

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 8, 1985

The twenty-fourth meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on February 8, 1985, by Chairman Joe Mazurek in Rooms 413-415 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Crippen who was excused.

CONSIDERATION OF SB 128: Senator Matt Himsl, sponsor of SB 128, presented written testimony in support of the bill (Exhibit 1).

PROPOSERS: John Gordon, an attorney from Kalispell, testified in support of the bill (see witness sheet attached as Exhibit 2). Mr. Gordon stated he has represented people on all sides of the mechanics' lien problem in Montana. This bill tries to modify our existing situation. Mr. Gordon pointed out several things that were wrong with our existing statutes. The courts have interpreted our existing statutes very strictly, and they have become very technical. Very rarely if at all do the merits of a construction lien problem get dealt with. All they deal with are the technicalities. One of the highest incidences of malpractice claims in this state is because mechanics' liens filed do not hold up. Our statute allows a secret lien. There is no certain way you can determine who has a lien right as a result of a construction job until 90 days after the last work has been done on that property. What this statute attacks are those two problems. It makes it simple to file a lien claim. It doesn't have to be technically interpreted. It provides a mechanism so the property owner and his bank could, must, or can claim a lien against that project. It provides adequate protection for everyone involved. The underlying practice we use in this state is not going to be altered substantially. There will be 90 days to file a lien. The current statute's priority between lien claimants is based on no reason. The first class of lien claimants that gets paid are those that file a lien within 30 days after the first lien is filed. Under this act, everyone who is a lien claimant will be of the same priority. Everyone who files while the notice of commencement is in effect is of the same class. There are two areas in which there are substantial changes: First, under our current statute, a mechanic's lien has absolute priority over any other mortgage. Under this statute, the mortgage which is used to finance construction can, if filed before the notice of commencement is filed, have priority. Under this statute, it

can be made second because if the bank files at 10:00 on Monday and the notice of commencement is filed at 10:05, the bank has a prior interest. Everybody has the same priority date, but the bank can only maintain that priority over that mechanic's lien if it makes sure the money paid under the mechanic's lien is for claims. The reason they have done that is a matter of commercial practicality. Second, they have created what is called a protected party--someone who buys a piece of property he is going to live on. When it is a protected person, even if a notice of commencement has been filed, when the deed is given to him, he will take the property free and clear of the liens. The lien claimant will have to look to the people he dealt with. This consumer relies on what is found on the record at the time he buys it. Another change in this statute is our current statute never thought about time-share condominium subdivisions. This statute will allow you to make a lien against property benefited for an improvement. The lien claimant can apportion his bill. The enforcement procedure far surpasses what we have now. If you want to get it off now, there are only two ways to do it: pay it or start a quiet title action. Agnes Hoffman, representing the Montana Bankers Association, testified in support of the bill (see witness sheet attached as Exhibit 3). She explained that once your home loan is closed, they are still at risk for mechanics' liens for the home you have purchased. The use of the lien law as an attempt to collect earnest money is abused also. Ms. Hoffman spoke from the homeowners' point of view as a lender. Don Anderson, of Anderson Masonry and Supply in Kalispell, testified he sat on the committee that came up with the information before the committee (see witness sheet attached as Exhibit 4). As a supplier and subcontractor, he would implement this bill if it were passed. The supplier should send a notice of lien liability to the owner. The contractor should send a notice of commencement. In Nebraska, when they put a protected party, they added a post-contracting owner. He would fight vehemently against that. Brad Walterskirchen, of Valley Bank of Kalispell, testified in support of the bill (see witness sheet attached as Exhibit 5). He believes the biggest problem he sees as a lender with regard to the existing statutes are no one knows what the potential is for the lien liability. As a lender, mechanics' liens scare him. The proposed bill would let him know of all potential lien claimants via the notice of lien liability form. Norm Simpson, of First Interstate Bank in Kalispell and a member of the Real Estate Committee of the Montana Bankers' Association, testified in support of the bill. He stated presently the majority of the burden of responsibility for payment is left with the lending institution. This makes the others carry some of that responsibility. This bill would force the suppliers to check the credit worthiness of their responsible parties. He thinks the people working with a home buyer have the responsibility of letting the buyer know who is out there. What he is recommending is the burden of proof is shared by all parties by passing this law. Doug Beaudoin,

representing Bankshares Montana Company of Billings, testified most of their loans are sold out of state. Part of their agreement with other investors is they provide them with a clear title policy within 30 days. They can do that and then have a lien come up. They would like to have knowledge of those potential liens. Julie Begler, Real Estate Loan Officer with Norwest Bank and a member of the Real Estate Finance Committee of the Montana Bankers Association, testified in support of the bill (see witness sheet attached as Exhibit 6). She stated there is no way to identify everyone involved in our current process. It is their responsibility as a lender to see that these people are paid. With the notice of lien liability, it would give them this opportunity. It is the consumer that ultimately suffers. Greg Bane, building contractor in Kalispell, testified in support of the bill (see witness sheet attached as Exhibit 7). He stated he also represented one of the members of the committee that first set this bill in progress. He feels this bill handles the situation much more completely and diligently. He feels this addresses many issues from start to end. Chairman Mazurek presented a phone message from Pat Hooks of Townsend, representing Savings and Loan League, in support the bill (see phone message slip attached as Exhibit 8).

