

Legislative History for Connecticut Act

HB 6200	PA 418 <sup>of 4</sup>	1975
Senate	3159	(1)
House	4922-4936	(15)
Jud.	0	
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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1975

VOL. 18  
PART 6  
2629-3188

1975 - GENERAL ASSEMBLY

## SENATE

FRIDAY

MAY 30, 1975

LFU  
108

THE CHAIR:

The question is on adoption of the Amendment. All those in favor indicate by saying aye. Opposed nay. Ayes have it. The Amendment's adopted. And the Bill will be placed on the Consent Calendar.

SENATOR LIEBERMAN:

Mr. President, on page ten, Calendar 1032, Substitute for Senate Bill No. 582. Calendar 1034, Substitute for House Bill No. 6851. Calendar 1036, Substitute for House Bill No. 7500. Calendar 1037, Substitute for House Bill No. 8453. Calendar 1039, Substitute for House Bill No. 5620. I should say for the Members of the Circle that 1038 had previously been marked Consent but there was objection in the interim. So we'll take it up. We won't take it up now.

Calendar 1040, House Bill No. 8463. Calendar 1041, Substitute for House Bill No. 5110. Moving to page eleven; Calendar 1044, Substitute for House Bill No. 6922. Calendar 1045, House Bill 8012. Calendar 1046, Substitute for House Bill No. 6200. Calendar 1047, I'd move for recommittal of Substitute for House Bill No. 6883 to the Committee on the Judiciary.

THE CHAIR:

Question is on recommittal. Is there any objection? If there is no objection, the Bill is recommitted to the Committee on Judiciary.

SENATOR LIEBERMAN:

Moving to page twelve of the Calendar, Mr. President, Calendar

H-167

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1975

VOL. 18  
PART 10  
4554-5052

House of Representatives

Tuesday, May 27, 1975

136

mms

Page 7 of the Calendar. Page 7 of the Calendar. Calendar  
1120. Substitute for House Bill 6200. AN ACT CONCERNING MECHANIC'S  
LIENS.

THE SPEAKER:

The gentleman from the 148th.

REP. ABATE (148th):

Mr. Speaker, I move acceptance of the Joint Committee'  
Favorable Report and passage of the Bill.

THE SPEAKER:

Question is on acceptance and passage. Will you remark?

REP. ABATE (148th):

Yes Mr. Speaker.

THE SPEAKER:

The gentleman from the 148th.

REP. ABATE (148th):

At the outset, I'd like to beg the indulgence of this  
Assembly. This is a rather complicated, technical Bill. The Bill extends  
for eleven pages and what I'm going to do is, on a section by section  
approach, make mention of the changes that we've made in the existing  
Statute.

This legislation has been mandated by the fact that the  
Supreme Court of the State of Connecticut ruled that our existing Statutory  
procedures, with regards to filing mechanic's liens, is unconstitutional.  
We are now placed in a position of having to submit new legislation that  
will remedy the defects raised in the existing Statute.

In Section one, of the proposal, in addition to the existing  
requirement of filing a certificate of lien with the Town Clerk, there

House of Representatives

Tuesday, May 27, 1975

137  
mms

is an added requirement that notice be given to the owner within the same requisite sixty day period, but not later than seven days after the recording of lien.

In Section 2, there is added language, as follows: Lot or plot of land. This is just inserted to conform with other Sections in the existing Statute wherein lot or plot of land is made reference to.

Section 3 limits the period within which an action to foreclose on a lien can be commenced to ~~one year after filing the~~ certificate of lien. It also specifically allows for foreclosure by cross complaint and counter claim in addition to by original complaint.

Section 4a is new. It allows for an application by an owner of property, for a hearing to decide if a lien should be discharged or reduced in amount. And it's a very significant new change. It allows for hearings to determine whether or not the lien was valid.

Section 4a, sub...sub-part b, requires at least four days ~~noter...notice~~, excuse me, to the lienor ~~and to other~~ owners who are not party applicants. And that Section establishes various methods of serving notice.

Section 4b, sets the format for application, order and summons. It allows for a hearing after foreclosure, but before the actual trial on...on the foreclosure. So long as there has not already been a hearing and a party filing, received notice of a prior hearing.

