

SENATE BILL 271

Introduced by Jergeson, et al.

2/04	Introduced
2/05	Referred to Judiciary
2/05	First Reading
2/14	Hearing
2/16	Tabled in Committee

1 *Senate* BILL NO. *271*
2 INTRODUCED BY *Jerguson*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A LIEN RIGHT
5 ON REAL PROPERTY RECEIVING SERVICES FROM A WATER OR SEWER
6 SERVICE COMPANY."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Definition. As used in
10 [sections 1 through 13], the term "improvements" includes
11 all buildings, structures, and improvements situated upon
12 land.

13 NEW SECTION. Section 2. Who may claim a water or sewer
14 service lien. A municipality, county, unincorporated
15 association, nonprofit corporation, special improvement
16 district, or rural improvement district that furnishes water
17 or sewer services to a consumer may claim a lien upon real
18 property to secure payment for the service.

19 NEW SECTION. Section 3. Attachment. A lien attaches to
20 the land or the improvements for which it was furnished. A
21 person enforcing a lien may sell the property under
22 execution, and the purchaser may remove the property sold
23 within a reasonable time after the sale.

24 NEW SECTION. Section 4. Parties. A person interested
25 in the matter in controversy; or in property charged with the

1 lien or having liens on it may be made a party to a
2 proceeding under [sections 1 through 13].

3 NEW SECTION. Section 5. Limitation on actions. An
4 action under [sections 1 through 13] must be commenced
5 within 2 years from the date of the filing of the lien.

6 NEW SECTION. Section 6. How lien obtained. (1) A
7 person who intends to use the benefits of [sections 1
8 through 13] shall file with the county clerk of the county
9 in which the property mentioned in [section 1] is situated,
10 within 90 days after the water or sewer service has been
11 furnished, an account of the amount due him, after allowing
12 all credits, containing a description of the property to be
13 charged with the lien, verified by affidavit. An error or
14 mistake in the account or description does not affect the
15 validity of the lien if the property can be identified by
16 the description. The document containing the account,
17 description, and affidavit is considered the lien.

18 (2) When there is an open account between the parties,
19 the lien may be filed within 90 days after the date of the
20 last item in the account and may include all items and
21 charges contained in the account for the property on which
22 the lien is claimed.

23 NEW SECTION. Section 7. Filing with county clerk --
24 notification of owner. (1) The county clerk shall endorse
25 upon a lien the day of its filing and shall make an abstract

1 of it in a book to be kept for that purpose, which must be
 2 properly indexed and must contain the date of the filing,
 3 the name of the person holding the lien, the amount of the
 4 lien, the name of the person against whose property the lien
 5 is filed, and the description of the property to be charged
 6 with the lien.

7 (2) The clerk may not file the lien unless there is
 8 attached to it a certification by the lien claimant or his
 9 agent that a copy of the lien has been served upon each
 10 owner of record of the property named in the lien. Service
 11 must be made by personal service on each owner or by mailing
 12 a copy of the lien by certified mail with return receipt
 13 requested to each owner's last-known address. The
 14 certification must state the method of service.

15 NEW SECTION. Section 8. What property affected. (1)
 16 The lien given extends to the lot or land upon which an
 17 improvement is situated, to the extent of 1 acre if outside
 18 of a town or city or, if within a town or city, then to the
 19 extent of the whole lot or lots upon which the improvement
 20 is situated if the land belonged to the person who received
 21 the water or sewer services. If the person owned less than a
 22 fee-simple estate in the land, then only his interest in the
 23 property is subject to the lien.

24 (2) When the interest in the land or improvements is a
 25 leasehold interest, the forfeiture of the lease does not

1 forfeit or impair the lien on the improvements. The
 2 improvements may be sold to satisfy the lien and may be
 3 removed by the purchaser within 20 days after the sale.

4 NEW SECTION. Section 9. Acknowledgement of
 5 satisfaction of lien -- penalty. Whenever any indebtedness
 6 that is a lien upon any real estate or other improvement is
 7 paid and satisfied, it is the duty of the creditors to
 8 acknowledge satisfaction of the lien as in the case of a
 9 mortgage. If any creditor fails to acknowledge satisfaction,
 10 he is liable to any person injured by the failure to the
 11 amount of the injury and the costs of action.

12 NEW SECTION. Section 10. Substitution of bond allowed
 13 -- filing -- amount -- condition. (1) Whenever a water or
 14 sewer service lien has been filed upon real property or any
 15 improvements on the property, the owner of an interest in
 16 the property, whether legal or beneficial, may, at any time
 17 before the lien claimant has commenced an action to
 18 foreclose the lien, file a bond with the clerk of the
 19 district court in the county in which the property is
 20 situated or, if the property is situated in more than one
 21 county, with the clerk of the district court of any county
 22 in which a part of the property is situated.

23 (2) The bond must be in an amount equal to one and
 24 one-half times the amount of the lien and must be either in
 25 cash or written by a corporate surety company. If written by

1 a corporate surety company, the bond must be approved by a
2 judge of the district court in which the bond is filed.

3 (3) The bond must be conditioned that if the lien
4 claimant is finally adjudged to be entitled to recover upon
5 the claim on which the lien is based, the principal or the
6 sureties shall pay to the claimant the amount of the
7 judgment, together with any interest, costs, attorney fees,
8 and other sums that the claimant would be entitled to
9 recover upon the foreclosure of a lien against the
10 principal.

11 NEW SECTION. Section 11. Lien discharged upon filing
12 of bond. Upon the filing of a bond as provided in [section
13 10], the lien against the real property must immediately be
14 discharged and released in full and the bond must be
15 substituted for the lien.

16 NEW SECTION. Section 12. Action upon bond -- period of
17 limitation. (1) When a bond is filed as provided in [section
18 10], the person filing the lien may bring an action upon the
19 bond.

20 (2) The action must be commenced within the time
21 allowed for the commencement of an action upon foreclosure
22 of a lien. The statute of limitations applicable to a lien
23 foreclosure applies to an action upon the bond.

24 NEW SECTION. Section 13. Rules of practice. (1) Except
25 as otherwise provided in [sections 1 through 13], the

1 provisions of Title 25 are applicable to and constitute the
2 rules of practice in the proceedings mentioned in [sections
3 1 through 13].

4 (2) The provisions of Title 25 relative to new trials
5 and appeals, except to the extent they are inconsistent with
6 the provisions of [sections 1 through 13], apply to the
7 proceedings mentioned in [sections 1 through 13].

8 NEW SECTION. Section 14. Codification instruction.
9 [Sections 1 through 13] are intended to be codified as an
10 integral part of Title 71, chapter 3, and the provisions of
11 Title 71, chapter 3, apply to [sections 1 through 13].

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