

2001 BILL 22

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 22

BUILDERS' LIEN AMENDMENT ACT, 2001

MR. DUCHARME

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 22
Mr. Ducharme

BILL 22

2001

BUILDERS' LIEN AMENDMENT ACT, 2001

(Assented to , 2001)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA
1980 cB-12

1 The *Builders' Lien Act* is amended by this Act.

2 Section 1 is amended

- (a) in clause (f.2) by striking out "section 15(1)" wherever it occurs and substituting "section 15(1) or (1.1)";**
- (b) in clause (f.3) by striking out "section 16.2(1)" wherever it occurs and substituting "section 16.2(1) or (1.1)".**

Explanatory Notes

1 Amends chapter B-12 of the Revised Statutes of Alberta 1980.

2 Section 1(f.2) and (f.3) presently read:

1 In this Act,

(f.2) “major lien fund” means

(i) where a certificate of substantial performance is not issued, the amount required to be retained under section 15(1) plus any amount payable under the contract

(A) that is over and above the 10% referred to in section 15(1), and

(B) that has not been paid by the owner in good faith while there is no lien registered;

(ii) where a certificate of substantial performance is issued, the amount required to be retained under section 15(1) plus any amount payable under the contract

(A) that is over and above the 10% referred to in section 15(1), and

(B) that, with respect to any work done or materials furnished before the date of issue of the certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

3 Section 9(1.2) is amended by striking out “sections 15(1) and 16.2(1)” and substituting “sections 15(1) or (1.1) and 16.2(1) or (1.1)”.

4 Section 15 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1) and irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract with respect to improvements to an oil or gas well or to an oil or gas well site under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 90 days from

- (a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or
- (b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(b) in subsections (2) and (5) by striking out “subsection (1)” wherever it occurs and substituting “subsection (1) or (1.1)”.

5 Section 16 is amended by adding the following after subsection (2):

(3) Notwithstanding section 15(1.1), if, with respect to improvements to an oil or gas well or to an oil or gas well site,

(f.3) “minor lien fund” means the amount required to be retained under section 16.2(1) plus any amount payable under the contract

(i) that is over and above the 10% referred to in section 16.2(1), and

(ii) that, with respect to any work done or materials furnished on and after the date of issue of a certificate of substantial performance, has not been paid by the owner in good faith while there is no lien registered;

3 Section 9(1.2) presently reads:

(1.2) Notwithstanding subsection (1.1), no judgment, execution, assignment, attachment, garnishment or receiving order shall affect the amount required to be retained under sections 15(1) and 16.2(1).

4 Section 15(1), (2) and (5) presently read:

15(1) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 45 days from

(a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or

(b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(2) In addition to the amount retained under subsection (1), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 10% referred to in subsection (1).

(5) A payment of an amount, other than that required to be retained under subsection (1), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered is valid, so that the major lien fund is reduced by the amount of the payment.

5 Section 16 presently reads:

16(1) Notwithstanding section 15(1), if

(a) a certificate of substantial performance is issued for a contract,

- (a) a certificate of substantial performance is issued for a contract,
- (b) a period of 90 days has expired from the date of issue of the certificate of substantial performance, and
- (c) no lien has been registered,

the amount that the owner is required to retain under section 15 is reduced by 10% of the value of the work actually done and materials actually furnished under the contract at the date of issue of the certificate of substantial performance.

(4) Notwithstanding section 15(1.1), if, with respect to improvements to an oil or gas well or to an oil or gas well site,

- (a) a certificate of substantial performance is issued for a subcontract,
- (b) a period of 90 days has expired from the date of issue of the certificate of substantial performance, and
- (c) no lien has been registered,

the amount that the owner is required to retain under section 15 is reduced by 10% of the value of the work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance.

6 Section 16.2 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), with respect to improvements to an oil or gas well or to an oil or gas well site, when a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 90 days from the date of the completion of the contract an amount equal to 10% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

(b) in subsections (2) and (5) by striking out “subsection (1)” wherever it occurs and substituting “subsection (1) or (1.1)”.