Section 5 requires that the lienor establish probable cause to sustain the validity of a lien and allows for proof by clear ~~and~~ convincing evidence, that such lien should not be sustained, or should be reduced ~~in~~ amount. So basically it establishes the burden of proof. It also establishes that a court or judge may deny an application if probable

House of Representatives

Tuesday, May 27, 1975

138  
mms

cause is established, or may discharge the lien if probalbe cause is not established, or if the lien invalidity is established by clear and convincing evidence, or he may reduce the amount of the lien, if it is found to be excessive by clear and convincing evidence.

Section 6 is also new. Any order of a judge or court issued after the hearing is to be considered a final judgment for purposes of appeal. This Section indicates that there shall be a stay of the effect of an order for seven days and requires appeal from such order within said seven day period. If appeal is taken within the seven days, the party taking the appeal may, within that seven day period, file an application requesting a stay of the order, pending the outcome of the appeal. The order is stayed upon filing of the application and the stay continues until the decision is made on the application.

Section C further requires the court to set surety bond in an amount adequate to indemnify the adverse party for any damages he might incur as a result of this stay. If the party seeking the stay gives such bond, the court shall grant the stay. If no bond is given, the court can grant or deny the stay or condition the granting of the stay on the getting of the bond.

Section C further makes orders of discharge, reduction or stay effective on filing with the Town Clerk. It also requires that the Clerk of Court not deliver any certified copies of orders until the appeal period has run or until a decision is made on the application for extension of the stay.

Section 7 permits validation of existing liens as of April 22, 1975 which happens to have been the date upon which the Supreme Court rendered its decision. By requiring a lienor to file a new certificate to give notice by sending a copy of the certificate to the owner within

House of Representatives

Tuesday, May 27, 1975

139  
mms

ninety days from the date after the Act, with a validation such lien has been originated as of the effective date of the original lien. Validation shall not effect the interest of any one buying the property or acquiring a mortgage thereon, after April 22nd, 1975, up until the effective date of the Act.

Section 7 further sets out procedures to be followed by those who could have claimed a lien between April 22nd and the effective date of the Act, but did not do so. It calls for filing of a certificate and notice, as already discussed, within the sixty day period or within the ninety day date of the Act. Whichever period is longer. In each case, it's the date of commencement, the date to be the effective date of the Act. But for purposes of determining the amount of such lien, such a commencement shall be the actual date of commencement.

Section 7c covers the situation of liens filed during the period April 22nd to the effective date of the Act. People in this particular category may file a new certificate within the ninety days of the effective date of the Act. Commencement of services or furnishing materials is the date of the Act, but regarding the amount of a lien, the date to be considered is the actual date.

Section 8a sets out the same provisions as are now in Section 49-37 of the existing Statutes, except that the period within which an action to recover upon a bond, must be commenced, is changed from two years to one year, to conform with other provisions in the Bill.

It also allows for an application for a hearing to determine whether the lien for which a bond was substituted, should be declared invalid or reduced in amount. The provisions of this Section parallel the provisions of Section 4, regarding a hearing to discharge or to

House of Representatives

Tuesday, May 27, 1975

140  
mms

reduce a lien.

Section 9 provides that if a bond was substituted for a lien prior to April 22nd, the obligee leinor, may validate the lien for which the bond was substituted by serving a copy of the original certificate of lien on the principal and surety, by registered or certified mail, within ninety days of the effective date of the Act.

That, in very summary fashion, explain a proposal which, in my estimation, meets in every detail, the requirements that were set forth in the decision of the Supreme Court, declaring our present Statute unconstitutional.

I move passage of the Bill.

THE SPEAKER:

Remark further on the Bill? The gentleman from the 136th.

REP. NEVAS (136th):

Mr. Speaker, the Clerk has an Amendment and I would ask that he call LCO 9826.

THE SPEAKER:

Clerk please call LCO 9826, House "A".

THE CLERK:

House Amendment Schedule "A" LCO Number 9826, offered by

Mr. Nevas of the 136th District:

In line 280, delete everything after the comma

Delete lines 281 to 287 inclusive and insert in lieu thereof the following language "and such liens shall be deemed valid as of the date of the order of the Court".

REP. NEVAS (136th):

Mr. Speaker, I think there's additional language. At least

House of Representatives

Tuesday, May 27, 1975

141  
mms

there is on my copy. There were two Amendments, Mr. Speaker and perhaps they didn't assign a different LCO Number.