OPPONENTS: Riley Johnson, representing the Montana Homebuilders Association, testified in opposition to SB 128. He believes this bill is flip-flopping the priority of our lien laws. We are putting the banks before the mechanics. We have heard the need to protect the homeowner. Under the new law, a homeowner can still be put in the position of paying twice. We are creating paperwork and legal fees. Every project will have to have lien liability forms. The mechanics are too busy to follow up on such details. Their choice is to hire an attorney. The lien laws do have problems. He questioned whether we were solving one problem for the attorneys and banks and creating another for the mechanics. We will see a tightening of money. They, as homebuilders, are not all negative about this proposed legislation. The avenue of using uniform codes in Montana is not new. The idea of uniform codes has worked. In all cases where we have used uniform codes, they have always had a track record in other states, but no state has adopted this law as it is presented. They don't understand it. Until they understand it, they don't want to junk what is working right now. They are going to have the businessmen suffering while the courts and attorneys will try to decide what we have with this law. This bill has some very good parts. They feel the lien laws in the state of Montana should be rewritten. They feel this bill is premature. James Lechner, individually and as Executive Director of Montana Homebuilders Association, testified in opposition to the bill (see witness sheet attached as Exhibit 9). He believes this bill is a change in the mode of construction. In building a house, there are many subcontractors

with many diverse suppliers of materials. They basically feel it is a reversal of the priority of liens. This law is so complex and so involved, he doubts if very many of the subcontractors are going to follow it to assure they have a right later on to put in a lien if that is necessary. He is not adverse to working further to correct some of the problems in our lien laws. Bill Olson, Executive Secretary, Montana Ready Mix Association, echoed the remarks of Mr. Johnson (see witness sheet attached as Exhibit 10). He does not feel the state of Montana is ready for this bill at this time. Irv Dellinger, Montana Building Material Dealers Association, presented written testimony in opposition to SB 128 (Exhibit 11). Blake Wordal, representing the Montana Hardware and Implement Association, asked the committee to look very carefully at the question of why a secured party, the lending institution, should take priority in lien rights. They also object to the protected party position because they don't think it will work. They have respect for uniform laws, but they think this bill is not understandable. They want an opportunity to get together and come back in two years with clear, logical legislation that will solve the problems. William McCauley, representing Cut Bank Building Service, testified in opposition to the bill (see witness sheet attached as Exhibit 12). He stated that somewhere they are going to have to do a great deal more paperwork to take care of the items this bill proposes. They are worried about the homeowner, but he is the one that will have to pay it in the end. This added liability can only be passed on to one person. Most of the liens that come about come about for one particular purpose, and that is because someone made a mistake. Owen Robinson, General Manager, Grogan-Robinson Lumber Company, testified something that was overlooked is everyone seems to think building material dealers think it is nice if someone has to pay twice. They go out of their way to avoid this (see pamphlet attached as Exhibit 13). This pamphlet explains the lien laws. In addition, they advertise the same concept (Exhibit 14). Foreclosures are not common. There are a lot of instances where we don't get our money once. Under the current law, some of these horror stories don't happen. He does not think the problems with the lien laws are the ones addressed by the bill. Under the current law, lien waivers can be used by the banks for their own protection. They are willing to sit down and work with it. They suggest the committee table it for two years and let them resolve their differences. John Grant, an attorney in Helena, testified he represents lumber dealers and small contractors. He has reviewed the law and finds it administratively unworkable. Everyone knows what to expect under our current law. He would like to correct something the committee has been led to believe. On Board of Housing cases, there is extended coverage available from title companies. Maxon Davis, lawyer from Great Falls representing Poulsen's Inc., a supplier in Great Falls, and other small contractors and working men, testified in opposition to the bill. He stated this is a bad bill, and it will

make a bad law. What you are doing is getting rid of liens. This bill pretty much does away with it. He believes this is a bankers' relief act. It quite clearly reverses the priority. Our law is written to protect the working men and suppliers and see they get paid. The court had in mind who is in the best position to protect himself--the banker. The law has been on the books for 114 years. If it were so bad, the hearing would be filled with people saying that. The paperwork which will be required will greatly complicate the process. A 52-page bill cannot be a simplification of the current 4-page statute. Liens are not secret--they are a matter of public record. He questioned whether we should let the working man go unpaid. He recommended the committee kill this bill and keep the protection for the working men. John Hollow, representing the Montana Building Material Dealers, testified in opposition to the bill (see written testimony attached as Exhibit 16) and submitted a copy of the Uniform Simplification of Land Transfers Act to the committee (Exhibit 17). He believes we are headed toward having no mechanic's lien with this legislation. He stated if the committee felt there were a problem, it should create a committee or ask them to agree to create a committee of private citizens to address the issue. The following testimony was submitted in opposition to the bill although not presented orally: Russell G. Eklund, representing Eklund Enterprises (Exhibit 18); and J. David Chapman, of Chapman Sheet Metal and Roofing, Cut Bank (Exhibit 19).

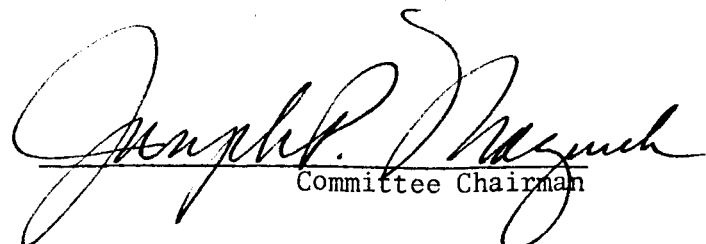
QUESTIONS FROM THE COMMITTEE: Senator Towe asked Mr. Gordon to explain section 9, subsections (2) and (4). Mr. Gordon responded the statute is designed with the assumption a notice of commencement is filed. He then submitted to the committee sample forms contemplated under the bill (Exhibit 20). Senator Towe asked that he explain subsection (4) on page 11. Mr. Gordon responded those are improvements which benefit the lots. Senator Mazurek questioned why there was a change in priorities. Mr. Gordon replied he researched the western states and found Montana is the only state where a mechanic's lien gains priority over a mortgage. The mortgage will become prior only so long as the money is being applied to the construction project. If it is diverted, it loses that priority. Senator Towe asked if subparagraph (3) on page 13 was done in the past. Mr. Gordon responded yes; you can get the use value of the machinery applied to the project. Senator Towe asked that he respond to Mr. Hollow's point regarding section 12. The mechanic is civilly limited to what he is entitled to under existing law because it all applies to the prime contractor. There is a substantial limiting of liens, not only on priority but in this instance, too. Mr. Gordon replied the relationship is between the supplier and the prime contractor, not between the supplier and the homeowner. He depends on the contractor to tell him who his suppliers are. It is not a bankers' bill because it is the homeowner who pays. Senator Towe asked Mr. Johnson to respond to the

