

SENATE BILL NO. 20

INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,
RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

IN THE SENATE

JANUARY 5, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 9, 1987 ON MOTION BY CHIEF SPONSOR, SENATORS
THAYER, HAGER, RASMUSSEN, BOYLAN, AND
GAGE AND REPRESENTATIVES POULSEN,
MERCER, WALLIN, AND D. BROWN ADDED
AS SPONSORS.

JANUARY 24, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 26, 1987 PRINTING REPORT.

JANUARY 28, 1987 SECOND READING, DO PASS.

JANUARY 29, 1987 ENGROSSING REPORT.

JANUARY 30, 1987 THIRD READING, PASSED.
AYES, 48; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 12, 1987 ON MOTION, REREFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1987 SECOND READING, CONCURRED IN.

MARCH 17, 1987

THIRD READING, CONCURRED IN.
AYES, 75; NOES, 21.

RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1987

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 SENATE BILL NO. 20
 2 INTRODUCED BY HALLIGAN
 3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
 7 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
 8 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
 9 MCA; AND PROVIDING AN APPLICABILITY DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 NEW SECTION. Section 1. Scope. This part creates and
 13 provides for the attachment and enforceability of a
 14 construction lien against real estate in favor of a person
 15 furnishing services or materials under a real estate
 16 improvement contract. A nonconsensual lien against real
 17 estate for improvements made thereon may not arise except as
 18 provided in this part.

19 NEW SECTION. Section 2. Definitions. (1)
 20 "Commencement of work" means the date of the first visible
 21 change in the physical condition of the real estate caused
 22 by the first person furnishing services or materials
 23 pursuant to a particular real estate improvement contract.
 24 (2) "Construction lien" or "lien" means a lien against
 25 real estate arising under this part.

1 (3) (a) "Contracting owner" means a person who owns an
 2 interest in real estate and who, personally or through an
 3 agent, enters into an express or implied contract for the
 4 improvement of the real estate.
 5 (b) For the purpose of determining whether a person is
 6 a contracting owner, agency is presumed, in the absence of
 7 clear and convincing evidence to the contrary:
 8 (i) between employer and employee;
 9 (ii) between spouses;
 10 (iii) between joint tenants; and
 11 (iv) among tenants in common.
 12 (4) (a) "Contract price" means the amount agreed upon
 13 by the contracting parties for performing services and
 14 furnishing materials covered by the contract, increased or
 15 diminished by:
 16 (i) the price of change orders or extras;
 17 (ii) any amounts attributable to altered
 18 specifications; or
 19 (iii) a breach of contract, including but not limited
 20 to defects in workmanship or materials.
 21 (b) If no price is agreed upon by the contracting
 22 parties, the contract price means the reasonable value of
 23 all services or materials covered by the contract.
 24 (5) (a) "Real estate improvement contract" means an
 25 agreement to perform services, including labor, or to



-2- INTRODUCED BILL
 SB 20

1 furnish materials for the purpose of producing a change in
2 the physical condition of the real estate, including:

3 (i) alteration of the surface by excavation, fill,
4 change in grade, or change in a shore, bank, or flood plain
5 of a stream, swamp, or body of water;

6 (ii) construction or installation on, above, or below
7 the surface of land;

8 (iii) demolition, repair, remodeling, or removal of a
9 structure previously constructed or installed;

10 (iv) seeding, sodding, or other landscape operation;

11 (v) surface or subsurface testing, boring, or
12 analysis; and

13 (vi) preparation of plans, surveys, or architectural or
14 engineering plans or drawings for any change in the physical
15 condition of the real estate, regardless of whether they are
16 used to produce a change in the physical condition of the
17 real estate.

18 (b) For the purpose of claiming a construction lien, a
19 real estate improvement contract does not include:

20 (i) a contract for the mining or removal of timber,
21 minerals, gravel, soil, sod, or things growing on the land
22 or a similar contract in which the activity is primarily for
23 the purpose of making the materials available for sale or
24 use; or

25 (ii) a contract for the planting, cultivation, or

1 harvesting of crops or for the preparation of the soil for
2 planting of crops.

3 NEW SECTION. Section 3. Who may claim a construction
4 lien -- limitation. A person who furnishes services or
5 materials pursuant to a real estate improvement contract may
6 claim a construction lien, only to the extent provided in
7 this part, to secure the payment of his contract price.

8 NEW SECTION. Section 4. Limitation of lien for
9 materials supplied. (1) A lien for furnishing materials
10 arises only if:

11 (a) (i) the materials are supplied with the intent
12 that they be used in the course of construction of or
13 incorporated into the improvement in connection with which
14 the lien arises; and

15 (ii) the intent described in subsection (1)(a)(i) can
16 be shown by a contract of sale, a delivery order, delivery
17 to the site by the lien claimant or at his direction, or by
18 other evidence; and

19 (b) the materials are:

20 (i) incorporated in the improvement or consumed as
21 normal wastage in construction operations;

22 (ii) specifically fabricated for incorporation into the
23 improvement and not readily resalable in the ordinary course
24 of the fabricator's business, even though the materials are
25 not actually incorporated into the improvement;

1 (iii) used for the construction or operation of
2 machinery or equipment used in the course of construction
3 and not remaining in the improvement, subject to diminution
4 by the salvage value of those materials; or

5 (iv) tools, appliances, or machinery used on the
6 particular improvement. However, a lien for supplying
7 tools, appliances, or machinery used on the improvement is
8 limited as provided by subsection (3).

9 (2) The delivery of materials to the site of the
10 improvement, whether by the lien claimant or by another,
11 creates a presumption that they were used in the course of
12 construction or were incorporated into the improvement.

13 (3) A lien arising for the supplying of tools,
14 appliances, or machinery under subsection (1)(b)(iv) is
15 limited as follows:

16 (a) if they are rented, the lien is for the reasonable
17 rental value for the period of actual use, including any
18 reasonable periods of nonuse provided for in the rental
19 contract; and

20 (b) if they are purchased, the lien is for the price
21 but arises only if they were purchased for use in the course
22 of the particular improvement and have no substantial value
23 after the completion of the improvement on which they were
24 used.

25 NEW SECTION. Section 5. Extent of lien. (1) A

1 construction lien extends to the interest of the contracting
2 owner in the real estate, as the interest exists at the
3 commencement of work or is thereafter acquired in the real
4 estate, subject to the provisions of this section.

5 (2) (a) If an improvement is located wholly on one or
6 more platted lots belonging to the contracting owner, the
7 lien applies to the improvement and to the lots on which the
8 improvement is located.

9 (b) If an improvement is not located wholly on one or
10 more platted lots, the lien applies to the improvement and
11 to the smallest identifiable tract or parcel of land on
12 which the improvement is located.

13 (3) If the improvement is to leased premises, the lien
14 attaches to the improvement and to the leasehold term.
15 Except as provided in subsection (4), it does not attach to
16 the lessor's interest unless he contracted for or agreed to
17 the improvement before it was begun.

18 (4) (a) A construction lien is not impaired to the
19 extent of the value of the work or improvement that is
20 severable from the real estate if the improvement is to
21 premises held by:

22 (i) a contracting owner who owns less than a fee
23 simple interest; or

24 (ii) a lessee and the lease is forfeited by the lessee.

25 (b) If the work or improvement may be removed without

1 harm to the rest of the real estate, the lienholder may have
 2 the value determined, the work or improvement sold
 3 separately, and the proceeds delivered to him to satisfy the
 4 construction lien. The purchaser shall remove the work or
 5 improvement within 45 days of the sale.

6 (5) If a contracting owner contracts for improvements
 7 on real estate not owned by him as part of an improvement on
 8 his real estate or for the purpose of directly benefitting
 9 his real estate, there is a lien against the contracting
 10 owner's real estate being improved or directly benefitted in
 11 favor of persons furnishing services or materials to the
 12 same extent as if the improvement had been on the
 13 contracting owner's real estate.

14 NEW SECTION. Section 6. Amount of lien. (1) A person
 15 who has furnished services or materials pursuant to a real
 16 estate improvement contract is entitled to a lien for the
 17 unpaid part of his contract price, subject to the provisions
 18 of [section 4].

19 (2) A person's lien is reduced by the sum of the liens
 20 of persons claiming construction liens through him.

21 NEW SECTION. Section 7. Notice of right to claim a
 22 lien required -- exceptions. (1) The following are not
 23 required to give notice of a right to claim a lien as
 24 required by this section:

25 (a) a person who furnishes services or materials

1 directly to the owner at his request;

2 (b) a wage earner or laborer who performs personal
 3 labor services for a person furnishing any service or
 4 material pursuant to a real estate improvement contract;

5 (c) a person who furnishes services or materials
 6 pursuant to a real estate improvement contract that relates
 7 to a dwelling for five or more families; and

8 (d) a person who furnishes services or materials
 9 pursuant to a real estate improvement contract that relates
 10 to an improvement that is partly or wholly commercial in
 11 character.