THE SPEAKER:

The Clerk advises the Chair that there were two Amendments and they both bear the LCO Number, but differ in their scope. Would the gentlemen.....

Would the House be at ease. Will the gentleman from the 136th be kind enough to come to the well?

THE CLERK:

House Amendment Schedule "A".

THE SPEAKER:

Clerk please re-read LCO 9826, House Amendment "A".

THE CLERK:

House Amendment Schedule "A", bearing LCO Number 9826:

In line 280, delete everything after the comma

Delete lines 281 to 287 inclusive and insert in lieu thereof the following language: "such liens shall be deemed valid as of the date of any order of the Court or in lieu thereof, as of the date of validation pursuant to the provisions of this Act"

REP. NEVAS (136th):

Mr. Speaker, I move adoption of the Amendment.

THE SPEAKER:

Question is on adoption of House "A". Will you remark sir?

REP. NEVAS (136th)

Yes Mr. Speaker.

THE SPEAKER:

The gentleman from the 136th.

House of Representatives

Tuesday, May 27, 1975

142  
mms

REP. NEVAS (136th):

Mr. Speaker, this is a good Bill and I support its passage. However, I take issue with lines beginning on 280 and going through the end of 287. And the effect of that language, Mr. Speaker, is to attempt to validate mechanic's liens retroactively. That is to say, mechanic's liens filed prior to April 22nd, 1975, are now...this provision would now permit them to be validated, by going through a procedure outlined in the Act.

My position, Mr. Speaker, and I am supported by a number of lawyers with whom I have discussed this matter, many of whom are much more knowledgeable in the area of Real Estate Law, than I, is that we simply can not do this. In effect, what we are...the Bill as in the file is attempting to do is to say that a mechanic's lien filed a year ago, under a statute which is now held to be unconstitutional, is by following a procedure, valid.

Mr. position Mr. Speaker is that if the Statute under which the lien was filed is unconstitutional, and thus invalid, there's no way, that you can make that lien valid. Because your affecting substantive rights, not procedural right. For example, Mr. Speaker, if you compare this to the pre-judgment remedy Statute, the validation proceedings there, talk only in terms of validation as of the date of a court order. They do not, and did not, when this Legislature adopted the pre-judgment remedy Statute, did not attempt to back date, or to validate, pre-existing attachments. And I don't think we can do it here.

In my view Mr. Speaker, we can validate matters relating to procedure, but we can not and we should not, attempt to validate substantive matters retroactively. In effect, this Statute has been declared

House of Representatives

Tuesday, May 27, 1975

143  
mms

void by our Supreme Court. And we are now trying to give life to mechanic's liens which were filed under an unconstitutional Statute.

My Amendment, Mr. Speaker, would validate pre-existing liens, but only as of the date of a court order, under the terms of this Statute, or under as of the date that they might otherwise be validated, under other substantive provisions of this Act. And in my view, Mr. Speaker, this is the only way that we can validate pre-existing mechanic's liens. And I move adoption of the Amendment.

THE SPEAKER:

Remark further on House "A"? The gentleman from the 148th.

REP. ABATE (148th):

Mr. Speaker, I rise in opposition to the Amendment. One thing that the Members of this Assembly ought to be aware of is that prior to April 22nd, the laws of this State permitted a certain procedure to be followed with regards to the filing of mechanic's liens. Individuals acting in accordance with existing law, filed liens, established priorities. If this Amendment were to be adopted, what you would be doing, is saying to those individuals, who, acting in good faith, in accordance with an existing Statute, you would be indicating to them that any priority that they may have established as a result of filing their lien in accordance with an existing Statute, is now lost. And they have to take their place behind a superceding lien.

There is case law that indicates that a Legislative Body may by Legislative enactment, retrospectively validate Acts to make legal and regular that which was declared illegal and irregular. That is exactly what we're doing here. We are not validating to the extent where intervene rights are being adversely affected. There is a specific

House of Representatives

Tuesday, May 27, 1975

144  
mms

exclusion in cases of intervening rights.

What we're doing is requiring individuals who as of April 22nd, had, what was at that time considered to be a valid lien, to follow certain procedures that we now deem to be constitutional. We require that to file again a new certificate of lien and at the same time, give notice to the property owner, and that property owner would have the same rights as any other property owner does under the proposal, to request a hearing on the newly filed lien.

On that basis, Mr. Speaker, I urge that we reject the Amendment.

