~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 28, 2009

**H. 3187**

Introduced by Reps. Chalk and Willis

S. Printed 4/28/09--S.

Read the first time March 3, 2009.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 3187) to amend the Code of Laws of South Carolina, 1976, by adding Section 29‑5‑26 so as to define the term “landscape service” and to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill as and if amended, by adding appropriately numbered SECTIONS to read:

/ SECTION \_\_. Chapter 5, Title 29 of the 1976 Code is amended by adding:

“Section 29‑5‑15. (A) To file a mechanics’ lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.”

SECTION \_\_. Section 29‑5‑120 of the 1976 Code is amended to read:

“Section 29‑5‑120. (A) Unless a suit for enforcing the lien is commenced~~,~~ and notice of pendency of the action is filed~~,~~ within six months after the person desiring to avail himself ~~thereof~~ of it ceases to labor on or furnish labor or material for ~~such~~ the building or ~~structures~~ structure, the lien ~~shall~~ must be dissolved.

(B) A mechanics’ lien and associated bonds may be released by a court order, a written affidavit of the bond holder’s attorney, or by a written affidavit from the defendant’s attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics’ lien was filed and must reference the lien’s recording information.”

SECTION \_\_\_. Section 40‑59‑30 of the 1976 Code is amended to read:

“Section 40‑59‑30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29‑5‑10, or another provision of law, a person or firm who first has not ~~first~~ procured a license or registered with the commission and is required to do so by law may not file a mechanics’ lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) ~~If it appears to the commission that a person or firm has violated, or is about to violate, a provision of this chapter, the commission may in its own name petition an administrative law judge, as provided under Article 5 of Chapter 23 of Title 1, to issue a temporary restraining order enjoining the violation of this chapter, pending a full hearing to determine whether or not the injunction must be made permanent.~~ Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent.” /

Renumber sections to conform.

Amend title to conform.

DAVID L. THOMAS for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates that this bill will have no impact on the General Fund of the State or on federal and/or other funds as it creates the legal option of a Mechanics Lien for a service value of more than $15,000 is provided and payment is not received.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29‑5‑26 SO AS TO DEFINE THE TERM “LANDSCAPE SERVICE” AND TO PROVIDE that A person who provides a landscape service on a parcel or real estate by virtue of an agreement with the owner of the real estate, and to whom a debt is due for his performance of the landscapING service, has a MECHANICS’ lien ON the real estate to secure payment of debt due to him.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 29 of the 1976 Code is amended by adding:

“Section 29‑5‑26. (A) A person who provides a landscape service on a parcel of real estate by virtue of a written agreement with the owner of the real estate that exceeds fifteen thousand dollars, and to whom a debt is due for his performance of the landscaping service, has a mechanics’ lien on the real estate to secure payment of debt due to him as provided by Section 29‑5‑10 and Section 29‑5‑20. The lien is on the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) the installation of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan and or site design;

(3) or both.

A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure.”

SECTION 2. This act takes effect upon approval by the Governor.

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