statement made that the homeowner shouldn't have to look out for lien waivers and take a risk he didn't get them all. He questioned why it isn't better that the supplier take his own risk with the contractor and not the homeowner. Mr. Grant replied the contractor is the agent for the homeowner. Senator Towe asked about the point on priorities. Montana is unique in allowing the materialmen to come ahead even of a pre-existing mortgage. Just because everyone else does it differently doesn't mean we are wrong. Mr. Grant replied the bank has the money and can go in the red for a year. A materialman doesn't have that kind of money. The bank is in a better position to take care of itself than the working man. Senator Towe asked if they acknowledge there are some benefits with the bill. Mr. Johnson responded yes. Senator Mazurek asked if they felt the additional filing requirements were perceived as a problem. Mr. Gordon replied he understands it better than the others do. There is no flurry of paper. There is one optional form: the notice of lien liability. Otherwise, a lien claimant files a notice of lien. From the lien claimant's point of view, he doesn't see anything. From the homeowners' or lenders' point of view, the only one that needs to be filed is the notice of commencement. Then when the project is done, there is the notice of termination. It will require materialmen and contractors to make sure their accounts are running down the road, and they will have to attend to business. Senator Blaylock addressed Mr. Gordon and stated the opponents have said repeatedly there are a lot of things they like. The biggest stumbling block seems to be the reversal of priorities. He asked if they could get together and compromise to come out with something workable. Mr. Gordon stated the fear he has is you might end up with something worse than what you've got. His feeling is their objection to this bill arises more out of ignorance than anything else.

CLOSING STATEMENT: Senator Hims1 stated this is a complex, comprehensive, and confusing pience of legislation, There is a lot in this bill that deserves serious consideration. He believes something should be done to correct this situation and maybe this is a vehicle to do it. He stated there is a lot of legal talent in this committee. He believes the committee should appoint a subcommittee and have it consider the bill and decide if it is meritorious.

Hearing on SB 128 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:00 p.m.


Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 020884

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen			X
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE February 8, 1985

COMMITTEE ON

Judiciary

VISITORS' REGISTER

SB 128

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
David Boalson	Boalson Inc.	128		✓
Jack Truck	Paulsen's Inc.	128		✓
Sam F. Lund	United Bldg. Ctrs	128		✓
Max R. Davis	Faulsen's Inc.	128		✓
Mike Satcha	United Building Centers	128		✓
Rep Lynett	INTERMOUNTAIN LBR	128		✓
Tom Sinkins	Sinkins Hall's Lumber	128		✓
Mike Wall	Inner Townsend Co. Mont. Hardw.	128		✓
Rep Robinson	Peterson Hb. Co. Helena Mont.	128		✓
Robert J. Jensen	Blacks & Jensen	128		✓
FRANK Murphy	HHH LUMBER	128		✓
WILLIAM L. McCauley	CUT BANK BUILDING SERVICE	128		✓
Annette Mason	Kenneth A. Krause Inc.	128		✓
Owen Robinson	Grogan Robinson Lumber	128		✓
Don TARTLETON	GROGAN ROBINSON LBR.	128		✓
Ed Hawley	Grogan Robinson Lumber	128		✓
Doug BEAUDOIN	BANESBROS. Mfg Co.	128	✓	
Norm Simpson	1st Interstate Bank	128	✓	
Julie R. Jordan	Myself	128	✓	
BRAD WALTERSKIRCHER	Valley Bank of Kalispell	128	✓	
Don Anderson	Anderson Masonry & Supply	128	✓	
Don	Sage	128	✓	
Bill	MBM D7	128		✓
Bill Olson	Mt. Ready Mix Assoc.	128		✓
John Grant	Jackson Muds & Gravel	128		✓
Mike Blanton	Valley Bank	128	✓	

(Please leave prepared statement with Secretary)

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

This bill is an adaptation of a Uniform State Law proposed by the National Conference of Commissioners, a body composed of 300 practicing lawyers, judges, law professors and government officials. This is a proposed model law. It has been modified in application in Florida, Nebraska, and North Dakota.

This is a comprehensive and quite complex law addressing a real problem ~~area~~ in ~~rapidly~~ rapidly developing areas of our state. It took some time to get the Uniform Commercial code accepted and it may take some digesting to find that this proposal serves everyone's best interest.

Why change our mechanic's lien law? Our law has its basis in law nearly 100 years old and the complexities and practices of this time require changes to protect and serve the best interests of all the parties involved. I have no pride of paternalism in this bill but have a special concern for the consumer, the home owner who finds himself a victim of sharp practices and has to pay twice for goods and services.

This bill would simplify the filing process, 2) is clear as to who has filing rights, 3) allows for modern property descriptions, 4) priority time of liens is equal, 5) provides protection for all suppliers who fulfil the requirements, and 6) provides for bonds and signed waivers.