THE SPEAKER:

Remark further on the Amendment? Further remarks on House "A"? The gentleman from the 136th.

REP. NEVAS (136th):

It would appear Mr. Speaker, that this is a matter in which two lawyers disagree on a question of interpretation of law, and that's not unusual. In response to the remarks of Representative Abate, I would merely like to point out the following, Mr. Speaker.

First of all, I don't think we're dealing here with a question of equity or the question of fairness. That's not the point. We're dealing with a question of substantive law and the vesting of rights and whether it's fair, unfair or inequitable for persons whose liens were filed prior to April 22nd, 1975, to now be in this position, is really not the issue. And it seems to me Mr. Speaker, that if the Supreme Court felt that it was unfair or inequitable for them to ~~have~~ been placed in this position, they would have said so in the decision. And would have indicated perhaps by way of dicta that some remedy should be available to them, so as to give them the right that Mr. Abate would now wish to

House of Representatives

Tuesday, May 27, 1975

145

mms

give them. He mentioned case law. He did not give a citation, but he indicated that he was aware of law which said you can val...the Legislature can validate, and I think these were his words "illegal or irregular Acts". That may or may not be so, but it doesn't seem to me the Legislature can validate unconstitutional Acts. And that's really what we're talking about here Mr. Speaker.

I think this Amendment is proper. I think that it will strengthen this Bill and I think that if the Bill is passed without this Amendment, it will be much weaker and will be subject to attack once more and for the next year or two years, while the case moves on its way back up to the Supreme Court to determine whether we can do what the file copy of the Bill proposes to do. We're going to be left hanging in limbo. If this Amendment is adopted, that will not be the case.

THE SPEAKER:

Remark further on the Amendment? The gentleman from the 111th.

REP. CAMP (111th):

Mr. Speaker, I'll support the Amendment because I think within the language of the Bill of the file copy, from lines 280 to 287, at least two points which were questionable validity. In the first instance the Statute seeks to protect certain acquiring interests. Those are of an owner or a mortgagee. What of other lienors, such as a judgment lienor? They apparently are in a different limbo field of which we're quite unaware.

Secondly, I don't think that for purposes of this Section, there's any magic in the date of April 22nd, 1975. That is, an owner acquiring property after the date on which the lien was put on, prior to April 22, 1975 would seem to be in the same position of a lienor.

House of Representatives

Tuesday, May 27, 1975

146  
mms

subsequent that date. Because in point of fact, the Supreme Court did not declare mechanic's liens invalid prospectively, but declared them invalid retroactively. Accordingly, liens acquired or interest acquired prior to April 22, '75, ought, it seems to me, to be included in the same category with those acquired after that date.

For those two reasons, I would support the Amendment.

THE SPEAKER:

Remark further on the Amendment? The gentleman from the 148th.

REP. ABATE (148th):

Mr. Nevas made reference to the fact that I referred to case law without...without saying a cite. I..I will at this time offer the name of the case and cite to him Sanger S A N G E R versus Bridgeport, located at 124 Connecticut 183.

I might, Mr. Speaker, make reference to lines 288 to 298 of the proposed Bill. It indicates that such validation shall not effect the interest of any person to whom such validation would be in violation of the Constitution of the United States or the Constitution of the State of Connecticut. So if in fact the determination is made that this Legislature, in validating what were declared to be illegal Acts at some point, denied the Constitutional rights of a particular individual, the Bill indicates that our attempted validation is...is of no effect.

Thank you very much.

THE SPEAKER:

Remark further on the Amendment? If not, the question is on its adoption. All those in favor will indicate by saying Aye. Opposed? In the opinion of the Chair, the Amendment clearly fails.

House of Representatives

Tuesday, May 27, 1975

147

mms

Remark further on the Bill? If not, will the Members please be seated? The gentleman from the 111th.

REP. CAMP (111th):

Mr. Speaker, I will support the Bill, but with some hesitation because I think there are a number of points in it that will continue to raise Constitutional questions.