- (b) *a period of 45 days has expired from the date of issue of the certificate of substantial performance, and*
- (c) *no lien has been registered,*

the amount that the owner is required to retain under section 15 is reduced by 10% of the value of the work actually done and materials actually furnished under the contract at the date of issue of the certificate of substantial performance.

(2) *Notwithstanding section 15(1), if*

- (a) *a certificate of substantial performance is issued for a subcontract,*
- (b) *a period of 45 days has expired from the date of issue of the certificate of substantial performance, and*
- (c) *no lien has been registered,*

the amount that the owner is required to retain under section 15 is reduced by 10% of the value of the work actually done and materials actually furnished under the subcontract at the date of issue of the certificate of substantial performance.

6 Section 16.2(1), (2) and (5) presently read:

16.2(1) When a certificate of substantial performance is issued in respect of a contract, the owner shall retain for a period of 45 days from the date of the completion of the contract an amount equal to 10% of the value of the work actually done and materials actually furnished on or after the date of issue of the certificate of substantial performance.

(2) In addition to the amount retained under subsection (1), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 10% referred to in subsection (1) for work done and materials furnished on and after the date of issue of the certificate of substantial performance of the contract.

(5) A payment of an amount, other than that required to be retained under subsection (1), that is made in good faith by an owner or

7 Section 17 is amended by striking out “section 15(1) or 16.2(1)” **and substituting** “section 15(1) or (1.1) or 16.2(1) or (1.1)”.

8 Section 18 is amended by adding the following after subsection (1.1):

(1.2) Notwithstanding subsection (1), with respect to improvements to an oil or gas well or to an oil or gas well site, on the expiration of 90 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner’s liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.

(1.3) Notwithstanding subsection (1.2), with respect to improvements to an oil or gas well or to an oil or gas well site, on the expiration of 90 days

(a) from the date of issue of a certificate of substantial performance, payment of the major lien fund may be validly made, and

(b) from the day the contract is completed, payment of the minor lien fund may be validly made,

so as to discharge the owner’s liability in respect of all liens that are a charge on the lien fund in respect of which the payment was made, unless a statement of lien is registered.

9 Section 20(1) is amended by striking out “section 15(1) or 16.2(1)” **and substituting** “section 15(1) or (1.1) or 16.2(1) or (1.1)”.

mortgagee to a contractor at a time when there is not any lien registered, is valid so that the minor lien fund is reduced by the amount of the payment.

7 Section 17 presently reads:

17 A mortgagee authorized by the owner to disburse money secured by a mortgage may retain the amount required to be retained by the owner as the person primarily liable on the contract and the retention by the mortgagee of that amount shall be deemed to be a compliance with section 15(1) or 16.2(1), as the case may be, by the owner as the person primarily liable on the contract.

8 Section 18(1) and (1.1) presently read:

18(1) On the expiration of 45 days from the day that the contract is completed, payment of the major lien fund may be validly made so as to discharge the owner's liability in respect of all liens that are a charge on the major lien fund, unless a statement of lien is registered.

(1.1) Notwithstanding subsection (1), on the expiration of 45 days

(a) from the date of issue of a certificate of substantial performance, payment of the major lien fund may be validly made, and

(b) from the day the contract is completed, payment of the minor lien fund may be validly made,

so as to discharge the owner's liability in respect of all liens that are a charge on the lien fund in respect of which the payment was made, unless a statement of lien is registered.

9 Section 20(1) presently reads:

20(1) If an owner, mortgagee, contractor or subcontractor

(a) gives written notice to

(i) the person liable on the contract or his agent, and

(ii) the persons liable on any intervening contracts or their agents,

10 Section 25(3) is repealed and the following is substituted:

(3) In the case of a lien arising in connection with an oil or gas well or an oil or gas well site it is not necessary to set out in the statement of lien the name of the owner or alleged owner of the oil or gas well or the oil or gas well site.

11 Section 30 is repealed and the following is substituted:

Time for registration

30(1) A lien for materials may be registered at any time within the period commencing when the lien arises and

- (a) subject to clause (b), terminating 45 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned, or
- (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned.

