

HOUSE No. 3044

The Commonwealth of Massachusetts

PRESENTED BY:

Joyce A. Spiliotis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Construction Supervisor Services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Joyce A. Spiliotis	12th Essex
Paul McMurtry	11th Norfolk
Gale D. Candaras	First Hampden and Hampshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CONSTRUCTION SUPERVISOR SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. This Act may be cited as the Construction Supervisor Act

2 Chapter 143 of the General Laws, as appearing in the 2006 Official Edition is hereby amended by
3 inserting after section 94 the following section:-

4 Section 94A. Licensed Construction Supervisors Services

5 Section 2. Definitions

6 For the purposes of this section the following words shall have the following meanings unless the
7 context clearly requires otherwise—:

8 “Contract for construction supervisor services “ .Every agreement to perform contracting services
9 requiring a construction supervisor shall be in writing and include the following documents and
10 information including but not limited to educational materials for distribution to property owners prepared
11 by the Board of Building Regulations and Standards.

12 “Licensed construction supervisor” any individual directly supervising persons engaged in
13 construction, reconstruction, alteration, repair, removal or demolition involving any activity regulated by
14 any provision of Mass Code of Regulations(CMR) such terms shall also apply to persons supervising
15 themselves. A licensed construction supervisor shall be required for the installation of all manufactured
16 one and two family homes. as defined in 780 CMR R.5.

17 “Payment Bond” is a bond, defined by requirements set forth in section 12, chapter 254 of the
18 General Laws.

19 Section 3. The Board of Building Regulations and Standards hereinafter known as the Board shall
20 establish a Licensed Construction Supervisor Advisory Committee, comprised of no less than 5 members
21 as follows: not less than one member of the Board of Building Regulations and Standards (BBRS); not
22 less than one licensed construction supervisor; two representatives, of residential property owner
23 organizations, nominated by residential property owners organization; one representative from sub trade
24 work designated in section 44f of chapter 149 of the General Laws

25 Board shall have the right to reappoint all members each year and each advisory committee member may
26 serve indefinitely.

27 1. Licensed Construction Supervisor Advisory Committee shall have the following powers and
28 duties:

29 a. To act as a liaison to the board on issues regarding licensed construction supervisors, including
30 contractual disputes.

31 b. To report to the board annually on issues relating to licensed construction supervisors and
32 property owners.

33 c. To identify common disputes between licensed construction supervisors and property owners,
34 including contractual disputes and present these common disputes in a committee report to the board.

35 d. To prepare educational materials, using consumer friendly language for distribution to all
36 licensed construction supervisors for distribution to property owners contracting for construction services,
37 including but not limited to: Chapter 254, specifically sections 4 and 12.

38 Defining a mechanic’s lien, and the effects it may have on an owner’s property in the Commonwealth.
39 Defining a payment bond, under chapter 254, section 12. Establishing a “Payment Bond Option Form”
40 providing property owners a means to elect as part of a contract for construction supervisor services, a
41 payment bond, pursuant to chapter 254 section 12,

42 2. The advisory committee shall ensure that the Payment Bond Option Form:

43 Requires the property owner’s signature and date signifying receipt of the educational materials,
44 prior to signing a contract for construction services.

45 Requires the property owner to “elect” or “not elect” to require a payment bond, indicated by the
46 property owner’s signature next to either choice

47 States that the construction supervisor must file this form in the registry of deeds where the
48 property lies

49 States the amount of the proposed contract for construction services

50 Describes the property subject of the proposed contract for construction services

51 Requires the construction supervisor's signature acknowledging that if the property owner
52 requires a bond then the construction supervisor must obtain a bond as described in chapter 254
53 section 12, upon entering into the construction contract.

54 Requires the construction supervisors' signature acknowledging the fact that failure to obtain a
55 payment bond required by the property owner upon entry into the contract will constitute a willful
56 violation of the "Payment Bond Option Requirement," subject to prosecution by the attorney general
57 and punishment of a maximum fine of two thousand dollars or maximum term of imprisonment of
58 one year or both.