12 (2) A person who may claim a construction lien
 13 pursuant to this part shall give notice of his right to
 14 claim a lien to the contracting owner in order to claim a
 15 lien.

16 (3) This notice must be given no later than 20 days
 17 after the date on which the services or materials are first
 18 furnished to the contracting owner. If notice is not given
 19 within this period, a lien is enforceable only for the
 20 services or materials furnished within the 20-day period
 21 before the date on which notice is given.

22 (4) The notice of the right to claim a lien must be
 23 sent to the contracting owner by certified mail or delivered
 24 personally to him.

25 (5) A person who may claim a lien shall file with the

1 clerk and recorder of the county in which the improved real
2 estate is located a copy of the notice of the right to claim
3 a lien, in the form required by {section 8}. This copy must
4 be filed no later than 20 days after the date on which the
5 services or materials were first furnished to the
6 contracting owner.

7 (6) At the request of any subcontractor or material
8 supplier who may claim a lien through him, a person shall
9 furnish to the requestor within 5 business days:

10 (a) a description of the real estate being improved,
11 sufficient to identify it; and

12 (b) the name and address of the contracting owner.

13 NEW SECTION. Section 8. Content of notice of right to
14 claim a lien. (1) The notice of the right to claim a lien
15 must be in writing and state that it is a notice of a right
16 to claim a lien against real estate for services or
17 materials furnished in connection with improvement of the
18 real estate.

19 (2) The notice must contain a description sufficient
20 to identify the real estate against which the lien may be
21 claimed.

22 (3) The notice must contain the following information
23 and be in substantially the following form:

1 NOTICE OF THE RIGHT TO CLAIM A LIEN
2 WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY
3 CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

4 To:..... Date of mailing:
5 (Owner)

6

7 (Owner's address)

8 This is to inform you that has begun to
9 provide (description of services or materials)
10 ordered by for improvements to property you own.
11 The property is located at

12 A lien may be claimed for all services and materials
13 furnished to you, if this notice is given to you within 20
14 days after the date on which the services or materials
15 described are first furnished to you. If the notice is not
16 given within that time, a lien is enforceable for only the
17 services or materials furnished within the 20-day period
18 before the date on which the notice is given.

19 Even if you or your mortgage lender have made full
20 payment to the contractor who ordered these services or
21 materials, your property may still be subject to a lien
22 unless the subcontractor or material supplier providing this
23 notice is paid. THIS IS NOT A LIEN. It is a notice sent to
24 you for your protection in compliance with the construction
25 lien laws of the state of Montana.

1 This notice has been sent to you by:
 2 NAME:..... IF YOU HAVE ANY
 3 ADDRESS:..... QUESTIONS ABOUT THIS
 4 TELEPHONE:..... NOTICE, PLEASE CALL US
 5 IMPORTANT INFORMATION ON REVERSE SIDE

7 IMPORTANT INFORMATION FOR YOUR PROTECTION

8 Under Montana's laws, those who work on your property
 9 or provide materials and are not paid have a right to
 10 enforce their claim for payment against your property. This
 11 claim is known as a construction lien.

12 If your contractor fails to pay subcontractors or
 13 material suppliers or neglects to make other legally
 14 required payments, the people who are owed money may look to
 15 your property for payment, even if you have paid your
 16 contractor in full.

17 The law states that all people hired by a contractor to
 18 provide you with services or materials are required to give
 19 you a notice of the right to lien to let you know what they
 20 have provided.

21 WAYS TO PROTECT YOURSELF ARE:

22 -- RECOGNIZE that this notice of delivery of services
 23 or materials may result in a lien against your property
 24 unless all those supplying a notice of the right to lien
 25 have been paid.

1 -- LEARN more about the construction lien laws and the
 2 meaning of this notice by contacting an attorney or the firm
 3 sending this notice.

4 -- WHEN PAYING your contractor for services or
 5 materials, you may make checks payable jointly to the
 6 contractor and the firm furnishing services or materials for
 7 which you have received a notice of the right to lien.

8 -- OBTAIN EVIDENCE that all firms from whom you have
 9 received a notice of the right to lien have been paid or
 10 have waived the right to claim a lien against your property.

11 -- CONSULT an attorney, a professional escrow company,
 12 or your mortgage lender.

13 NEW SECTION. Section 9. Attachment of lien -- filing.

14 (1) A person's lien does not attach and may not be enforced
 15 unless, after entering into the contract under which the
 16 lien arises, he has filed a lien not later than 90 days
 17 after:

- 18 (a) his final furnishing of services or materials; or
- 19 (b) the owner files a notice of completion pursuant to
- 20 71-3-512.

21 (2) (a) The lien must be filed with the county clerk
 22 and recorder of the county in which the improved real estate
 23 is located.

24 (b) The person claiming the lien must certify to the
 25 county clerk and recorder that a copy of the lien has been

1 served on the owner of record as provided in 71-3-513(2).

2 (3) The lien statement must contain:

3 (a) the name and address of the person claiming the
4 lien;

5 (b) a description of the real property against which
6 the lien is claimed sufficient to identify it;

7 (c) the name of the contracting owner;

8 (d) the name and address of the party with whom the
9 person claiming the lien contracted to furnish services or
10 materials;

11 (e) a description of the services or materials
12 provided;

13 (f) the amount unpaid for services or materials or, if
14 no amount is fixed by the contract, a good faith estimate of
15 the amount unpaid, designated as an estimate;

16 (g) (i) the date on which the services or materials
17 were first furnished; and

18 (ii) the date on which the services or materials were
19 last furnished; and

20 (h) a declaration that a notice of a right to claim a
21 lien was given to the contracting owner or an explanation of
22 why such notice was not required.

23 (4) A lien notice that is filed pursuant to this
24 section before the person claiming the lien has
25 substantially furnished services or materials pursuant to a

1 real estate improvement contract is not effective to create
2 a construction lien unless the lien claimant is prevented
3 from fulfilling his obligation because of the fault of
4 another person.

5 (5) Except as provided in subsection (6), a lien
6 attaches at the commencement of work as defined in [section
7 2].

8 (6) A lien attaches when it is filed if it is for the
9 preparation of plans, surveys, or architectural or
10 engineering plans or drawings for any change in the physical
11 condition of land or structures that are not used incident
12 to producing a change in the physical condition of the real
13 estate.

14 NEW SECTION. Section 10. Content of lien notice. The
15 notice for the lien provided for in [section 9] may be filed
16 in substantially this form:

17 Construction Lien

18 I, . . . (insert name and address of person claiming
19 the construction lien), claim a construction lien pursuant
20 to Title 71, chapter 3, of the Montana Code Annotated.

21 I claim this lien against . . . (give description of
22 the real property against which the lien is claimed
23 sufficient to identify it). The contracting owner is . . .
24 (insert name of the person who owns the real estate and name
25 of the person who entered into the contract to improve it).

1 At the request of (give name and address of
 2 party with whom person claiming the lien contracted to
 3 furnish services or materials), I provided the following:
 4 (give description of the services or materials
 5 provided). The amount remaining unpaid is (insert
 6 the amount unpaid; if no amount was fixed by the contract,
 7 give your good faith estimate of the amount and identify it
 8 as an estimate).

9 I first furnished these services or materials on
 10 (give date) and last furnished services or materials
 11 on (give date; if the date has not yet arrived,
 12 insert an estimate of the date on which services or
 13 materials will be last furnished and identify the date as an
 14 estimate).

15 I gave notice of the right to claim a lien as required
 16 by [section 7] on (give date) to (give name
 17 of contracting owner). . . . (If it is not required to
 18 give a notice of the right to claim a lien, state the reason
 19 it is not required.)

20 NEW SECTION. Section 11. Priority among holders of
 21 construction liens. (1) There is equal priority between or
 22 among construction lien claimants who contribute to the same
 23 real estate improvement project, regardless of the date on
 24 which each lien claimant first contributed services or
 25 materials and regardless of the date on which he filed his

1 notice of lien. When the proceeds of a foreclosure sale are
 2 not sufficient to pay all construction lien claimants in
 3 full, each claimant will receive a pro rata share of the
 4 proceeds based on the amount of his respective lien.

5 (2) Construction liens attaching at different times
 6 have priority in the order of attachment.

7 NEW SECTION. Section 12. Priority of construction
 8 liens as against claims other than construction lien claims.
 9 (1) A construction lien arising under this part has priority
 10 over any other interest, lien, mortgage, or encumbrance that
 11 may attach to the building, structure, or improvement or on
 12 the real property on which the building, structure, or
 13 improvement is located and which is filed after the
 14 construction lien attaches.