(2) A lien for the performance of services may be registered at any time within the period commencing when the lien arises and

- (a) subject to clause (b), terminating 45 days from the day that the performance of the services is completed or the contract to provide the services is abandoned, or
- (b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the performance of the services is

of his intention to make payment to a person who has a lien for or on account of a debt due to that person for work done or materials furnished and for which the person giving notice is not liable on the contract, and

- (b) does not receive from any person to whom a notice was given under clause (a), or his agent, within 5 days from the day on which the notice was given, an objection to the payment's being made,*

he may, subject to subsection (2), make the payment and the payment is a payment on his contract or, in the case of a mortgagee, an advance on the mortgage, and on the intervening contracts, as the case may be, but not so as to affect the percentage required to be retained by the owner under section 15(1) or 16.2(1), as the case may be.

10 Section 25(3) presently reads:

(3) In the case of a lien arising in connection with an oil or gas well it is not necessary to set out in the statement of lien the name of the owner or alleged owner of the oil or gas well.

11 Section 30 presently reads:

30(1) A lien for materials may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the last of the materials is furnished or the contract to furnish the materials is abandoned.

(2) A lien for the performance of services may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the performance of the services is completed or the contract to provide the services is abandoned.

(3) A lien for wages may be registered at any time within the period

(a) commencing when the lien arises, and

(b) terminating 45 days from the day that the work for which the wages are claimed is completed or abandoned.

(4) In cases not referred to in subsections (1) to (3), a lien in favour of a contractor or a subcontractor may be registered at any time within the period

completed or the contract to provide the services is abandoned.

(3) A lien for wages may be registered at any time within the period commencing when the lien arises and

(a) subject to clause (b), terminating 45 days from the day that the work for which the wages are claimed is completed or abandoned, or

(b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day that the work for which the wages are claimed is completed or abandoned.

(4) In cases not referred to in subsections (1) to (3), a lien in favour of a contractor or subcontractor may be registered at any time within the period commencing when the lien arises and

(a) subject to clause (b), terminating 45 days from the day the contract or subcontract, as the case may be, is completed or abandoned, or

(b) with respect to improvements to an oil or gas well or to an oil or gas well site, terminating 90 days from the day the contract or subcontract, as the case may be, is completed or abandoned.

(5) Notwithstanding subsections (1) to (4), the time limited by this section for registering a lien is not extended by reason only that something improperly done or omitted to be done in respect of work done or materials furnished is corrected or done, as the case may be, at a later date.

12 Section 35(2)(c) is amended by striking out “section 15(1) or 16.2(1)” and substituting “section 15(1) or (1.1) or 16.2(1) or (1.1)”.

(a) commencing when the lien arises, and

(b) terminating 45 days from the day the contract or subcontract, as the case may be, is completed or abandoned.

(5) Notwithstanding subsections (1) to (4), the time limited by this section for registering a lien is not extended by reason only that something improperly done or omitted to be done in respect of work done or materials furnished is corrected or done, as the case may be, at a later date.

12 Section 35(2) presently reads:

(2) Money paid into court or any security given under subsection (1)

(a) stands in place of the land,

(b) is subject to the claims of the person whose lien has been removed, and

(c) shall not affect the amount required to be retained under section 15(1) or 16.2(1).

13 The following is added after section 57:

Transitional

58 In sections 15(1.1), 16(3) and (4), 16.2(1.1), 18(1.2) and (1.3) and 30(1)(b), (2)(b), (3)(b) and (4)(b) all references to “90 days” are deemed to be references to “45 days” with respect to the following contracts or subcontracts under which a builder’s lien may arise:

- (a) any contract or subcontract entered into before April 1, 2002;
- (b) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into before April 1, 2002;
- (c) any subcontract entered into on or after April 1, 2002 that is made under a contract entered into before April 1, 2002;
- (d) any contract solely for the furnishing of materials, the performance of services or the provision of work by a labourer entered into on or after April 1, 2002 that is made in respect of a contract entered into before April 1, 2002.

14 This Act comes into force on April 1, 2002.

13 Transitional.

14 Coming into force.