Frankly, this is not my area of special knowledge, so in the interest of time and for clarity I'd like to present attorney John Gordon who is most knowledgeable in this lien law to explain the bill.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1DATE 020885BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: JOHN GORDON DATE: 2-8-85

ADDRESS: Box 728 Kalspell, MT

PHONE: 255-5700

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO 2
DATE 020885
BILL NO SB 128

NAME Agnes Hoffman BILL NO. 128

ADDRESS Brungs DATE 3/8/85

WHOM DO YOU REPRESENT MBA

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 020885

BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: Don Anderson DATE: 2/8/85

ADDRESS: 16 Woodland Park Dr. Kalispell

PHONE: 755-2497

REPRESENTING WHOM? Anderson Masonry + Supply

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: Relieve it adds more tools for

our company to track the money ~~it~~ on a
project without resorting to a lien. We also
can use a lien as the present law as that
final resort

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 020885

BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: BRAD WATERSKIRCHEN DATE: FEB 8, 1985

ADDRESS: Box 48

PHONE: 752-4589

REPRESENTING WHOM? Valley Bank of Kalispell

APPEARING ON WHICH PROPOSAL: Senate Bill 128

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: FOR BILL - SO THAT ALL PARTIES

KNOW ALL POTENTIAL FOR LIEN LIABILITY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 020885

BILL NO. SB 128

NAME Julie Begler BILL NO. 128
ADDRESS Helena DATE 2-8-85
WHOM DO YOU REPRESENT MBA
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 020885
BILL NO. SB128

(This sheet to be used by those testifying on a bill.)

NAME: Wesley DATE: 2/9/85

ADDRESS: 3577 Hwy 93 N Kalispell mt

PHONE: 752-2386

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: Does a much more adequate

going handling the many problems of the
current statute

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 020885

BILL NO. SB 128



Bell System

Call Memo

35-20
(10-80)

To Joe

From Pat Hooks

Tel. No. () Ext. ()

☐ URGENT ☐ Will Call Later ☐ Job Ready ☐ Contact

☒ Called ☐ To See You ☐ Repro. ☐ WP Ctr.

☒ Please Call ☐ Was Here ☐ Graphics ☐ Comm. Ctr.

☐ Returned Your Call ☐

Rec'd By C Date 020885 Time 9:00

He was going to come over for
this mornings hearing on SB 128
but the road is closed. Please
registal the Savings & Loan
League in support of the
bill.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 020885

BILL NO. SB 128

NAME: James F. Lechner DATE: 2/7/85

ADDRESS: P.O. Box 875, Billings, MT 59103

PHONE: (406) 257-1436

REPRESENTING WHOM? Individual - Montana HBA

APPEARING ON WHICH PROPOSAL: S.B. 128

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: _____

Reverses priority of mechanics lien - ~~the~~
no mechanic gets second priority of
lien rights instead of first priority as
now. SB 128 requires an involved
process to protect mechanics lien rights
if the mechanic is going to be
able to maintain any right of lien
of any significance. It would eliminate
or severely restrict independent contractor's
ability to collect what is due him and
whose labor and material has been incorporated
in property which would be difficult to remove.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 020885

BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: William Olson DATE: 2/8/85

ADDRESS: Box 4519 Helena, MT. 59604

PHONE: 442-4162

REPRESENTING WHOM? Montana Ready Mix Assn

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: A uniform law cannot be injected in the
statutes "carte blanche". This bill is too complex to
place on residents of Montana without further study.
True, there are problems with existing lien statutes, but
the proposal under SB 128 does not correct the flaws
in existing statutes entirely.

We recommend that SB 128 be tabled and a
committee bill come out referring the issue being
addressed to either an interim study committee or
to an advisory council.

Further study is needed!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

NO. 10

DATE 020885

BILL NO. SB 128

Judiciary Committee

February 8, 1985

Senate Bill # 128

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 020885

BILL NO. SB 128

We recognize that our present lien law has problems as the proponents have stated. Whereas SB 128 may address some of these problems, we feel that this bill will only create new problems that will have to be revised in the future.

We want the consumer to have protection and not have to pay twice, but, we likewise want to have some vehicle to insure that we get our money once.

We have problems with this bill for several reasons;

Section 4 Protected party -refer to law.

Once title pass - no lien rights-you have lost everything
Give example from Nebraska Quick Sale

Section 11 Notice of Lien liability

May file notice of lien liability with contract owner,
What if he doesn't file notice has he lost his rights?

Warning = Double liability, no where in bill can I find
what this double liability is, or what the penalty is to
contract owner if he does not preform his part..

Section 21 Notice of Commencement refer to bill

Must file later on it says if no notice is filed,
Does not Must mean it shall be done????

These are just some of the questions that we have, we have
dealers here that I am sure have more questions to bill....

I checked with the Uniform Code Commissioners legal council
(I believe his name is McCabe) and he advised me that Nebraska
is the only state to have implemented this law.

I checked with 5 dealers and the response was all negative
that the law was not working for them.

It is impossible to keep up with the paper work
Their lawyers are at a loss in helping them
Sub contractors & suppliers are basically left out,
with little protection.

They are going to present bills to the next legislation to hopefully make the bill more workable for everyone.

I check with the Florida Association, the problems that they have is with all the paper work to perfect a lien. They are required to send a Notice of Lien Liability within ?? days after first deliver.

We have been advised by ^{Dealer}~~dealers~~ lawyers that it probably going to take a lien specialist, lawyer to interpute the law and file for ~~you~~. ^{them}

MBMDA is made up of a lot of small 1 & 2 , ma & pa operations. They could not leave their stores or they would be appearing here today. Are we going to give them a law that it ;is going to be difficult to interput and take time to preform all the paper work necessary to file a proper lien????

I stated earlier we feel that the current lien law needs some revisions. We would like for you to kill this bill, put it in some sort a hearing. We would like to work with the Bankers, Home Builders, Contractors, Title Company, Lawyers to bring back a bill in 1987 that can be workable and be supported by everyone.