15 (2) An interest, lien, mortgage, or encumbrance that
 16 is filed before the construction lien attaches has priority
 17 over a construction lien arising under this part, except as
 18 provided in subsections (3) and (4).

19 (3) A construction lien has priority, to the extent of
 20 the value of the work or improvement that is severable, over
 21 an interest, lien, mortgage, or encumbrance that is filed
 22 before the construction lien attaches. If the work or
 23 improvement may be removed without harm to the rest of the
 24 real property, the lienholder may have the value determined,
 25 the work or improvement sold separately on foreclosure, and

1 the proceeds delivered to him to satisfy the construction
2 lien.

3 (4) A construction lien has priority over any
4 interest, lien, mortgage, or encumbrance that is filed
5 before the construction lien attaches if that interest,
6 lien, mortgage, or encumbrance was taken to secure advances
7 made for the purpose of paying for the particular real
8 estate improvement being liened.

9 Section 13. Section 71-3-512, MCA, is amended to read:

10 "71-3-512. Notice of completion. (1) The contracting
11 owner may file a notice of completion at any time after the
12 completion of any work or improvement.

13 (2) The following acts or events constitute completion
14 of any work or improvement for the purpose of filing a
15 notice of completion:

16 (a) the written acceptance by the contracting owner,
17 his agent, or representative of the building, improvement,
18 or structure. The filing of a notice of completion shall not
19 be considered as an acceptance of the building, improvement,
20 or other structure.

21 (b) the cessation from labor for 30 days upon any
22 building, improvement, or structure, or the alteration,
23 addition to, or repair thereof.

24 (3) The notice of completion together with an
25 affidavit of publication as hereinafter required shall be

1 filed in the office of the county clerk and recorder of the
2 county where the property is situated and the notice shall
3 set forth:

4 (a) the date when the work or improvement was
5 completed or the date on which cessation from labor occurred
6 first and the period of its duration;

7 (b) the contracting owner's name ~~or-owners'-names-~~as
8 ~~the-case-may-be,-the~~ and address of the owner ~~--or--addresses~~
9 ~~of--the--owners,-as--the-case-may-be,~~ and the nature of the
10 title, if any, of the person signing the notice;

11 (c) a description of the property sufficient for
12 identification;

13 (d) the name of the contractor, if any.

14 (4) The notice shall be verified by the contracting
15 owner or his agent.

16 (5) A copy of the notice of completion shall be
17 published once each week for 3 successive weeks in a
18 newspaper of general circulation in the county where the
19 land on which the work or improvement was performed is
20 situated.

21 (6) The contracting owner shall give a copy of the
22 notice of completion to any person who has given the
23 contracting owner a notice of a right to claim a lien."

24 Section 14. Section 71-3-516, MCA, is amended to read:

25 "71-3-516. Substitution of bond allowed -- filing --

1 amount -- condition. (1) Whenever a mechanic's construction
 2 lien has been filed upon real property or any improvements
 3 thereon, ~~as enumerated in 71-3-501~~, the contracting owner of
 4 any interest in such property, whether legal or beneficial,
 5 may, at any time before the lien claimant has commenced an
 6 action to foreclose such lien, file a bond with the clerk of
 7 the district court in the county in which such property is
 8 situated or, if such property is situated in more than one
 9 county, with the clerk of the district court of any county
 10 in which a part of such property is situated.

11 (2) Such bond shall be in an amount 1 1/2 times the
 12 amount of the lien and shall be either in cash or written by
 13 a corporate surety company. If written by a corporate
 14 surety, such bond shall be approved by a judge of the
 15 district court with which such bond is filed.

16 (3) The bond shall be conditioned that if the lien
 17 claimant shall be finally adjudged to be entitled to recover
 18 upon the claim upon which his lien is based, the principal
 19 or his sureties shall pay to such claimant the amount of his
 20 judgment, together with any interest, costs, attorneys'
 21 fees, and other sums which such claimant would be entitled
 22 to recover upon the foreclosure of a lien against the
 23 principal."

24 Section 15. Section 70-23-607, MCA, is amended to
 25 read:

1 "70-23-607. Claim for common expenses -- priority of
 2 lien -- contents -- recording. (1) Whenever an association
 3 of unit owners acting through its manager furnishes to a
 4 unit any services, labor, or material lawfully chargeable as
 5 common expenses, the association of unit owners, upon
 6 complying with subsection (2) of this section, shall have a
 7 lien upon the individual unit and the undivided interest in
 8 the common elements appertaining to such unit for the
 9 reasonable value of such common expenses, and the lien shall
 10 be prior to all other liens or encumbrances upon the unit
 11 except:

- 12 (a) tax and assessment liens; and
- 13 (b) a first mortgage or trust indenture of record.

14 (2) An association of unit owners claiming the
 15 benefits of subsection (1) of this section shall record in
 16 the county in which the unit or some part thereof is located
 17 a claim containing:

- 18 (a) a true statement of the account due for such
 19 common expenses after deducting all just credits and
 20 offsets;

- 21 (b) the name of the owner of the unit or reputed
 22 owner, if known;

- 23 (c) a description of the property where the common
 24 expenses were furnished and the designation of the unit,
 25 sufficient for identification.

1 (3) The claim shall be verified by the oath of some
 2 person having knowledge of the facts and shall be filed with
 3 and recorded by the recording officer in the book kept for
 4 the purpose of recording liens filed under ~~71-3-501~~ Title
 5 71, chapter 3, part 5. The record shall be indexed as deeds
 6 and other conveyances are required by law to be indexed."

7 Section 16. Section 70-23-608, MCA, is amended to
 8 read:

9 "70-23-608. Foreclosure of lien under claim for common
 10 expenses -- action without foreclosure. (1) The proceedings
 11 to foreclose liens created by 70-23-607 shall conform as
 12 nearly as possible to the proceedings to foreclose liens
 13 created by ~~71-3-501~~ Title 71, chapter 3, part 5. The lien
 14 may be enforced by the manager acting on behalf of the
 15 association of unit owners.

16 (2) An action to recover a money judgment for unpaid
 17 common expenses may be maintained without foreclosing or
 18 waiving the lien securing the claim for common expenses."

19 NEW SECTION. Section 17. Repealer. Sections 71-3-501
 20 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

21 NEW SECTION. Section 18. Codification instruction.
 22 Sections 1 through 12 are intended to be codified as an
 23 integral part of Title 71, chapter 3, part 5, and the
 24 provisions of Title 71, chapter 3, part 5, apply to sections
 25 1 through 12.

1 NEW SECTION. Section 19. Saving clause. This act does
 2 not affect rights and duties that matured, penalties that
 3 were incurred, or proceedings that were begun before the
 4 effective date of this act.

5 NEW SECTION. Section 20. Severability. If a part of
 6 this act is invalid, all valid parts that are severable from
 7 the invalid part remain in effect. If a part of this act is
 8 invalid in one or more of its applications, the part remains
 9 in effect in all valid applications that are severable from
 10 the invalid applications.

11 NEW SECTION. Section 21. Applicability. This act
 12 applies to real estate improvement contracts made after
 13 September 30, 1987.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 20

INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,
RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

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"Commencement of work" means the date of the first visible
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(3) (a) "Contracting owner" means a person who owns an
interest in real estate and who, personally or through an
agent, enters into an express or implied contract for the
improvement of the real estate.

(b) For the purpose of determining whether a person is
a contracting owner, agency is presumed, in the absence of
clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(4) (a) "Contract price" means the amount agreed upon
by the contracting parties for performing services and
furnishing materials covered by the contract, increased or
diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered
specifications; or

(iii) a breach of contract, including but not limited
to defects in workmanship or materials.

(b) If no price is agreed upon by the contracting
parties, the contract price means the reasonable value of
all services or materials covered by the contract.

(5) (a) "Real estate improvement contract" means an

SECOND READING

1 agreement to perform services, including labor, or to
2 furnish materials for the purpose of producing a change in
3 the physical condition of the real estate, including:

4 (i) alteration of the surface by excavation, fill,
5 change in grade, or change in a shore, bank, or flood plain
6 of a stream, swamp, or body of water;

7 (ii) construction or installation on, above, or below
8 the surface of land;

9 (iii) demolition, repair, remodeling, or removal of a
10 structure previously constructed or installed;

11 (iv) seeding, sodding, or other landscape operation;

12 (v) surface or subsurface testing, boring, or
13 analysis; and

14 (vi) preparation of plans, surveys, or architectural or
15 engineering plans or drawings for any change in the physical
16 condition of the real estate, regardless of whether they are
17 used to produce a change in the physical condition of the
18 real estate.

