



## **Protecting Opportunity: Public Project Liens in Light of the American Recovery and Reinvestment Act**

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The \$789 Billion American Recovery and Reinvestment Act (ARRA) will fund major public construction projects in both Kentucky and Ohio. Although this hopefully means an upturn in the beleaguered construction industry, protecting your payment remains of paramount importance in this economy.

Under the ARRA, Ohio will receive \$8.2 Billion in federal stimulus money. Approximately \$1.7 Billion of that will be spent on public construction projects. As well, Kentucky will receive \$3 Billion in federal stimulus money, with approximately \$500 Million to be spent on public construction projects. By design, the stimulus money will fund many much needed public construction projects and help to re-build our deteriorating public infrastructure. As a result, Engineers, Architects, Planners, Construction Management Companies, Contractors, Subcontractors, materials vendors and any other business involved with public projects may have significant opportunities.

But, as with all opportunities, businesses must remember to protect themselves. Thus, knowing and understanding the mechanic's and materialman's lien laws is critical to success in the emerging expansion of public projects. Importantly, in both Ohio and Kentucky, a special set of rules apply when dealing with public projects. The following brief rundown hits the key points for preserving your lien rights in Ohio:

- You cannot "lien" the public property itself, rather, you must lien the public funds for the project;
- Subcontractors must serve notice of furnishing upon the general contractor within 21 days after first providing work or materials;
- Subcontractors must serve an affidavit noticing the unpaid amount upon the public authority and the general contractor within 120 days from the last work or last materials provided;
- To preserve the priority of your lien against others, you must then record the affidavit in the county in which the public project is located;
- Lastly, you can enforce your lien rights against the public authority by filing suit in the court of common pleas.

The rules for preserving lien rights on public projects is similar in Kentucky, but those rules differ primarily in the following ways:

- The lien must initially be filed within 60 days of the end of the month in which the subcontractor last supplied materials or furnished labor;
- That lien statement must be recorded in the appropriate county clerk's office;
- If claiming a lien against funds owed a contractor or subcontractor, then you must also send them notice of the lien and an attested copy of the lien statement;
- Lastly, you must bring an action in circuit court to foreclose and enforce the public lien within 6 months of the original filing, or if a (sub)contractor protests the lien, within 30 days of the protest.

The ARRA heralds the positive news of increased, perhaps substantial, work in the public construction arena. Nonetheless, as before, the construction industry cannot neglect to protect its ability to get paid. The fact that a project may be public does not lessen the need to timely file liens – so make sure to follow the special rules and truly capitalize on these new opportunities.