Thank you.....

Irvin E Dellinger
Montana Building Material
Dealers Association

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 020885
BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: WILLIAM L. McCAULEY DATE: 2/8/85

ADDRESS: 410 9TH AVE S.E. CUT BANK MONT 59427

PHONE: 406-873-2925 OR 406-873-2293

REPRESENTING WHOM? CUT BANK BUILDING SERVICE & MBLDA.

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 020885
BILL NO. SB 128

DON'T PAY TWICE

FOR LABOR AND MATERIALS

When You . . .

- REMODEL
- BUILD
- REPAIR

for Your PROTECTION

READ FURTHER

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 020885
BILL NO. SB 128

Dear Property Owner — Please take time to read about liens. We want to protect our good contractors and you. Good contractors shouldn't have to compete with the few who do not pay material and/or labor bills and could cause you to pay twice. Choose a professional — it's your money!

Thanks
Aldrich's

DON'T PAY TWICE

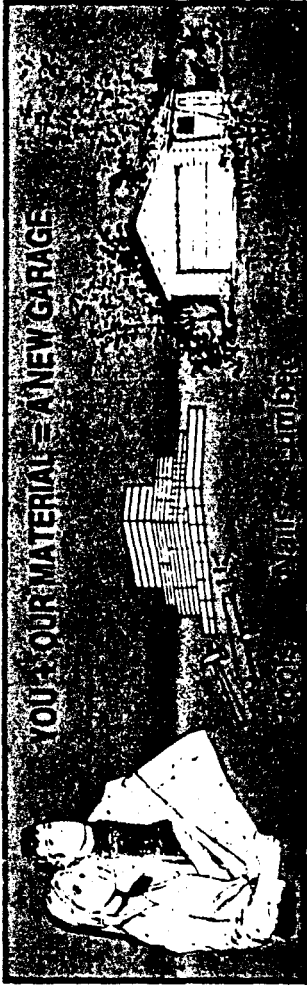
FOR LABOR AND MATERIALS

When You...

- REMODEL
- BUILD
- REPAIR

for Your PROTECTION

READ FURTHER



"IT'S THE LAW"

When you BUILD-REPAIR-REMODEL-you are obligated to pay your contractor the amount set forth in your contract with him.

The contractor assumes an equal obligation — to pay for all materials and labor used.

It's the law which sets up a legal claim against your property — if your materials furnished and labor provided are not paid for by your contractor — or by you — if you are doing it yourself.

In other words, if the contractor does not pay the material supplier for materials bought for use on your property, the supplier can file a lien against your property EVEN THOUGH YOU MAY HAVE ALREADY PAID THE CONTRACTOR FOR THEM.

REMEMBER, ALMOST ALL CONTRACTORS ARE RELIABLE AND RESPONSIBLE AND PAY THEIR BILLS AS AGREED!

HERE'S HOW TO PROTECT YOURSELF...

To protect yourself against the occasional contractor who doesn't pay his bills or whose credit is "shaky":

1. Before paying out any monies to the contractor, require of him a sworn statement of all the persons furnishing material or labor for your job and the amount of money due each.
2. Before making any payments to any contractor, require WAIVERS OF LIEN from him and have him give you a waiver of lien signed by EVERY person who furnished labor for material covered by your payment.
3. Make sure you have a waiver of lien from each person listed on the sworn statement referred to in No. 1 above.

If you do these three things, your construction job should end with no regrets — AND NO DOUBLE PAYMENTS FOR EITHER MATERIAL OR LABOR.

- Have it contractor built — us for references.
- Do-it-yourself — free blueprints and instructions.

Bill H-20
Sheridan, Riverton-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 020885
BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME:

MAXON R DAVIS

DATE:

2-8-85

ADDRESS:

P.O. Box 2103, GREAT FALLS MT 19403

PHONE:

761-5243

REPRESENTING WHOM?

ROUSEN'S INC.

APPEARING ON WHICH PROPOSAL:

SB 128

DO YOU:

SUPPORT? ☐

AMEND? ☐

OPPOSE? ☒

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

15

DATE

020885

BILL NO.

SB 128

(This sheet to be used by those testifying on a bill.)

NAME: JOHN HOLLOMAN DATE: 2/8/85

ADDRESS: 44 West 6th Helena

PHONE: 443-5709

REPRESENTING WHOM? MM Building Material Dealers

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? OPPOSE

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 020885
BILL NO. SB128

JOHN L. HOLLOW
ATTORNEY AT LAW
44 WEST 6TH DIAMOND BLOCK BUILDING
HELENA, MONTANA 59601
(406) 443-5790

February 2, 1985

RE: PROPOSED MONTANA CONSTRUCTION LIEN LAW

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 16

DATE 020885

BILL NO. SB 128

Greetings:

Mr. Dellinger asked that I add some comments to those he forwarded to you. The prefatory note and comments to Article 5, The Construction Lien Laws, of the Uniform Simplification of Land Transfers Act, 1977, drafted by the National Conference of Commissioners of Uniform State Laws, describe in depth the proposed Montana construction lien law. The law was taken verbatim from the Uniform Act. Thus, I will only highlight the problems I see from the point of view of the individual providing materials to a contractor building a building for an owner. References are to the comments Mr. Dellinger sent to you. In summary, this act is designed to protect owners, secured parties, and buyers. The act greatly diminishes the protection in current laws for materialmen and subcontractors. The act increases the effort necessary to obtain a lien. By limits placed on the amount of the lien, the act most probably will result in lien claimants, materialmen and subcontractors settling their disputes without the benefit of the leverage in negotiations that the lien provides.

I will assume you have the comments Mr. Dellinger sent you. My comments are merely emphasis on the problems I see.

Section 4.(Section 5-105) A protected person, essentially a residence buyer, who buys a home during construction and before liens are filed, takes free of all liens. The protected buyer is home free. The materialman has no leverage against the buyer or seller. His recourse seems to be against the contractor or buyer in court if he is not paid. See Section 15(6).(Section 5-209(e))

Section 7 (Section 5-201). Note the last sentence of comment 1. The materialman is left with a law suit against the contractor but no lien, which is often the leverage to get paid.

Section 9, Subsection (6).(Section 5-203) Note that this is a mechanism for the contracting owner or the secured party to by giving notice to cause materialman to take an action within a specified amount of days or the materialman's right is diminished. The owner can, if you do not respond within thirty days, apportion your lien to one of three houses for example. He can diminish the line on a building he wants to sell. The materialman's leverage against the owner is diminished. The point is, the materialman is forced to act by the owner or secured party.

Section 10 (Section 5-204) Limitations. This merely describes what is good practice already. However, if you sell material to a contractor who has you deliver them to the site and that individual takes them from that site to another site, that becomes a problem between you and the contractor removing them. Again, a lawsuit without the leverage of a lien.

Section 11 (Section 5-205). Notice of lien liability is permissive; however, note the first sentence of comment 1. A delay in filing a notice of lien liability may diminish your lien.

Section 12 (Section 5-206) This is a limitation on what the materialman can claim and receive. Read the examples. These examples most clearly demonstrate the purpose of the bill, to protect owners and secured parties by limiting the amount that can be made a lien. Thus, the sub-contractor, materialman, and contractor are forced to settle their dispute off the property.

Section 13 (Section 5-207). Attachment. You have 90 days from the date of last provided materials to file a lien.

Section 14 (Section 5-208) Comment 1, Example 1. Read it. Again an example of the purpose of the act; to protect the owner and secured party. This is not an act designed to protect materialman or sub-contractors.

Section 15 (Section 5-209). Essentially a reversal of the current law. It puts the lender in a higher position than the materialman.

Section 16 (Section 5-210). Trims to one year the time for initiating enforcement. Under Subsection (2), the owner or secured party can force the claimant to initiate action within 30 days after the notice.

Section 31 (Section 5-401). Changes current law, particularly as it relates to the materialman. The materialman could under present law obtain attorney's fees in enforcing a lien. Under this act, he must negotiate for such a provision in his contract with the contractor.

The jist of the underlying Uniform Simplification of Land Transfers ACT is to provide clear title to property. It does so at the expense of the materialman and the sub-contractor. The act restricts the amount of lien (Section 12)(Section 5-206) and increases the actions necessary to obtain a lien. A materialman before selling materials for a project must check at the clerk and recorder for notice of commencement, if none file one; file notice of lien liability Section 11 (Section 5-205); file lien (Section 13) (Section 5-207); respond to notice of termination (Section 21)(Section 5-302); and respond to a written demand to initiate an action. (Section 16)(Section 5-210).

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 16

DATE 020885

BILL NO. SB 128

(This sheet to be used by those testifying on a bill.)

NAME: Russell G. Eklund DATE: 2-8-84

ADDRESS: 2205 11th St S.W. Great Falls Montana

PHONE: 761-3585

REPRESENTING WHOM? Eklund Ent.

APPEARING ON WHICH PROPOSAL: SB 128

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: Does away with the present spirit,

Being a small builder, if I were to lose on
case because of say the protected person clause, I
would be out of business I do in a year counting
suppliers, plumbers, etc. etc, all of these too
would lose. This bill I believe could be very
tough on the small builder, or supplier, and sub-
contractors.

Some of the "homer" stories of hidden lien etc. given by
proponents, if this bill were passed may not be small
problems.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 18

DATE 020885

BILL NO. SB 128

Chapman Sheet Metal and Roofing

HEATING AND AIR CONDITIONING

ALL TYPES OF SHEET METAL WORK

BUILT UP ROOFING

Box 566
Phone 938-2561
118 North Central
Cut Bank, Montana

Feb. 7, 1985

Gentlemen:

As a small businessmen, we are perfectly happy with the current situation of being able to place a lein on property to insure payment for services and or goods receive d.

Now we here there is a bill before you that will take away the only means we have of getting a owner to make payment to us.

While I realize the present system is not perfect, there must be a way that would be better for both parties than the proposed bill. Possibly mandatory notices to the owner of the various subcontractors and suppliers so that the owner could receive lein wavers before final payment to the contractor.

I'm sure with a lot of thought a means of protecting both parties can be enacted. With this in mind I strongly urge you to defeat passage of this bill.

Sincerely,


V. David Chapman

cc: office files

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 19

DATE 020885

BILL NO. SB 128

CONSTRUCTION LIEN

UCLL-1

[Recorded pursuant to the Montana
Construction Lien Law (71-3-501,
et seq. M.C.A)]

1. REAL ESTATE SUBJECT TO LIEN: [See instructions on reverse
for proper completion of this form]
2. NAME OF PERSON WHOSE INTEREST IS SUBJECTED TO LIEN:
3. NAME AND ADDRESS OF CLAIMANT:
4. NAME AND ADDRESS OF PERSON CONTRACTING WITH CLAIMANT AS TO
THE IMPROVEMENT:
5. DESCRIPTION OF SERVICES OR MATERIALS PROVIDED AND CONTRACT
PRICE:
6. AMOUNT UNPAID:
7. DATE WHEN SERVICES OR MATERIALS WERE (WILL BE) FURNISHED:

DATE: _____

CLAIMANT

RECORDED This _____ day of _____ *
19____, at _____ o'clock, ____M., as *
Reception Fee. No. _____ *
in Book _____, page _____. *
*
*
*
*