19 (b) For the purpose of claiming a construction lien, a
20 real estate improvement contract does not include:

21 (i) a contract for the mining or removal of timber,
22 minerals, gravel, soil, sod, or things growing on the land
23 or a similar contract in which the activity is primarily for
24 the purpose of making the materials available for sale or
25 use; or

1 (ii) a contract for the planting, cultivation, or
2 harvesting of crops or for the preparation of the soil for
3 planting of crops.

4 NEW SECTION. Section 3. Who may claim a construction
5 lien -- limitation. A person who furnishes services or
6 materials pursuant to a real estate improvement contract may
7 claim a construction lien, only to the extent provided in
8 this part, to secure the payment of his contract price.

9 NEW SECTION. Section 4. Limitation of lien for
10 materials supplied. (1) A lien for furnishing materials
11 arises only if:

12 (a) (i) the materials are supplied with the intent
13 that they be used in the course of construction of or
14 incorporated into the improvement in connection with which
15 the lien arises; and

16 (ii) the intent described in subsection (1)(a)(i) can
17 be shown by a contract of sale, a delivery order, delivery
18 to the site by the lien claimant or at his direction, or by
19 other evidence; and

20 (b) the materials are:

21 (i) incorporated in the improvement or consumed as
22 normal wastage in construction operations;

23 (ii) specifically fabricated for incorporation into the
24 improvement and not readily resalable in the ordinary course
25 of the fabricator's business, even though the materials are

1 not actually incorporated into the improvement;

2 (iii) used for the construction or operation of
3 machinery or equipment used in the course of construction
4 and not remaining in the improvement, subject to diminution
5 by the salvage value of those materials; or

6 (iv) tools, appliances, or machinery used on the
7 particular improvement. However, a lien for supplying
8 tools, appliances, or machinery used on the improvement is
9 limited as provided by subsection (3).

10 (2) The delivery of materials to the site of the
11 improvement, whether by the lien claimant or by another,
12 creates a presumption that they were used in the course of
13 construction or were incorporated into the improvement.

14 (3) A lien arising for the supplying of tools,
15 appliances, or machinery under subsection (1)(b)(iv) is
16 limited as follows:

17 (a) if they are rented, the lien is for the reasonable
18 rental value for the period of actual use, including any
19 reasonable periods of nonuse provided for in the rental
20 contract; and

21 (b) if they are purchased, the lien is for the price
22 but arises only if they were purchased for use in the course
23 of the particular improvement and have no substantial value
24 after the completion of the improvement on which they were
25 used.

1 NEW SECTION. Section 5. Extent of lien. (1) A
2 construction lien extends to the interest of the contracting
3 owner in the real estate, as the interest exists at the
4 commencement of work or is thereafter acquired in the real
5 estate, subject to the provisions of this section.

6 (2) (a) If an improvement is located wholly on one or
7 more platted lots belonging to the contracting owner, the
8 lien applies to the improvement and to the lots on which the
9 improvement is located.

10 (b) If an improvement is not located wholly on one or
11 more platted lots, the lien applies to the improvement and
12 to the smallest identifiable tract or parcel of land on
13 which the improvement is located.

14 (3) If the improvement is to leased premises, the lien
15 attaches to the improvement and to the leasehold term.
16 Except as provided in subsection (4), it does not attach to
17 the lessor's interest unless he contracted for or agreed to
18 the improvement before it was begun.

19 (4) (a) A construction lien is not impaired to the
20 extent of the value of the work or improvement that is
21 severable from the real estate if the improvement is to
22 premises held by:

23 (i) a contracting owner who owns less than a fee
24 simple interest; or

25 (ii) a lessee and the lease is forfeited by the lessee.

1 (b) If the work or improvement may be removed without
 2 harm to the rest of the real estate, the lienholder may have
 3 the value determined, the work or improvement sold
 4 separately, and the proceeds delivered to him to satisfy the
 5 construction lien. The purchaser shall remove the work or
 6 improvement within 45 days of the sale.

7 (5) If a contracting owner contracts for improvements
 8 on real estate not owned by him as part of an improvement on
 9 his real estate or for the purpose of directly benefitting
 10 his real estate, there is a lien against the contracting
 11 owner's real estate being improved or directly benefitted in
 12 favor of persons furnishing services or materials to the
 13 same extent as if the improvement had been on the
 14 contracting owner's real estate.

15 NEW SECTION. Section 6. Amount of lien. (1) A person
 16 who has furnished services or materials pursuant to a real
 17 estate improvement contract is entitled to a lien for the
 18 unpaid part of his contract price, subject to the provisions
 19 of [section 4].

20 (2) A person's lien is reduced by the sum of the liens
 21 of persons claiming construction liens through him.

22 NEW SECTION. Section 7. Notice of right to claim a
 23 lien required -- exceptions. (1) The following are not
 24 required to give notice of a right to claim a lien as
 25 required by this section:

1 (a) a person who furnishes services or materials
 2 directly to the owner at his request;

3 (b) a wage earner or laborer who performs personal
 4 labor services for a person furnishing any service or
 5 material pursuant to a real estate improvement contract;

6 (c) a person who furnishes services or materials
 7 pursuant to a real estate improvement contract that relates
 8 to a dwelling for five or more families; and

9 (d) a person who furnishes services or materials
 10 pursuant to a real estate improvement contract that relates
 11 to an improvement that is partly or wholly commercial in
 12 character.

13 (2) A person who may claim a construction lien
 14 pursuant to this part shall give notice of his right to
 15 claim a lien to the contracting owner in order to claim a
 16 lien.

17 (3) This notice must be given no later than 20 days
 18 after the date on which the services or materials are first
 19 furnished to the contracting owner. If notice is not given
 20 within this period, a lien is enforceable only for the
 21 services or materials furnished within the 20-day period
 22 before the date on which notice is given.

23 (4) The notice of the right to claim a lien must be
 24 sent to the contracting owner by certified mail or delivered
 25 personally to him. NOTICE BY CERTIFIED MAIL IS EFFECTIVE ON

1 THE DATE THE NOTICE IS MAILED.

2 (5) A person who may claim a lien shall ALSO file with
3 the clerk and recorder of the county in which the improved
4 real estate is located a copy of the notice of the right to
5 claim a lien, in the form required by [section 8]. This copy
6 must be filed no later than ~~20-days-after-the-date-on-which~~
7 ~~the-services--or--materials--were--first--furnished--to--the~~
8 ~~contracting--owner:~~ 5 BUSINESS DAYS AFTER THE DATE ON WHICH
9 THE NOTICE OF THE RIGHT TO CLAIM A LIEN IS GIVEN TO THE
10 CONTRACTING OWNER.

11 (6) At the request of any subcontractor or material
12 supplier who may claim a lien through him, a person shall
13 furnish to the requestor within 5 business days:

- 14 (a) a description of the real estate being improved,
15 sufficient to identify it; and
- 16 (b) the name and address of the contracting owner.

17 NEW SECTION. Section 8. Content of notice of right to
18 claim a lien. (1) The notice of the right to claim a lien
19 must be in writing and state that it is a notice of a right
20 to claim a lien against real estate for services or
21 materials furnished in connection with improvement of the
22 real estate.

23 (2) The notice must contain a description sufficient
24 to identify the real estate against which the lien may be
25 claimed.

1 (3) The notice must contain the following information
2 and be in substantially the following form:

3 NOTICE OF THE RIGHT TO CLAIM A LIEN
4 WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY
5 CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.
6 TO:..... Date of mailing:
7 (Owner)
8
9 (Owner's address)

10 This is to inform you that has begun to
11 provide (description of services or materials)
12 ordered by for improvements to property you own.
13 The property is located at

14 A lien may be claimed for all services and materials
15 furnished to you, if this notice is given to you within 20
16 days after the date on which the services or materials
17 described are first furnished to you. If the notice is not
18 given within that time, a lien is enforceable for only the
19 services or materials furnished within the 20-day period
20 before the date on which the notice is given.

21 Even if you or your mortgage lender have made full
22 payment to the contractor who ordered these services or
23 materials, your property may still be subject to a lien
24 unless the subcontractor or material supplier providing this
25 notice is paid. THIS IS NOT A LIEN. It is a notice sent to

1 you for your protection in compliance with the construction
2 lien laws of the state of Montana.

3 This notice has been sent to you by:
4 NAME:..... IF YOU HAVE ANY
5 ADDRESS:..... QUESTIONS ABOUT THIS
6 TELEPHONE:..... NOTICE, PLEASE CALL US

7 IMPORTANT INFORMATION ON REVERSE SIDE

8
9 IMPORTANT INFORMATION FOR YOUR PROTECTION

10 Under Montana's laws, those who work on your property
11 or provide materials and are not paid have a right to
12 enforce their claim for payment against your property. This
13 claim is known as a construction lien.

14 If your contractor fails to pay subcontractors or
15 material suppliers or neglects to make other legally
16 required payments, the people who are owed money may look to
17 your property for payment, even if you have paid your
18 contractor in full.

