



October 16, 2019
Construction Industry Legislative Meeting
Hosted by Senator Jack Johnson, Representative Ron Gant
Cordell Hull Building – Conference Room 8C

Identification of the Problem

1. We, the construction industry, need adequate payment protections.
2. Current construction industry acts are intertwined and provide some protection, but are inconsistent and insufficient.
3. Risk of nonpayment is not borne by party best able to manage risk or fairly allocated.

How do we Resolve the Payment Dilemma?

1. Internal consistency among lien laws, Truth in Construction Act, Prompt Pay Act, and construction defect statutes
2. Eliminate applicability loopholes
3. Ensure acts have adequate timing, notice, and penalty provisions to protect industry. Solutions should be achieved through industry roundtable



Summary of Changes

1. Modifies statutory language to reflect consistent definitions and terminology throughout lien laws, Truth in Construction Act, Prompt Pay Act, and construction defect statutes to maintain internal consistency
 - a. Tennessee Lien Laws – T.C.A. §§66-11-101, *et seq.*
 - b. Truth in Construction – T.C.A. §§66-11-201, *et seq.*
 - c. Prompt Pay Acts of 1985, 1991 – T.C.A. §§12-4-701, *et seq.*; 66-34-101, *et seq.*
 - d. Construction Defect Statute – T.C.A. §§66-36-101, *et seq.*
2. Ensures acts have adequate timing, notice, and penalty provisions to protect industry.
 - i. Lien statutes – Provides that mechanics' liens will be on parity with mortgages (T.C.A. §66-11-108)
 - ii. Prompt Pay Act
 - a. Clarifies existing law that all contractors may recover funds owed to them from the party holding the construction proceeds through an equitable action regardless of any arbitration requirement (T.C.A. §§66-34-104, -205, -602)
 - b. Raises interest rate to statutory rate (1 ½% per month) applicable to purchases by the State of Tennessee (T.C.A. §66-34-601)
 - c. Introduces a "stop work" notice procedure that largely mirrors the common law "notice and opportunity to cure" requirement to allow contractors to stop work when they are not paid (T.C.A. §66-34-602)
 - d. Introduces a "Demand for Reasonable Assurances" that provides all contractors assurance that the owner has obtain sufficient funding to pay for all labor and materials on a project (T.C.A. §66-34-603)



3. Provides forms for use by contractors to serve notice of their rights under Tennessee's construction statutes (T.C.A. §66-34-602, -603)
4. Eliminates applicability loopholes (T.C.A. §66-34-703)
5. Clarifies definition of action
 - a. Includes arbitration within the definition of "action" to clarify that the statute of repose for construction applies equally in litigation and arbitration (T.C.A. §28-1-101)
 - b. Amends terminology used in lien statutes to eliminate "action" and reflect requirement of court proceeding to enforce lien (T.C.A. §§66-11-126, -130, -133, -134, -135, -136, -139, -142)
6. Affirms that limitations of liability in contracts with design professionals are not against the public policy of the State of Tennessee (new statute).
7. Eliminates unnecessary notice provisions for commercial construction contracts (T.C.A. §§66-11-201, *et seq.*).

Relevant Statutes:

- Tennessee Lien Laws – T.C.A. §§66-11-101, *et seq.*
- Truth in Construction – T.C.A. §§66-11-201, *et seq.*
- Prompt Pay Acts of 1985, 1991 – T.C.A. §§12-4-701, *et seq.*; 66-34-101, *et seq.*
- Construction Defect Statute – T.C.A. §§66-36-101, *et seq.*