CLERK AND RECORDER OF _____ *
COUNTY, MONTANA. *

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 020885

BILL NO. SB 128

INSTRUCTIONS FOR COMPLETING
CONSTRUCTION LIEN

1. Real Estate Subject to Lien. Copy description from Notice of Commencement. If one not recorded, provide property description sufficient for identification.
2. Name of Person Whose Interest is Subjected to Lien: Insert the name of the contracting owner, or the record owner of the contracting owner's interest at the time the lien is recorded.
3. Name and Address of Claimant. Insert your name and address.
4. Name and Address of Person Contracting With Claimant as to the Improvement. Insert the name and address of the person with whom you contracted for the services and materials to be supplied to the property.
5. Description of Services or Materials Provided and Contract Price. Provide a general description of the services or materials you were or will furnish for the improvement. You must also provide the contract price.
6. Amount Unpaid. Insert the amount unpaid, whether it is now due or not. If no amount was fixed by the contract insert your good faith estimate, clearly identifying it as an estimate.
7. Date when Services or Materials Were (will be) Furnished. Insert the date when services or materials were last furnished to the improvement. If the date has not yet arrived, insert an estimate of the time. THE LIEN MUST BE RECORDED WITHIN 90 DAYS AFTER FINAL FURNISHING OF SERVICES AND MATERIALS.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB 128

NOTICE OF COMMENCEMENT
(Contracting Owner)

UCLL-2

THIS NOTICE OF COMMENCEMENT IS MADE PURSUANT TO THE
MONTANA CONSTRUCTION LIEN LAW (71-3-501 et seq M.C.A.)

1. REAL ESTATE IMPROVED OR BENEFITED: [See instructions on reverse for proper completion of this form]

2. NAME AND ADDRESS OF CONTRACTING OWNER:

3. THE INTEREST OF THE CONTRACTING OWNER IN THE PROPERTY IS:
 - a. ☐ Fee simple owner
 - b. ☐ Purchaser
 - c. ☐ Lessee, renter, tenant
 - d. Name and address of the fee simple owner (other than contracting owner):

4. DURATION OF THIS NOTICE OF COMMENCEMENT:

This Notice of Commencement will terminate on: _____

5. A LIEN RECORDED AFTER THIS NOTICE OF COMMENCEMENT IS RECORDED WILL HAVE PRIORITY FROM THE RECORDING DATE OF THIS NOTICE.

DATED: _____

CONTRACTING OWNER(s):

RECORDED This _____ day of _____,*
19____, at ____o'clock ____M., as Recept.*
Fee. No. _____, in Book _____*
of LIENS, page _____.*

CLERK AND RECORDER OF _____*
COUNTY, MONTANA *

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB 128

INSTRUCTIONS FOR COMPLETING NOTICE OF COMMENCEMENT
(Contracting Owner)

1. Real Estate Improved or Benefited: Here insert a legal description of the property to be benefited or improved. The description must be sufficient to indentify it. You may limit this NOTICE to a particular project or portion on the real estate, however the limitation will not be effective unless the portion covered is sufficiently described so that a lien claimant can determine, upon reasonable inquiry, whether his contract is covered by this NOTICE.
2. Name and address of contracting owner. Insert your name as you hold title to the property and your current address.
3. The interest of the contracting owner in the property is: If you own the property in fee simple check box "a". Otherwise, if you are buying the property such as on contract, or are renting, you must state the name of the fee simple owner of the property and provide his current address.
4. Duration of this Notice of Commencement. Insert the month, date and year the Notice will terminate. This date must not be less than 6 months from the recording date of the NOTICE. If no date is inserted, the NOTICE will terminate 2 years from the recording date unless the property is "residential property" and you are a "protected party" (as defined by the Construction Lien Law) in which event it will terminate 1 year after recording.

THE NOTICE MUST BE SIGNED BY THE CONTRACTING OWNER.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB128

UCLL-2a

1. REAL ESTATE IMPROVED OR BENEFITED: [See instructions on reverse for proper completion of this form]
2. NAME AND ADDRESS OF CONTRACTING OWNER:
3. NAME AND ADDRESS OF CLAIMANT:
4. NAME AND ADDRESS OF PERSON CONTRACTING WITH CLAIMANT AS TO THE IMPROVEMENT:
5. DESCRIPTION OF SERVICES OR MATERIALS PROVIDED:
6. A LIEN RECORDED AFTER THIS NOTICE OF COMMENCEMENT IS RECORDED WILL HAVE PRIORITY FROM THE RECORDING DATE OF THIS NOTICE.

CLAIMANT:

SENATE JUDICIARY COMMITTEE
EXP. DIT. NO. 20
DATE 020885
BILL NO. SB 128

INSTRUCTIONS FOR COMPLETING NOTICE OF COMMENCEMENT
(Claimant Recording)

1. Real Estate Improved or Benefited: Here insert a legal description of the property to be directly benefited or improved. The description must be sufficient to indentify it. You may limit this NOTICE to a particular portion of the real estate.
2. Name and address of contracting owner. Insert the name and address of the contracting owner.
3. Name and address of Claimant. Insert your name and address.
4. Name and address of Person Contracting With Claimant as to the Improvement. Insert the name and address of the person who contracted with you to provide the services or materials.
5. Description of Services or Materials Provided: Insert here a brief description of the services or materials provided or to be provided by you.
6. MAILING OF NOTICE. YOU ARE REQUIRED BY LAW TO SEND A COPY OF THE NOTICE OF COMMENCEMENT TO THE CONTRACTING ON THE SAME DAY IT IS RECORDED. YOU WILL BE LIABLE TO THE CONTRACTING OWNER FOR ANY AND ALL DAMAGES CAUSED BY YOUR FAILURE TO DO SO.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB 128

