappoint all members each year and each advisory committee member may serve indefinitely.

( c ) Licensed Construction Supervisor Advisory Committee shall have the following powers and duties:

a) To act as a liaison to the board on issues regarding licensed construction supervisors, including contractual disputes.

b) To report to the board annually on issues relating to licensed construction supervisors and property owners.

c) To identify common disputes between licensed construction supervisors and property owners, including contractual dispute and present these common disputes in committee report to the board.

d) To prepare educational materials, using consumer friendly language for distribution to all licensed construction supervisors for distribution to property owners contracting for construction services, including but not limited to:

(1) Chapter 254, specifically sections 4 and 12.

(2) Defining a mechanic’s lien, and the effects it may have on an owner’s property in the Commonwealth

(3) Defining a payment bond, under chapter 254, section 12.

(4) Payment Bond Option Form providing property owners a means to elect as part of a contract for construction supervisor services, a payment bond, pursuant to chapter 254 section 12,

The advisory committee shall ensure that the Payment Bond Option Form:

a. requires the property owner’s signature and date signifying receipt of the educational materials, prior to signing a contract for construction services.

b. requires the property owner to “elect” or “not elect” to require a payment bond, indicated by the property owner’s signature next to either choice

c. states that the construction supervisor must file this form in the registry of deeds where the property lies

d. states the amount of the proposed contract for construction services

e. describes the property subject of the proposed contract for construction services

f. requires the construction supervisor’s signature acknowledging that if the property owner requires a bond then the construction supervisor must obtain a bond as described in chapter 254 section 12, upon entering into the construction contract.

g. requires the construction supervisors’ signature acknowledging the fact that failure to obtain a payment bond required by the property owner upon entry into the contract will constitute a willful violation of the “Payment Bond Option Requirement,” subject to prosecution by the attorney general and punishment of a maximum fine of two thousand dollars or maximum term of imprisonment of one year or both.

(d) Additional board duties

The board shall provide every licensed construction supervisor with:

* 1. Educational materials for distribution to property owners.
  2. Payment Bond Option Form for distribution to property owners.
  3. Notice of this amendment to chapter 143.
  4. require construction supervisors to:
     1. Provide the educational materials described in b(iv)a to any property owner the construction supervisor intends to contract with for construction services.
     2. Provide the materials prior to entry into any contract for construction services and obtain the property owner’s signature on the bond option form indicating such receipt.
     3. File at least one copy of the “Payment Bond Option form” in the registry of deeds for the county or district where such land lies that is the subject of the contract between a property owner and the construction supervisor to receive construction supervisor services.
  5. Provide the following section as penalty for violation of any of the above provisions of the section entitled “Payment Bond Option Requirement”
     1. The attorney general or the district attorney may prosecute any person who knowingly and willfully violates any of the provisions of this chapter, with a maximum fine of two thousand dollars or maximum term of imprisonment of one year, or both. If a greater penalty is provided by the provisions of this chapter or by any other law, then the greater penalty applies.
     2. Such fines and imprisonment shall be in addition to any penalty given by the board.

(e) To hold public advisory committee meetings after 5 p.m. at least once every six months.

(f) To establish and maintain records of actions and procedures in according with the public records laws.

(g) To perform such other functions and duties as may be necessary to carry out the provisions of this chapter.

(h) The Board shall promulgate and enforce the provisions of the chapter as amended.

SECTION 3 Chapter 254 of the General Laws, as appearing in the 2002 Official Edition is hereby amended by adding after section 12 the following section:—

Section 12A Payment Bond Option Form Presumption

(a) Definitions

For the purposes of this section following words shall have the following meanings unless the context clearly requires otherwise—:

“Payment Bond” is defined by requirements set forth in section 12, chapter 254 of the Mass General Laws.

1. Payment Bond Option Form” is defined as the form established in section 94A,
   1. require construction supervisors to
      1. Provide the educational materials described in a to any property owner the construction supervisor intends to contract with for construction services.
      2. Provide the materials prior to entry into any contract for construction services and obtain the property owner’s signature on the bond option form indicating such receipt.
      3. File at least one copy of the “Payment Bond Option form” in the registry of deeds for the county or district where such land lies that is the subject of the contract between a property owner and the construction supervisor to receive construction supervisor services.
   2. Provide the following section as penalty for violation of any of the above provisions of the section entitled “Payment Bond Option Requirement”
      1. The attorney general or the district attorney may prosecute any person who knowingly and willfully violates any of the provisions of this chapter, with a maximum fine of two thousand dollars or maximum term of imprisonment of one year, or both. If a greater penalty is provided by the provisions of this chapter or by any other law, then the greater penalty applies.
      2. Such fines and imprisonment shall be in addition to any penalty given by the board.

(b) The registry of deeds in the county or district where the land identified in the Payment Bond Option Form lies, shall not allow attachment of any lien under section four of this chapter on the identified land if the property owner contracting for licensed construction supervisor services, as defined in 780 CMR R5, required a bond as described in section 12, chapter 254 by signifying this requirement on the Payment Bond Option Form.

(c) If a licensed construction supervisor fails to file a Payment Bond Option Form in conjunction with a contract to provide construction services, a presumption arises that the property owner required a bond as described in section twelve, and all such rights as the property owner had under section twelve shall apply.

(d) If a property owner signifies in a Payment Bond Option Form a requirement of a bond as described in section twelve, but the licensed construction supervisor failed to procure such a bond, the registry of deeds in the county or district where the land identified in the Payment Bond Option Form lies shall not allow attachment of any lien under section four of this chapter on the identified land. The property owner shall receive the benefits of a bond, as described under (b).

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act Relative to Construction Supervisor Services.

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