In the first instance, the subject which we're dealing with generally, for those who are not lawyers, is not a mechanic in the sense of a guy who repairs your car, but a person who supplies labor or materials to your house. A mechanic's lien is a device by which, a person having supplied such labor and materials, acquires within sixty days of the date that he terminates his work or supply...finishes supplying the materials, may acquire by filing a lien in the land records, which under old law, reverted it back to the date of the original...when...when work was first commenced or materials were first supplied. In the case of Roundhouse Construction Corporation versus Telesco, the Supreme Court of the State of Connecticut essentially decided two facts. One, I think is that the imposition of a mechanic's lien did in fact constitute a deprivation of property, within the meaning of the Fourteenth Amendment of the..of the Federal Constitution and also within the meaning, I believe, of Article Ten of the State Constitution. They further decided that that being a deprivation, then the due...due process clause, the requirements of due process, were not in fact, met.

This decision was based upon earlier cases that the United States Supreme Court, starting out with the decision in the name of Snidak which involved a wage attachment, carried through in a very strong opinion called *Fluents* and more recently modified by *Mitchell versus*

House of Representatives

Tuesday, May 27, 1975

148  
mms

Grant. In the Fuenties case, it was determined that any post hearing was invalid. If Fuenties has any validity whatsoever, then the procedure which we have adopted today, or plan to adopt, will not stand Constitutional attack. And, in my judgment, rather than doing that, we ought, it seems to me, to have a creed lien procedure, because that would be clearly constitutional.

Secondly, the requirement in the Statute would require for two hearings or two services, rather. One by the person filing the lien. Second by the owner if he wishes...wishes to challenge. I think that could be done away with.

Third, I find that the lienor in order to maintain his day, must only show by probable cause, the validity of the lien, whereas, the owner must show by clear and convincing evidence, that the lien should not be sustained. I question whether that meets constitutional standards.

Finally, as to the various validating parts of the Act, I think they go further than might...what might be necessary for constitutional purposes. They attempt, for example, to allow for any lien which could have been filed at that time, whether or not it was filed, or whether or not had anything to do with constitutionality, presumably to be validated by these sections.

I would say in summation that the people who have worked on this Bill have handled a very difficult problem. I merely say that I think it might have been handled otherwise. I'm not sure that this meets constitutional challenges and I think we could adopt a Bill which clearly would do so. Thank you.

THE SPEAKER:

Remark further on the Bill? The gentleman from the 148th.

House of Representatives

Tuesday, May 27, 1975

149  
mms

REP. ABATE (148th):

I think Representative Camp, in all sincerity, made suggestions which...which he felt would be an improvement on this particular Bill. I disagree. I think that the individuals who had a meeting of the minds with regard to this particular Bill, did an outstanding job.

I would like however, to commend Representative Camp because he represented the appellee defendants in the case wherein this particular Statute was declared unconstitutional. And he's to be commended for his adept ability before the Bar in that particular case. Thank you very much.

THE SPEAKER:

Are there any further relevant comments on the Bill? If not, will the Members please be seated? The staff come to the well. The machine will be open. Have all the Members voted? Is your vote properly recorded? If so, the machine will be closed and the Clerk will take a tally.

The gentleman from the 140th.

REP. COLLINS (140th):

In the affirmative please.

THE SPEAKER:

Clerk please note.

The gentleman from the 70th...7th.

REP. BILLINGTON (7th):

In the affirmative.

THE SPEAKER:

The gentleman from the 7th in the affirmative.

THE ASSISTANT CLERK:

House of Representatives

Tuesday, May 27, 1975

150  
mms

Total Number Voting.....	143
Necessary for Passage.....	72
Those Voting Yea.....	143
Those Voting Nay.....	0
Those absent and not Voting.....	8

THE SPEAKER:

The Bill is passed.

THE CLERK:

Calendar 1122. Substitute for House Bill 7263. AN ACT  
CONCERNING AN APPROPRIATION OF STATE MONIES TO EXPAND FAMILY PLANNING  
PROGRAMS.

THE SPEAKER:

The gentleman from the 93rd.

REP. STOLBERG (93rd):

I move acceptance of the Joint Committee's Favorable Report  
and passage of the Bill.

THE SPEAKER:

Question is on acceptance and passage. Will you remark sir?

REP. STOLBERG (93rd):

Mr. Speaker, the Clerk has an Amendment.

THE SPEAKER:

Clerk please call House "A".

REP. STOLBERG (93rd):

LCO 8496.

THE CLERK:

House Amendment Schedule "A" offered by Representative  
Stolberg of the 93rd:

In line 8, after the word "of" strike out the word "ten"  
and insert "two hundred and fifty" in lieu thereof.

THE SPEAKER: