



**GEORGIA AIRCRAFT LIEN  
STATUTE PRESENTS NEW  
CHALLENGES AND OPPORTU-  
NITIES FOR LENDERS AND THE  
AIRCRAFT SERVICE INDUSTRY**

**I.**

**Introduction and Summary**

A bill about to be signed into law by Georgia Governor Sonny Purdue will impact aircraft lenders and lessors to the extent aircraft they hold interests in are serviced in Georgia without payment being made for the service. This legislative initiative known as Senate Substitute to H.B. 1147 will bring to light three significant issues:

- (1) While, in Georgia, there has been some debate about the priority between a mechanic’s lien and the lien of a secured party holding a security interest in an aircraft, the new statute will ensure that the mechanic’s lien takes priority over the party claiming a security interest in the aircraft. Moreover, if the mechanic’s lien is foreclosed on in court proceedings, the mechanic can sell the aircraft to satisfy the lien.
- (2) While historically Georgia has recognized a lien for unpaid fuel invoices, the new statute does not list the word “fuel” as an item cov-

ered by a mechanic’s or material-man’s lien.

- (3) The new Georgia statute will allow mechanic’s performing services on engines to record their interests with the Georgia Superior Court Clerk’s Cooperative Authority.

In this article, we will examine Georgia’s new mechanic’s lien statute and consider its impact on aircraft servicing facilities, engine repair facilities, and commercial institutions and lessors claiming security interests in aircraft.

**II.**

**A Major Alteration  
in the Landscape**

Historically, persons or institutions claiming liens by virtue of providing services to aircraft could avail themselves of O.C.G.A. §§44-14-363 and 44-14-518. The former statute relates generally to security interest in personal property. The latter statute relates to security interest in aircraft. For many years, there has been no coordination between state lien statutes in Georgia and liens authorized by federal law such as recordation permitted by 49 U.S.C. §44107. The consequence has been that seasoned aviation practitioners filed liens both with the Georgia Superior Courts and also with the Federal Aviation Administration. Now, with the advent of Senate Substitute to H.B.

1147, references to aircraft have been deleted from O.C.G.A. §44-14-363. More importantly, O.C.G.A. §44-14-518 has been substantially amended to clarify that liens on a United States registered aircraft are to be filed with the Federal Aviation Administration.<sup>1</sup>

The Bill declares that “[a]ny person engaged in repair, storage, servicing, or furnishing supplies or accessories for aircraft or aircraft engines or providing contracts of indemnity for aircraft shall have a lien on such aircraft or aircraft engines for any reasonable charges therefore including charges for labor, for the use of tools, machinery and equipment, and for all parts, accessories, materials, oils, lubricants, storage fees, earned premiums, and other supplies furnished in connection therewith.”<sup>2</sup>

It is to be noted that the list of items providing for the ability to assert a lien for unpaid items has had deleted from that list the word “fuel.”<sup>3</sup> The House version of the Bill included “fuel” as an item that would permit an aircraft facility to file a lien against an aircraft. The Senate version did not. That being said, this Bill which is to be signed into law and which is anticipated to take effect on July 1, 2010, will raise a question about whether or not a fixed based operator in Georgia will have a lien for unpaid fuel it places in an aircraft. The amendment to O.C.G.A. §44-14-518, while affording liens for, *inter alia*, “labor,..., equipment, ...parts, accessories, materials, oils, lubricants [and] storage fees,”<sup>4</sup> fails to recite that a Georgia fixed base operator enjoys a lien for providing “fuel” to the aircraft.

Will counsel for a fixed base operator be successful in arguing that the terms “materials, oil, and lubricants” provide a mechanic’s lien for unpaid fuel provided to an aircraft owner or operator? The decision of the Georgia Senate to delete “fuel” from its amendment to O.C.G.A. §44-14-518 will result in lenders challenging mechanic’s liens based only on unpaid fuel invoices.

A second and significant aspect of the landscape is the following language that appears in the Senate Substitute to H.B. 1147: “Such lien shall be superior to all liens except liens for taxes, subject to compliance with subsection (b) of this code section..”<sup>5</sup> So that there is no question, this language in the Bill clearly indicates that **a mechanic’s lien will have priority over a prior perfected security interest in the aircraft.** Respectfully, the language in this Bill is not ambiguous. This does not appear open to further debate. Apparently, this bill slipped by lobbyists for the banking industry.

