

# Legislative Analysis



## SPECIAL TOOLS BUILDER'S AND MOLDBUILDER'S LIENS

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**House Bill 4356 as introduced**  
**Sponsor: Rep. John Proos**

**House Bill 4358 w/committee amendment**  
**Sponsor: Rep. Andrew Kandreas**

**House Bill 4357 w/ committee amendment**  
**Sponsor: Rep. Mark Meadows**  
**Committee: Judiciary**  
**Complete to 10-28-10**

**House Bill 4359 as introduced**  
**Sponsor: Rep. Kim Meltzer**

### A SUMMARY OF HOUSE BILLS 4356-4359 AS REPORTED 2-17-10

The bills would make identical amendments to two acts to revise provisions regarding the liens of moldbuilders and special tool builders.

Moldbuilders are the companies that design and make molds that are used by other companies (known as molders) in manufacturing *plastic* parts that are then delivered to the end customer. A special tool builder is a person who designs, develops, manufactures, or assembles special tools for sale that are used in the design, development, manufacture, assembly, or fabrication of *metal* parts or metal products.

Current law delineates the process to be followed by a moldbuilder or a special tool builder to enforce a lien, including requiring written notice to the party owing on the item in question. If the moldbuilder or special tool builder is not paid the amount claimed in the notice within 90 days after receipt of the notice, the moldbuilder or special tool builder has a right to possession of the die, mold, or form (moldbuilder) or special tool (special tool builder) and can enforce the right by judgment, foreclosure, or any available judicial procedure. Possession can also be accomplished without judicial process if it would not cause a breach of the peace. **House Bills 4356 and 4359** would shorten the time frame between the notice and possession from 90 days to 30 days, allow an available judicial procedure to include a motion allowed under the court rules, and specify that the possession would be "immediate."

After taking possession of the die, mold, or form or a special tool, current law allows a moldbuilder or a special tool maker to sell the item at auction. If the proceeds of the sale are greater than the amount of the lien, the proceeds are first paid to the moldbuilder or special tool builder to satisfy the lien and the proceeds in excess of the lien are paid to the customer. **House Bills 4357 and 4358** would revise these provisions to specify that if a moldbuilder or a special tool builder prevailed in an action to enforce a perfected lien, the court would be required to award the moldbuilder or special tool builder interest, reasonable attorney fees, court costs, and expenses related to the enforcement of the lien and sale before paying any proceeds to the customer.

House Bills 4356 and 4357 would amend the Special Tools Lien Act (MCL 570.567 and 570.571, respectively). The bills are tie-barred to each other and to Senate Bill 345. Senate Bill 345 would amend the same act to remove the requirement that special tool builders permanently record certain information on every special tool the builder fabricates, repairs, or modifies; specify a lien attaches when the special tool is delivered to the customer or end user; and specify that certain provisions of a contract would be void and unenforceable.

House Bills 4358 and 4359 would amend Public Act 155 of 1981 (MCL 445.620c and 445.620a, respectively), which deals with the ownership of dies, molds, and forms used in the making of plastics. The bills are tie-barred to each other and to Senate Bill 344. That bill would amend Public Act 155 to make revisions for moldbuilders that are virtually identical to the revisions that Senate Bill 345, described above, would make for special tool builders.

#### **FISCAL IMPACT:**

The bills would have no fiscal impact on the state or local units of government.

#### **BACKGROUND INFORMATION:**

Reportedly, companies that make the molds and tools used by other companies to manufacture parts for their clients (i.e., automotive parts for auto manufacturers) are often not paid for up to two years after delivery of the molds and tools. As a result, many moldbuilders and special tool builders, which often are small, family-owned businesses, have gone into bankruptcy or are struggling to stay afloat in a difficult economy.

Under existing law, moldbuilders and special tool builders can file a lien to obtain payment, or, if still not paid 90 days after notice of the lien, can take possession of the mold/tool, but this process is time-consuming and expensive.

The bill package would provide some relief by shortening the time period for reclaiming the mold or tool from 90 days to 30 days. The bills would also enable a moldbuilder or special tool builder to recoup litigation expenses if it prevailed in a lien action. The provisions contained in the companion Senate bills (SB 344-345), among other things, would further enhance protections by enforcing a lien filed by a Michigan moldbuilder or special tool builder even if the mold/tool had been delivered to a company operating in another state. When taken together, the House and Senate bills would amend Michigan law to mirror what has been in place in Ohio, which has a similar manufacturing base, for several years.

However, the bill package does not address the plight of the OEM (original equipment manufacturer, such as an automaker) who may end up paying twice for the mold or special tool. This happens when an OEM pays its supplier, but the supplier does not pay the moldbuilder or special tool builder. Paying twice on the part of an OEM could result in increased manufacturing costs that would be passed on to consumers in the form of

higher retail costs for the end product. In addition, since interests in the mold/tool could be held by more than one company, it is not clear if, or what types of, notice would be provided to OEMs when a lien is filed by a moldbuilder or special tool builder. This is important in light of the provisions allowing moldbuilders and special tool builders to take immediate possession of the mold/tool if payment had not been made within 30 days after the notice of the lien.

**POSITIONS:**

A representative of Commercial Tool & Die, Inc. testified in support of the bills. (2-17-10)

Ford Motor Company indicated opposition to the bills. (2-17-10)

General Motors indicated opposition to the bills. (2-17-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.