59 3. Additional board duties

60 The board shall provide every licensed construction supervisor with:

- 61 a. Educational materials for distribution to property owners.
- 62 b. Payment Bond Option Form for distribution to property owners.
- 63 c. Notice of this amendment to chapter 143.
- 64 d. require construction supervisors to:
 - 65 i. Provide the educational materials described in b(iv)a to any property owner the
66 construction supervisor intends to contract with for construction services.
 - 67 ii. Provide the materials prior to entry into any contract for construction services
68 and obtain the property owner's signature on the bond option form indicating
69 such receipt.
 - 70 iii. File at least one copy of the "Payment Bond Option form" in the registry of
71 deeds for the county or district where such land lies that is the subject of the
72 contract between a property owner and the construction supervisor to receive
73 construction supervisor services.
- 74 e. Provide the following section as penalty for violation of any of the above
75 provisions of the section entitled "Payment Bond Option Requirement"
 - 76 i. The attorney general or the district attorney may prosecute any person who
77 knowingly and willfully violates any of the provisions of this chapter, with a
78 maximum fine of two thousand dollars or maximum term of imprisonment of one
79 year, or both. If a greater penalty is provided by the provisions of this chapter or
80 by any other law, then the greater penalty applies.
 - 81 ii. Such fines and imprisonment shall be in addition to any penalty given by the
82 board.
- 83 f. To hold public advisory committee meetings after 5 p.m. at least once every six months.
- 84 g . To establish and maintain records of actions and procedures in accordance with the public
85 records laws.
- 86 h. To perform such other functions and duties as may be necessary to carry out the provisions of
87 this chapter.
- 88 i. The Board shall promulgate and enforce the provisions of the chapter as amended.

89 Section 4. Chapter 254 of the General Laws, as appearing in the 2006 Official Edition is hereby amended
90 by adding after section 12 the following section:—

91 Section 12A. Payment Bond Option Form Presumption

92 For the purposes of this section the following words shall have the following meanings unless the
93 context clearly requires otherwise—:

94 “Payment Bond” is defined by requirements set forth in section 12, chapter 254 of the Mass
95 General Laws.

- 96 (1) “Payment Bond Option Form” is defined as the form established in section 94A,
97 a. require construction supervisors to
98 i. Provide the educational materials described in section 1d to any property owner
99 the construction supervisor intends to contract with for construction services.
100 ii. Provide the materials prior to entry into any contract for construction services
101 and obtain the property owner’s signature on the bond option form indicating
102 such receipt.
103 iii. File at least one copy of the “Payment Bond Option form” in the registry of
104 deeds for the county or district where such land lies that is the subject of the
105 contract between a property owner and the construction supervisor to receive
106 construction supervisor services.
107 b. Provide the following section as penalty for violation of any of the above provisions of
108 the section entitled “Payment Bond Option Requirement”
109 i. The attorney general or the district attorney may prosecute any person who
110 knowingly and willfully violates any of the provisions of this chapter, with a
111 maximum fine of two thousand dollars or maximum term of imprisonment of one
112 year, or both. If a greater penalty is provided by the provisions of this chapter or
113 by any other law, then the greater penalty applies.
114 ii. Such fines and imprisonment shall be in addition to any penalty given by the
115 board.
116 c. The registry of deeds in the county or district where the land identified in the Payment Bond Option
117 Form lies, shall not allow attachment of any lien under section four of this chapter on the identified land if
118 the property owner contracting for licensed construction supervisor services, as defined in 780 CMR R5,
119 required a bond as described in section 12, chapter 254 by signifying this requirement on the Payment
120 Bond Option Form.
121 d. If a licensed construction supervisor fails to file a Payment Bond Option Form in conjunction with a
122 contract to provide construction services, a presumption arises that the property owner required a bond as
123 described in section twelve, and all such rights as the property owner had under section twelve shall
124 apply.
125 e. If a property owner signifies in a Payment Bond Option Form a requirement of a bond as described in
126 section twelve, but the licensed construction supervisor failed to procure such a bond, the registry of
127 deeds in the county or district where the land identified in the Payment Bond Option Form lies shall not
128 allow attachment of any lien under section four of this chapter on the identified land. The property owner
129 shall receive the benefits of a bond, as described under b.