A fixed base operator or the provider of services may assert the lien by retaining possession of the aircraft or aircraft engines.<sup>6</sup> Not only may the lien be asserted by physical retention of the aircraft or aircraft engine, but if the lien is asserted by retention of the aircraft or aircraft engines, “the lienor shall not be required to surrender the aircraft or the aircraft engine to the holder of a subordinate security interest or lien.”<sup>7</sup> Once again, this language is not ambigu-

ous. If the aircraft mechanic or maintenance facility retains physical possession of the aircraft or engine, any bank or lender with a security interest in the aircraft cannot require the FBO or maintenance facility to release the aircraft engine or lien to it.

With regard to timing, any person or entity claiming a lien against an aircraft or engine must, within ninety (90) days after “such repair, storage, service, supplies, or contracts of indemnity are furnished (1) provide written notice, subscribed and sworn to by such person or by some person in his or her behalf, giving a just and true account of the demands claimed to be due within all just credits and the name of the person to whom the repair, storage, service, supplies, accessories or contracts of indemnity were furnished, the name of the owner of the aircraft or aircraft engines, if known, and a description of the aircraft sufficient for identification by personal delivery, certified mail or statutory overnight delivery, return receipt requested to the following: (A) the registered owner and others holding recorded interests in the aircraft or the aircraft engines at the addresses listed in the Federal Aviation Administration’s Aircraft Registry; or (B) if not a United States registered aircraft or if the aircraft engine is not subject to recordation by the Federal Aviation Administration, to the owner, if known, at his or her last known address, or, if not known, to the person to whom the repair, storage, service, supplies, accessories or contracts of indemnity were furnished; and (2) file such written notice

for recording in the Federal Aviation Administration’s Aircraft Registry in the manner prescribed by federal law under 49 U.S.C. Section 44107 for the filing of such liens for recordation, or, if not a United States registered aircraft or if the aircraft engine is not subject to recordation by the Federal Aviation Administration, with the Georgia Superior Court Clerks’ Cooperative Authority or the appropriate recording authority, established by applicable law, international treaty, or foreign law, in the manner prescribed for the filing of such liens for recordation.”<sup>8</sup>

### III.

#### **How Does One Foreclose on an Aircraft or Engine Lien in Georgia?**

We know from reading the Senate Substitute to H.B. 1147 that notice must be given within ninety (90) days of completing the work on the airplane or engine to the person to whom the repairs, services, storage or supplies were provided and to the owner of the aircraft.<sup>9</sup> We now shift our focus from the Senate Substitute to H.B. 1147 to O.C.G.A. §1147 to O.C.G.A. §44-14-550 dealing with foreclosing liens on personal property (including aircraft) in Georgia. That statute requires that the mechanic or provider of the services make a demand on the owner, and the demand and the refusal of the owner to pay must be averred in a pleading filed with the court to foreclose on the lien.<sup>10</sup> If a demand cannot be made “on account of the absence from the

county of his residence of the party creating the lien on personal property, by reason of his moving or absconding from the county of his residence, or other acts which show an intention to be absent from the county so as to defeat the demand, the party holding the lien shall not be obliged to make a demand but may foreclose without such demand.”<sup>11</sup> However, the owner or debtor who receives demand for payment from the lienholder “may contest the validity of the amount claimed to be due by making a written demand upon the lienholder.”<sup>12</sup>

If the owner or debtor of the aircraft has made written demand on the lienholder, and the lienholder has physical possession of the aircraft or engine, then the lienholder must institute foreclosure proceedings within ten (10) days.<sup>13</sup> If the lienholder does not retain physical possession of the aircraft or engines but the owner/debtor has contested the validity of the amount to be due by making written demand, then the lienholder must institute foreclosure proceedings within thirty (30) days.<sup>14</sup> If the lienholder fails to institute foreclosure proceedings within the applicable time provided by law, then the lien is forfeited.<sup>15</sup>

If is important to note that a lienholder must bring an action to foreclose on the lien within one (1) year from the time the lien is recorded or asserted by retention.<sup>16</sup>

If the lienholder brings an action to foreclose the lien, he must do so by affidavit to a court of competent jurisdiction showing all the facts necessary

to constitute a lien in the amount claimed to be due.<sup>17</sup> To be clear, the lienholder who brings an action to foreclose the lien must verify his statement by oath or affirmation and affix his signature to the document.<sup>18</sup>

After the party who claims a lien against the aircraft or engine has moved to foreclose the lien, then the clerk of court or judge shall serve a notice upon the owner, recorded lienholders, and the lessee or property of a right to a hearing to determine if reasonable cause exists to believe that a valid debt exists.<sup>19</sup> Within five (5) days of the owner, recorded lienholders or lessee of the property receiving notice from the court, one or more of them must petition the court for a hearing.<sup>20</sup> If no petition for the hearing is filed within the time allowed by law, then the lien will be conclusively deemed valid and the foreclosure shall be allowed.<sup>21</sup>

If a petition for hearing has been filed within five (5) days of service of the notice, the court shall set the hearing within ten (10) days of the filing of the petition.<sup>22</sup> If the court makes a determination at the probable cause hearing that a reasonable cause exists to believe a valid debt exists, the person asserting the lien shall be given possession of the property or the court shall obtain possession of the property.<sup>23</sup> The defendant (owner of the property, lessee of the property or the party claiming a security interest) may only retain possession of the property by giving bond and security for the amount due and costs for the action.<sup>24</sup>

Within five (5) days of the court conducting the probable cause hearing, the defendant in the case (the aircraft owner, lessee or secured party) must petition the court for a full hearing on the validity of the debt.<sup>25</sup> If no petition for a full hearing is filed, then the lien on the amount shall be conclusively deemed to be valid and the foreclosure shall be allowed.<sup>26</sup> On the other hand, if a full hearing on the validity of the debt is requested by the Defendant, the court shall conduct a full hearing within thirty (30) days of the filing of the petition.<sup>27</sup>

If after a hearing on the validity of the debt the court concludes that a valid debt exists, then the court shall authorize the **foreclosure upon and sale** of the property subject to the lien to satisfy the debt unless the debt is immediately paid.<sup>28</sup> On the other hand, if the court were to find that the actions taken by the party claiming a lien were not in good faith, the court could award, in its discretion, damages to the owner, agent or lessee due to deprivation of the use of their property.

#### IV.

#### Conclusion

The new Georgia statute scheduled to take effect on July 1, 2010, dealing with aircraft and engine liens is going to place financial institutions and lessors at risk to the extent borrowers and lessees incur and fail to pay for maintenance and servicing expenses on aircraft in Georgia. It will place

secured creditors at risk because the new Georgia law **gives mechanics' liens priority over those of secured creditors and allow the mechanic to sell the aircraft to satisfy the unpaid lien.** This appears to be a departure from the law which has previously recognized that secured creditors had priority over aircraft mechanics and materialmen. Simply stated, this is good news for aircraft repair facilities and maintenance facilities, and it is bad news for banks and aircraft lessors.

As noted previously in this article, since the Georgia Senate deleted the word "fuel" from the version of the bill approved by the Georgia House of Representatives, secured creditors and lessors will have an argument to attack liens on aircraft for unpaid fuel invoices. A trial court confronted with this question will have to balance the legislative history on this statute in relation to the language that remains in the statute and arrive at the appropriate conclusion about whether there is or is not a lien arising out of an unpaid fuel bill.

With regard to aircraft engines, historically the FAA has refused to file applications for liens on aircraft engines in the FAA Aircraft Registry. Now, Georgia has declared that aircraft engine liens can be filed with the Georgia Superior Court Clerk's Cooperative Authority or other appropriate entities as provided by law.

Actions taken by the Georgia Legislature and the Governor of Georgia in promulgating this amendment to Georgia law dealing with aircraft liens is likely to create more work for lawyers in Georgia and elsewhere. Moreover, lenders and lessors with interests in aircraft undergoing service or repairs in Georgia are put at risk by this new amendment to Georgia law on mechanic's liens. If an aircraft owner whose aircraft is subject to a lender's security interest or lessee of an aircraft fails to pay for services or repairs to the aircraft rendered in Georgia, the lender and/or lessor risks being required to pay the unpaid invoices or have a court sanction the sale of the aircraft to satisfy the mechanic's lien.

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<sup>1</sup> See the revisions to O.C.G.A. §44-14-518(b) as contained in the Senate Substitute to H.B. 1147.

<sup>2</sup> See Senate Substitute to H.B. 1147 to be codified as O.C.G.A. §44-14-518(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Senate Substitute to H.B. 1147 to be codified as O.C.G.A. §44-14-518(b).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> O.C.G.A. §44-14-550(1).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> O.C.G.A. §44-14-550(1)



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