19 The law states that all people hired by a contractor to
20 provide you with services or materials are required to give
21 you a notice of the right to lien to let you know what they
22 have provided.

23 WAYS TO PROTECT YOURSELF ARE:

24 -- RECOGNIZE that this notice of delivery of services
25 or materials may result in a lien against your property

1 unless all those supplying a notice of the right to lien
2 have been paid.

3 -- LEARN more about the construction lien laws and the
4 meaning of this notice by contacting an attorney or the firm
5 sending this notice.

6 -- WHEN PAYING your contractor for services or
7 materials, you may make checks payable jointly to the
8 contractor and the firm furnishing services or materials for
9 which you have received a notice of the right to lien.

10 -- OBTAIN EVIDENCE that all firms from whom you have
11 received a notice of the right to lien have been paid or
12 have waived the right to claim a lien against your property.

13 -- CONSULT an attorney, a professional escrow company,
14 or your mortgage lender.

15 NEW SECTION. Section 9. Attachment of lien -- filing.
16 (1) A person's lien does not attach and may not be enforced
17 unless, after entering into the contract under which the
18 lien arises, he has filed a lien not later than 90 days
19 after:

20 (a) his final furnishing of services or materials; or
21 (b) the owner files a notice of completion pursuant to
22 71-3-512.

23 (2) (a) The lien must be filed with the county clerk
24 and recorder of the county in which the improved real estate
25 is located.

1 (b) The person claiming the lien must certify to the
 2 county clerk and recorder that a copy of the lien has been
 3 served on the owner of record as provided in 71-3-513(2).

4 (3) The lien statement must contain:

5 (a) the name and address of the person claiming the
 6 lien;

7 (b) a description of the real property against which
 8 the lien is claimed sufficient to identify it;

9 (c) the name of the contracting owner;

10 (d) the name and address of the party with whom the
 11 person claiming the lien contracted to furnish services or
 12 materials;

13 (e) a description of the services or materials
 14 provided;

15 (f) the amount unpaid for services or materials or, if
 16 no amount is fixed by the contract, a good faith estimate of
 17 the amount unpaid, designated as an estimate;

18 (g) (i) the date on which the services or materials
 19 were first furnished; and

20 (ii) the date on which the services or materials were
 21 last furnished; and

22 (h) a declaration that a notice of a right to claim a
 23 lien was given to the contracting owner or an explanation of
 24 why such notice was not required.

25 (4) A lien notice that is filed pursuant to this

1 section before the person claiming the lien has
 2 substantially furnished services or materials pursuant to a
 3 real estate improvement contract is not effective to create
 4 a construction lien unless the lien claimant is prevented
 5 from fulfilling his obligation because of the fault of
 6 another person.

7 (5) Except as provided in subsection (6), a lien
 8 attaches at the commencement of work as defined in [section
 9 2].

10 (6) A lien attaches when it is filed if it is for the
 11 preparation of plans, surveys, or architectural or
 12 engineering plans or drawings for any change in the physical
 13 condition of land or structures that are not used incident
 14 to producing a change in the physical condition of the real
 15 estate.

16 NEW SECTION. Section 10. Content of lien notice. The
 17 notice for the lien provided for in [section 9] may be filed
 18 in substantially this form:

19 Construction Lien

20 I, (insert name and address of person claiming
 21 the construction lien), claim a construction lien pursuant
 22 to Title 71, chapter 3, of the Montana Code Annotated.

23 I claim this lien against (give description of
 24 the real property against which the lien is claimed
 25 sufficient to identify it). The contracting owner is

1 (insert name of the person who owns the real estate and name
2 of the person who entered into the contract to improve it).

3 At the request of . . . (give name and address of
4 party with whom person claiming the lien contracted to
5 furnish services or materials), I provided the following:
6 . . . (give description of the services or materials
7 provided). The amount remaining unpaid is . . . (insert
8 the amount unpaid; if no amount was fixed by the contract,
9 give your good faith estimate of the amount and identify it
10 as an estimate).

11 I first furnished these services or materials on
12 . . . (give date) and last furnished services or materials
13 on . . . (give date; if the date has not yet arrived,
14 insert an estimate of the date on which services or
15 materials will be last furnished and identify the date as an
16 estimate).

17 I gave notice of the right to claim a lien as required
18 by [section 7] on . . . (give date) to . . . (give name
19 of contracting owner). . . . (If it is not required to
20 give a notice of the right to claim a lien, state the reason
21 it is not required.)

22 NEW SECTION. Section 11. Priority among holders of
23 construction liens. (1) There is equal priority between or
24 among construction lien claimants who contribute to the same
25 real estate improvement project, regardless of the date on

1 which each lien claimant first contributed services or
2 materials and regardless of the date on which he filed his
3 notice of lien. When the proceeds of a foreclosure sale are
4 not sufficient to pay all construction lien claimants in
5 full, each claimant will receive a pro rata share of the
6 proceeds based on the amount of his respective lien.

7 (2) Construction liens attaching at different times
8 have priority in the order of attachment.

9 NEW SECTION. Section 12. Priority of construction
10 liens as against claims other than construction lien claims.
11 (1) A construction lien arising under this part has priority
12 over any other interest, lien, mortgage, or encumbrance that
13 may attach to the building, structure, or improvement or on
14 the real property on which the building, structure, or
15 improvement is located and which is filed after the
16 construction lien attaches.

17 (2) An interest, lien, mortgage, or encumbrance that
18 is filed before the construction lien attaches has priority
19 over a construction lien arising under this part, except as
20 provided in subsections (3) and (4).

21 (3) A construction lien has priority, to the extent of
22 the value of the work or improvement that is severable, over
23 an interest, lien, mortgage, or encumbrance that is filed
24 before the construction lien attaches. If the work or
25 improvement may be removed without harm to the rest of the

1 real property, the lienholder may have the value determined,
2 the work or improvement sold separately on foreclosure, and
3 the proceeds delivered to him to satisfy the construction
4 lien.

5 (4) A construction lien has priority over any
6 interest, lien, mortgage, or encumbrance that is filed
7 before the construction lien attaches if that interest,
8 lien, mortgage, or encumbrance was taken to secure advances
9 made for the purpose of paying for the particular real
10 estate improvement being liened.

11 Section 13. Section 71-3-512, MCA, is amended to read:

12 "71-3-512. Notice of completion. (1) The contracting
13 owner may file a notice of completion at any time after the
14 completion of any work or improvement.

15 (2) The following acts or events constitute completion
16 of any work or improvement for the purpose of filing a
17 notice of completion:

18 (a) the written acceptance by the contracting owner,
19 his agent, or representative of the building, improvement,
20 or structure. The filing of a notice of completion shall not
21 be considered as an acceptance of the building, improvement,
22 or other structure.

23 (b) the cessation from labor for 30 days upon any
24 building, improvement, or structure, or the alteration,
25 addition to, or repair thereof.

1 (3) The notice of completion together with an
2 affidavit of publication as hereinafter required shall be
3 filed in the office of the county clerk and recorder of the
4 county where the property is situated and the notice shall
5 set forth:

6 (a) the date when the work or improvement was
7 completed or the date on which cessation from labor occurred
8 first and the period of its duration;

9 (b) the contracting owner's name or ~~owners' names,~~ ~~as~~
10 ~~the case may be,~~ and address of ~~the owner or addresses~~
11 ~~of the owners,~~ ~~as the case may be,~~ and the nature of the
12 title, if any, of the person signing the notice;

13 (c) a description of the property sufficient for
14 identification;

15 (d) the name of the contractor, if any.

16 (4) The notice shall be verified by the contracting
17 owner or his agent.

18 (5) A copy of the notice of completion shall be
19 published once each week for 3 successive weeks in a
20 newspaper of general circulation in the county where the
21 land on which the work or improvement was performed is
22 situated.

23 (6) The contracting owner shall give a copy of the
24 notice of completion to any person who has given the
25 contracting owner a notice of a right to claim a lien."

1 Section 14. Section 71-3-516, MCA, is amended to read:
 2 "71-3-516. Substitution of bond allowed -- filing --
 3 amount -- condition. (1) Whenever a mechanic's construction
 4 lien has been filed upon real property or any improvements
 5 thereon, ~~as enumerated in 71-3-501~~; the contracting owner of
 6 any interest in such property, whether legal or beneficial,
 7 may, at any time before the lien claimant has commenced an
 8 action to foreclose such lien, file a bond with the clerk of
 9 the district court in the county in which such property is
 10 situated or, if such property is situated in more than one
 11 county, with the clerk of the district court of any county
 12 in which a part of such property is situated.
 13 (2) Such bond shall be in an amount 1 1/2 times the
 14 amount of the lien and shall be either in cash or written by
 15 a corporate surety company. If written by a corporate
 16 surety, such bond shall be approved by a judge of the
 17 district court with which such bond is filed.
 18 (3) The bond shall be conditioned that if the lien
 19 claimant shall be finally adjudged to be entitled to recover
 20 upon the claim upon which his lien is based, the principal
 21 or his sureties shall pay to such claimant the amount of his
 22 judgment, together with any interest, costs, attorneys'
 23 fees, and other sums which such claimant would be entitled
 24 to recover upon the foreclosure of a lien against the
 25 principal."

1 Section 15. Section 70-23-607, MCA, is amended to
 2 read:
 3 "70-23-607. Claim for common expenses -- priority of
 4 lien -- contents -- recording. (1) Whenever an association
 5 of unit owners acting through its manager furnishes to a
 6 unit any services, labor, or material lawfully chargeable as
 7 common expenses, the association of unit owners, upon
 8 complying with subsection (2) of this section, shall have a
 9 lien upon the individual unit and the undivided interest in
 10 the common elements appertaining to such unit for the
 11 reasonable value of such common expenses, and the lien shall
 12 be prior to all other liens or encumbrances upon the unit
 13 except:
 14 (a) tax and assessment liens; and
 15 (b) a first mortgage or trust indenture of record.
 16 (2) An association of unit owners claiming the
 17 benefits of subsection (1) of this section shall record in
 18 the county in which the unit or some part thereof is located
 19 a claim containing:
 20 (a) a true statement of the account due for such
 21 common expenses after deducting all just credits and
 22 offsets;
 23 (b) the name of the owner of the unit or reputed
 24 owner, if known;
 25 (c) a description of the property where the common

1 expenses were furnished and the designation of the unit,
2 sufficient for identification.

3 (3) The claim shall be verified by the oath of some
4 person having knowledge of the facts and shall be filed with
5 and recorded by the recording officer in the book kept for
6 the purpose of recording liens filed under ~~71-3-501~~ Title
7 71, chapter 3, part 5. The record shall be indexed as deeds
8 and other conveyances are required by law to be indexed."

9 Section 16. Section 70-23-608, MCA, is amended to
10 read:

11 "70-23-608. Foreclosure of lien under claim for common
12 expenses -- action without foreclosure. (1) The proceedings
13 to foreclose liens created by 70-23-607 shall conform as
14 nearly as possible to the proceedings to foreclose liens
15 created by ~~71-3-501~~ Title 71, chapter 3, part 5. The lien
16 may be enforced by the manager acting on behalf of the
17 association of unit owners.

18 (2) An action to recover a money judgment for unpaid
19 common expenses may be maintained without foreclosing or
20 waiving the lien securing the claim for common expenses."

21 NEW SECTION. Section 17. Repealer. Sections 71-3-501
22 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

23 NEW SECTION. Section 18. Codification instruction.
24 Sections 1 through 12 are intended to be codified as an
25 integral part of Title 71, chapter 3, part 5, and the

1 provisions of Title 71, chapter 3, part 5, apply to sections
2 1 through 12.

3 NEW SECTION. Section 19. Saving clause. This act does
4 not affect rights and duties that matured, penalties that
5 were incurred, or proceedings that were begun before the
6 effective date of this act.

7 NEW SECTION. Section 20. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 21. Applicability. This act
14 applies to real estate improvement contracts made after
15 September 30, 1987.

-End-

1 SENATE BILL NO. 20

2 INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,
3 RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN
4 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
8 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
9 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
10 MCA; AND PROVIDING AN APPLICABILITY DATE."
11

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

13 NEW SECTION. Section 1. Scope. This part creates and
14 provides for the attachment and enforceability of a
15 construction lien against real estate in favor of a person
16 furnishing services or materials under a real estate
17 improvement contract. A nonconsensual lien against real
18 estate for improvements made thereon may not arise except as
19 provided in this part.

20 NEW SECTION. Section 2. Definitions. (1)
21 "~~Commencement~~ of work" means the date of the first visible
22 change in the physical condition of the real estate caused
23 by the first person furnishing services or materials
24 pursuant to a particular real estate improvement contract.

25 (2) "Construction lien" or "lien" means a lien against

1 real estate arising under this part.

2 (3) (a) "Contracting owner" means a person who owns an
3 interest in real estate and who, personally or through an
4 agent, enters into an express or implied contract for the
5 improvement of the real estate.

6 (b) For the purpose of determining whether a person is
7 a contracting owner, agency is presumed, in the absence of
8 clear and convincing evidence to the contrary:

9 (i) between employer and employee;

10 (ii) between spouses;

11 (iii) between joint tenants; and

12 (iv) among tenants in common.

13 (4) (a) "Contract price" means the amount agreed upon
14 by the contracting parties for performing services and
15 furnishing materials covered by the contract, increased or
16 diminished by:

17 (i) the price of change orders or extras;

18 (ii) any amounts attributable to altered
19 specifications; or

20 (iii) a breach of contract, including but not limited
21 to defects in workmanship or materials.

22 (b) If no price is agreed upon by the contracting
23 parties, the contract price means the reasonable value of
24 all services or materials covered by the contract.

25 (5) (a) "Real estate improvement contract" means an

THIRD READING

1 agreement to perform services, including labor, or to
 2 furnish materials for the purpose of producing a change in
 3 the physical condition of the real estate, including:

4 (i) alteration of the surface by excavation, fill,
 5 change in grade, or change in a shore, bank, or flood plain
 6 of a stream, swamp, or body of water;

7 (ii) construction or installation on, above, or below
 8 the surface of land;

9 (iii) demolition, repair, remodeling, or removal of a
 10 structure previously constructed or installed;

11 (iv) seeding, sodding, or other landscape operation;

12 (v) surface or subsurface testing, boring, or
 13 analysis; and

14 (vi) preparation of plans, surveys, or architectural or
 15 engineering plans or drawings for any change in the physical
 16 condition of the real estate, regardless of whether they are
 17 used to produce a change in the physical condition of the
 18 real estate.

19 (b) For the purpose of claiming a construction lien, a
 20 real estate improvement contract does not include:

21 (i) a contract for the mining or removal of timber,
 22 minerals, gravel, soil, sod, or things growing on the land
 23 or a similar contract in which the activity is primarily for
 24 the purpose of making the materials available for sale or
 25 use; or

1 (ii) a contract for the planting, cultivation, or
 2 harvesting of crops or for the preparation of the soil for
 3 planting of crops.

4 NEW SECTION. Section 3. Who may claim a construction
 5 lien -- limitation. A person who furnishes services or
 6 materials pursuant to a real estate improvement contract may
 7 claim a construction lien, only to the extent provided in
 8 this part, to secure the payment of his contract price.

9 NEW SECTION. Section 4. Limitation of lien for
 10 materials supplied. (1) A lien for furnishing materials
 11 arises only if:

12 (a) (i) the materials are supplied with the intent
 13 that they be used in the course of construction of or
 14 incorporated into the improvement in connection with which
 15 the lien arises; and

16 (ii) the intent described in subsection (1)(a)(i) can
 17 be shown by a contract of sale, a delivery order, delivery
 18 to the site by the lien claimant or at his direction, or by
 19 other evidence; and

20 (b) the materials are:

21 (i) incorporated in the improvement or consumed as
 22 normal wastage in construction operations;

23 (ii) specifically fabricated for incorporation into the
 24 improvement and not readily resalable in the ordinary course
 25 of the fabricator's business, even though the materials are

1 not actually incorporated into the improvement;

2 (iii) used for the construction or operation of
3 machinery or equipment used in the course of construction
4 and not remaining in the improvement, subject to diminution
5 by the salvage value of those materials; or

6 (iv) tools, appliances, or machinery used on the
7 particular improvement. However, a lien for supplying
8 tools, appliances, or machinery used on the improvement is
9 limited as provided by subsection (3).

10 (2) The delivery of materials to the site of the
11 improvement, whether by the lien claimant or by another,
12 creates a presumption that they were used in the course of
13 construction or were incorporated into the improvement.

14 (3) A lien arising for the supplying of tools,
15 appliances, or machinery under subsection (1)(b)(iv) is
16 limited as follows:

17 (a) if they are rented, the lien is for the reasonable
18 rental value for the period of actual use, including any
19 reasonable periods of nonuse provided for in the rental
20 contract; and

21 (b) if they are purchased, the lien is for the price
22 but arises only if they were purchased for use in the course
23 of the particular improvement and have no substantial value
24 after the completion of the improvement on which they were
25 used.

1 NEW SECTION. Section 5. Extent of lien. (1) A
2 construction lien extends to the interest of the contracting
3 owner in the real estate, as the interest exists at the
4 commencement of work or is thereafter acquired in the real
5 estate, subject to the provisions of this section.

6 (2) (a) If an improvement is located wholly on one or
7 more platted lots belonging to the contracting owner, the
8 lien applies to the improvement and to the lots on which the
9 improvement is located.

10 (b) If an improvement is not located wholly on one or
11 more platted lots, the lien applies to the improvement and
12 to the smallest identifiable tract or parcel of land on
13 which the improvement is located.

14 (3) If the improvement is to leased premises, the lien
15 attaches to the improvement and to the leasehold term.
16 Except as provided in subsection (4), it does not attach to
17 the lessor's interest unless he contracted for or agreed to
18 the improvement before it was begun.

19 (4) (a) A construction lien is not impaired to the
20 extent of the value of the work or improvement that is
21 severable from the real estate if the improvement is to
22 premises held by:

23 (i) a contracting owner who owns less than a fee
24 simple interest; or

25 (ii) a lessee and the lease is forfeited by the lessee.

1 (b) If the work or improvement may be removed without
2 harm to the rest of the real estate, the lienholder may have
3 the value determined, the work or improvement sold
4 separately, and the proceeds delivered to him to satisfy the
5 construction lien. The purchaser shall remove the work or
6 improvement within 45 days of the sale.

7 (5) If a contracting owner contracts for improvements
8 on real estate not owned by him as part of an improvement on
9 his real estate or for the purpose of directly benefitting
10 his real estate, there is a lien against the contracting
11 owner's real estate being improved or directly benefitted in
12 favor of persons furnishing services or materials to the
13 same extent as if the improvement had been on the
14 contracting owner's real estate.

15 NEW SECTION. Section 6. Amount of lien. (1) A person
16 who has furnished services or materials pursuant to a real
17 estate improvement contract is entitled to a lien for the
18 unpaid part of his contract price, subject to the provisions
19 of [section 4].

20 (2) A person's lien is reduced by the sum of the liens
21 of persons claiming construction liens through him.

22 NEW SECTION. Section 7. Notice of right to claim a
23 lien required -- exceptions. (1) The following are not
24 required to give notice of a right to claim a lien as
25 required by this section:

1 (a) a person who furnishes services or materials
2 directly to the owner at his request;

3 (b) a wage earner or laborer who performs personal
4 labor services for a person furnishing any service or
5 material pursuant to a real estate improvement contract;

6 (c) a person who furnishes services or materials
7 pursuant to a real estate improvement contract that relates
8 to a dwelling for five or more families; and

9 (d) a person who furnishes services or materials
10 pursuant to a real estate improvement contract that relates
11 to an improvement that is partly or wholly commercial in
12 character.

13 (2) A person who may claim a construction lien
14 pursuant to this part shall give notice of his right to
15 claim a lien to the contracting owner in order to claim a
16 lien.

17 (3) This notice must be given no later than 20 days
18 after the date on which the services or materials are first
19 furnished to the contracting owner. If notice is not given
20 within this period, a lien is enforceable only for the
21 services or materials furnished within the 20-day period
22 before the date on which notice is given.

23 (4) The notice of the right to claim a lien must be
24 sent to the contracting owner by certified mail or delivered
25 personally to him. NOTICE BY CERTIFIED MAIL IS EFFECTIVE ON

1 THE DATE THE NOTICE IS MAILED.

2 (5) A person who may claim a lien shall ALSO file with
3 the clerk and recorder of the county in which the improved
4 real estate is located a copy of the notice of the right to
5 claim a lien, in the form required by [section 8]. This copy
6 must be filed no later than ~~20 days after the date on which~~
7 ~~the services--or--materials--were--first--furnished--to--the~~
8 ~~contracting--owner-~~ 5 BUSINESS DAYS AFTER THE DATE ON WHICH
9 THE NOTICE OF THE RIGHT TO CLAIM A LIEN IS GIVEN TO THE
10 CONTRACTING OWNER.

11 (6) At the request of any subcontractor or material
12 supplier who may claim a lien through him, a person shall
13 furnish to the requestor within 5 business days:

- 14 (a) a description of the real estate being improved,
15 sufficient to identify it; and
- 16 (b) the name and address of the contracting owner.

17 NEW SECTION. Section 8. Content of notice of right to
18 claim a lien. (1) The notice of the right to claim a lien
19 must be in writing and state that it is a notice of a right
20 to claim a lien against real estate for services or
21 materials furnished in connection with improvement of the
22 real estate.

23 (2) The notice must contain a description sufficient
24 to identify the real estate against which the lien may be
25 claimed.

1 (3) The notice must contain the following information
2 and be in substantially the following form:

3 NOTICE OF THE RIGHT TO CLAIM A LIEN
4 WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY
5 CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.
6 To:..... Date of mailing:
7 (Owner)
8
9 (Owner's address)

10 This is to inform you that has begun to
11 provide (description of services or materials)
12 ordered by for improvements to property you own.
13 The property is located at

14 A lien may be claimed for all services and materials
15 furnished to you, if this notice is given to you within 20
16 days after the date on which the services or materials
17 described are first furnished to you. If the notice is not
18 given within that time, a lien is enforceable for only the
19 services or materials furnished within the 20-day period
20 before the date on which the notice is given.

21 Even if you or your mortgage lender have made full
22 payment to the contractor who ordered these services or
23 materials, your property may still be subject to a lien
24 unless the subcontractor or material supplier providing this
25 notice is paid. THIS IS NOT A LIEN. It is a notice sent to

1 you for your protection in compliance with the construction
2 lien laws of the state of Montana.

3 This notice has been sent to you by:

4 NAME:..... IF YOU HAVE ANY
5 ADDRESS:..... QUESTIONS ABOUT THIS
6 TELEPHONE:..... NOTICE, PLEASE CALL US

7 IMPORTANT INFORMATION ON REVERSE SIDE

8
9 IMPORTANT INFORMATION FOR YOUR PROTECTION

10 Under Montana's laws, those who work on your property
11 or provide materials and are not paid have a right to
12 enforce their claim for payment against your property. This
13 claim is known as a construction lien.

14 If your contractor fails to pay subcontractors or
15 material suppliers or neglects to make other legally
16 required payments, the people who are owed money may look to
17 your property for payment, even if you have paid your
18 contractor in full.

19 The law states that all people hired by a contractor to
20 provide you with services or materials are required to give
21 you a notice of the right to lien to let you know what they
22 have provided.

23 WAYS TO PROTECT YOURSELF ARE:

24 -- RECOGNIZE that this notice of delivery of services
25 or materials may result in a lien against your property

1 unless all those supplying a notice of the right to lien
2 have been paid.

3 -- LEARN more about the construction lien laws and the
4 meaning of this notice by contacting an attorney or the firm
5 sending this notice.

6 -- WHEN PAYING your contractor for services or
7 materials, you may make checks payable jointly to the
8 contractor and the firm furnishing services or materials for
9 which you have received a notice of the right to lien.

10 -- OBTAIN EVIDENCE that all firms from whom you have
11 received a notice of the right to lien have been paid or
12 have waived the right to claim a lien against your property.

13 -- CONSULT an attorney, a professional escrow company,
14 or your mortgage lender.

15 NEW SECTION. Section 9. Attachment of lien -- filing.

16 (1) A person's lien does not attach and may not be enforced
17 unless, after entering into the contract under which the
18 lien arises, he has filed a lien not later than 90 days
19 after:

- 20 (a) his final furnishing of services or materials; or
 - 21 (b) the owner files a notice of completion pursuant to
- 22 71-3-512.

23 (2) (a) The lien must be filed with the county clerk
24 and recorder of the county in which the improved real estate
25 is located.

1 (b) The person claiming the lien must certify to the
2 county clerk and recorder that a copy of the lien has been
3 served on the owner of record as provided in 71-3-513(2).

4 (3) The lien statement must contain:

5 (a) the name and address of the person claiming the
6 lien;

7 (b) a description of the real property against which
8 the lien is claimed sufficient to identify it;

9 (c) the name of the contracting owner;

10 (d) the name and address of the party with whom the
11 person claiming the lien contracted to furnish services or
12 materials;

13 (e) a description of the services or materials
14 provided;

15 (f) the amount unpaid for services or materials or, if
16 no amount is fixed by the contract, a good faith estimate of
17 the amount unpaid, designated as an estimate;

18 (g) (i) the date on which the services or materials
19 were first furnished; and

20 (ii) the date on which the services or materials were
21 last furnished; and

22 (h) a declaration that a notice of a right to claim a
23 lien was given to the contracting owner or an explanation of
24 why such notice was not required.

25 (4) A lien notice that is filed pursuant to this

1 section before the person claiming the lien has
2 substantially furnished services or materials pursuant to a
3 real estate improvement contract is not effective to create
4 a construction lien unless the lien claimant is prevented
5 from fulfilling his obligation because of the fault of
6 another person.

7 (5) Except as provided in subsection (6), a lien
8 attaches at the commencement of work as defined in [section
9 2].