NOTICE OF LIEN LIABILITY

UCLL-3

THIS NOTICE IS MADE PURSUANT TO THE MONTANA CONSTRUCTION LIEN LAW (§§ 71-3-501 et seq M.C.A.) OF A RIGHT TO ASSERT A LIEN AGAINST REAL ESTATE FOR SERVICES OR MATERIALS FURNISHED IN CONNECTION WITH IMPROVEMENT OF THE REAL ESTATE DESCRIBED HEREIN

1. NAME AND ADDRESS OF CLAIMANT:
2. NAME AND ADDRESS OF PERSON CONTRACTING WITH CLAIMANT:
3. NAME OF THE OWNER AGAINST WHOM A LIEN IS (OR MAY BE) CLAIMED:
4. DESCRIPTION OF THE SERVICES OR MATERIALS PROVIDED:
5. DESCRIPTION OF THE REAL ESTATE AGAINST WHICH LIEN MAY BE CLAIMED:
6. ☐ CLAIMANT HAS RECORDED A LIEN AND THE DATE OF RECORDING IS: _____, 19____.
☐ CLAIMANT IS ENTITLED TO RECORD A LIEN
7. THE AMOUNT UNPAID TO CLAIMANT IS: \$ _____
OR
NO AMOUNT IS FIXED BY THE CONTRACT, BUT A GOOD FAITH ESTIMATE OF THE AMOUNT UNPAID IS: \$ _____

WARNING: IF YOU DID NOT CONTRACT WITH THE PERSON GIVING THIS NOTICE, ANY FUTURE PAYMENTS YOU MAKE IN CONNECTION WITH THIS PROJECT MAY SUBJECT YOU TO DOUBLE LIABILITY

THE UNDERSIGNED CLAIMANT MUST BE GIVEN WRITTEN NOTICE OF THE RECORDING OF ANY TERMINATION OF A NOTICE OF COMMENCEMENT AT LEAST 21 DAYS BEFORE THE EFFECTIVE DATE OF THE NOTICE OF TERMINATION.

CLAIMANT

RECORDED This _____ day of _____
19____, at _____ o'clock _____ M., as
Reception Fee No. _____ in *
Book _____, page _____.

CLERK AND RECORDER OF _____
COUNTY, MONTANA.

DATE: _____

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB 128

INSTRUCTIONS FOR
NOTICE OF LIEN LIABILITY

1. NAME AND ADDRESS OF CLAIMANT: Insert your name and mailing address.
2. NAME AND ADDRESS OF PERSON CONTRACTING WITH CLAIMANT: Insert the name and address with whom you have the contract to supply the services or materials for this improvement.
3. NAME OF THE OWNER AGAINST WHOM A LIEN IS (OR MAY BE) CLAIMED: Insert the name of the owner of the real property on which the improvement is located or which will be directly benefited.
4. DESCRIPTION OF THE REAL ESTATE AGAINST WHICH THE LIEN MAY BE CLAIMED: Insert a legal description of the real property sufficient to identify it.
5. If you have recorded a lien already, check the appropriate box and insert the recording date. If not, check the alternate box.
6. THE AMOUNT UNPAID TO CLAIMANT IS: State the amount unpaid to you (regardless of whether it is presently due) under your contract. If you do not have a contract, or the amount is not fixed in the contract, state a good faith estimate in the appropriate blank.
7. SIGN THE NOTICE. MAIL TO OWNER BY CERTIFIED OR REGISTERED MAIL AND KEEP THE PROOF OF MAILING. RECORD A DUPLICATE ORIGINAL WITH THE CLERK AND RECORDER.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 020885

BILL NO. SB 128

UCLL-4

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 20
DATE 020885
BILL NO. SB 128

INSTRUCTIONS FOR COMPLETING AND IMPLEMENTING
A TERMINATION OF A NOTICE OF COMMENCEMENT
(Contracting Owner)

1. Real Estate Improved or Benefited: Copy information from Notice of Commencement.
2. Name and Address of Contracting Owner. Copy information from Notice of Commencement
3. The Interest of the Contracting Owner in the Property is: Copy information from the Notice of Commencement.
4. Recording Information for Notice of Commencement. Insert the recording information from the Notice of Commencement, including the date of recording, the book, page and document or reception number and the county of recording.
5. Termination Date. Insert here the date of termination. THIS DATE CANNOT BE EARLIER THAN 30 DAYS AFTER THE "TERMINATION" IS RECORDED.
6. Real Estate Affected by Termination: If the termination is to apply only to a part of the property covered by the Notice of Commencement, this fact must be stated here. You must insert here a description of the property affected by the termination.
7. IMPLEMENTATION OF THE TERMINATION: You must, IN ADDITION to completing and filing the "Termination" do ALL OF THE FOLLOWING:
 - a. Mail a copy of the "Termination" to each claimant who has served on you or recorded a request for notification. THIS MUST BE DONE AT LEAST 21 DAYS BEFORE THE TERMINATION DATE. The copy must have the recording information on it showing when and where it was recorded.
 - b. Publish a copy of the "Termination" in a newspaper having general circulation in the county where it was recorded. It must be published once a week for 3 consecutive weeks. The published copy must contain the recording information showing when and where the "Termination" was recorded. It must also contain the following statement:

"ALL LIEN CLAIMS FOR WHICH A NOTICE OF LIEN IS NOT RECORDED BY THE TERMINATION DATE MAY BE DEFEATED BY A TRANSFER OF THE REAL ESTATE"
 - c. Prepare and record an Affidavit stating that notice of the recorded notice of termination has been sent to all claimants who have requested notice and that publication has been made. A copy of the published notice must be attached to the affidavit. The affidavit must contain the name of the newspaper and the dates of publication.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 020885

BILL NO. SB 128