10 (6) A lien attaches when it is filed if it is for the
11 preparation of plans, surveys, or architectural or
12 engineering plans or drawings for any change in the physical
13 condition of land or structures that are not used incident
14 to producing a change in the physical condition of the real
15 estate.

16 NEW SECTION. Section 10. Content of lien notice. The
17 notice for the lien provided for in [section 9] may be filed
18 in substantially this form:

19 Construction Lien

20 I, (insert name and address of person claiming
21 the construction lien), claim a construction lien pursuant
22 to Title 71, chapter 3, of the Montana Code Annotated.

23 I claim this lien against (give description of
24 the real property against which the lien is claimed
25 sufficient to identify it). The contracting owner is

1 (insert name of the person who owns the real estate and name
2 of the person who entered into the contract to improve it).

3 At the request of (give name and address of
4 party with whom person claiming the lien contracted to
5 furnish services or materials), I provided the following:
6 (give description of the services or materials
7 provided). The amount remaining unpaid is (insert
8 the amount unpaid; if no amount was fixed by the contract,
9 give your good faith estimate of the amount and identify it
10 as an estimate).

11 I first furnished these services or materials on
12 (give date) and last furnished services or materials
13 on (give date; if the date has not yet arrived,
14 insert an estimate of the date on which services or
15 materials will be last furnished and identify the date as an
16 estimate).

17 I gave notice of the right to claim a lien as required
18 by [section 7] on (give date) to (give name
19 of contracting owner). . . . (If it is not required to
20 give a notice of the right to claim a lien, state the reason
21 it is not required.)

22 NEW SECTION. Section 11. Priority among holders of
23 construction liens. (1) There is equal priority between or
24 among construction lien claimants who contribute to the same
25 real estate improvement project, regardless of the date on

1 which each lien claimant first contributed services or
2 materials and regardless of the date on which he filed his
3 notice of lien. When the proceeds of a foreclosure sale are
4 not sufficient to pay all construction lien claimants in
5 full, each claimant will receive a pro rata share of the
6 proceeds based on the amount of his respective lien.

7 (2) Construction liens attaching at different times
8 have priority in the order of attachment.

9 NEW SECTION. Section 12. Priority of construction
10 liens as against claims other than construction lien claims.

11 (1) A construction lien arising under this part has priority
12 over any other interest, lien, mortgage, or encumbrance that
13 may attach to the building, structure, or improvement or on
14 the real property on which the building, structure, or
15 improvement is located and which is filed after the
16 construction lien attaches.

17 (2) An interest, lien, mortgage, or encumbrance that
18 is filed before the construction lien attaches has priority
19 over a construction lien arising under this part, except as
20 provided in subsections (3) and (4).

21 (3) A construction lien has priority, to the extent of
22 the value of the work or improvement that is severable, over
23 an interest, lien, mortgage, or encumbrance that is filed
24 before the construction lien attaches. If the work or
25 improvement may be removed without harm to the rest of the

1 real property, the lienholder may have the value determined,
2 the work or improvement sold separately on foreclosure, and
3 the proceeds delivered to him to satisfy the construction
4 lien.

5 (4) A construction lien has priority over any
6 interest, lien, mortgage, or encumbrance that is filed
7 before the construction lien attaches if that interest,
8 lien, mortgage, or encumbrance was taken to secure advances
9 made for the purpose of paying for the particular real
10 estate improvement being liened.

11 Section 13. Section 71-3-512, MCA, is amended to read:

12 "71-3-512. Notice of completion. (1) The contracting
13 owner may file a notice of completion at any time after the
14 completion of any work or improvement.

15 (2) The following acts or events constitute completion
16 of any work or improvement for the purpose of filing a
17 notice of completion:

18 (a) the written acceptance by the contracting owner,
19 his agent, or representative of the building, improvement,
20 or structure. The filing of a notice of completion shall not
21 be considered as an acceptance of the building, improvement,
22 or other structure.

23 (b) the cessation from labor for 30 days upon any
24 building, improvement, or structure, or the alteration,
25 addition to, or repair thereof.

1 (3) The notice of completion together with an
2 affidavit of publication as hereinafter required shall be
3 filed in the office of the county clerk and recorder of the
4 county where the property is situated and the notice shall
5 set forth:

6 (a) the date when the work or improvement was
7 completed or the date on which cessation from labor occurred
8 first and the period of its duration;

9 (b) the contracting owner's name ~~or owners' names;--as~~
10 ~~the--case--may--be;--the~~ and address ~~of the owner or addresses~~
11 ~~of the owners;--as the case may be;~~ and the nature of the
12 title, if any, of the person signing the notice;

13 (c) a description of the property sufficient for
14 identification;

15 (d) the name of the contractor, if any.

16 (4) The notice shall be verified by the contracting
17 owner or his agent.

18 (5) A copy of the notice of completion shall be
19 published once each week for 3 successive weeks in a
20 newspaper of general circulation in the county where the
21 land on which the work or improvement was performed is
22 situated.

23 (6) The contracting owner shall give a copy of the
24 notice of completion to any person who has given the
25 contracting owner a notice of a right to claim a lien."

1 Section 14. Section 71-3-516, MCA, is amended to read:

2 "71-3-516. Substitution of bond allowed -- filing --
3 amount -- condition. (1) Whenever a mechanic's construction
4 lien has been filed upon real property or any improvements
5 thereon, ~~as enumerated in 71-3-501~~, the contracting owner of
6 any interest in such property, whether legal or beneficial,
7 may, at any time before the lien claimant has commenced an
8 action to foreclose such lien, file a bond with the clerk of
9 the district court in the county in which such property is
10 situated or, if such property is situated in more than one
11 county, with the clerk of the district court of any county
12 in which a part of such property is situated.

13 (2) Such bond shall be in an amount 1 1/2 times the
14 amount of the lien and shall be either in cash or written by
15 a corporate surety company. If written by a corporate
16 surety, such bond shall be approved by a judge of the
17 district court with which such bond is filed.

18 (3) The bond shall be conditioned that if the lien
19 claimant shall be finally adjudged to be entitled to recover
20 upon the claim upon which his lien is based, the principal
21 or his sureties shall pay to such claimant the amount of his
22 judgment, together with any interest, costs, attorneys'
23 fees, and other sums which such claimant would be entitled
24 to recover upon the foreclosure of a lien against the
25 principal."

1 Section 15. Section 70-23-607, MCA, is amended to
2 read:

3 "70-23-607. Claim for common expenses -- priority of
4 lien -- contents -- recording. (1) Whenever an association
5 of unit owners acting through its manager furnishes to a
6 unit any services, labor, or material lawfully chargeable as
7 common expenses, the association of unit owners, upon
8 complying with subsection (2) of this section, shall have a
9 lien upon the individual unit and the undivided interest in
10 the common elements appertaining to such unit for the
11 reasonable value of such common expenses, and the lien shall
12 be prior to all other liens or encumbrances upon the unit
13 except:

- 14 (a) tax and assessment liens; and
- 15 (b) a first mortgage or trust indenture of record.

16 (2) An association of unit owners claiming the
17 benefits of subsection (1) of this section shall record in
18 the county in which the unit or some part thereof is located
19 a claim containing:

- 20 (a) a true statement of the account due for such
21 common expenses after deducting all just credits and
22 offsets;
- 23 (b) the name of the owner of the unit or reputed
24 owner, if known;
- 25 (c) a description of the property where the common

1 expenses were furnished and the designation of the unit,
2 sufficient for identification.

3 (3) The claim shall be verified by the oath of some
4 person having knowledge of the facts and shall be filed with
5 and recorded by the recording officer in the book kept for
6 the purpose of recording liens filed under ~~71-3-501~~ Title
7 71, chapter 3, part 5. The record shall be indexed as deeds
8 and other conveyances are required by law to be indexed."

9 Section 16. Section 70-23-608, MCA, is amended to
10 read:

11 "70-23-608. Foreclosure of lien under claim for common
12 expenses -- action without foreclosure. (1) The proceedings
13 to foreclose liens created by 70-23-607 shall conform as
14 nearly as possible to the proceedings to foreclose liens
15 created by ~~71-3-501~~ Title 71, chapter 3, part 5. The lien
16 may be enforced by the manager acting on behalf of the
17 association of unit owners.

18 (2) An action to recover a money judgment for unpaid
19 common expenses may be maintained without foreclosing or
20 waiving the lien securing the claim for common expenses."

21 NEW SECTION. Section 17. Repealer. Sections 71-3-501
22 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

23 NEW SECTION. Section 18. Codification instruction.
24 Sections 1 through 12 are intended to be codified as an
25 integral part of Title 71, chapter 3, part 5, and the

1 provisions of Title 71, chapter 3, part 5, apply to sections
2 1 through 12.

3 NEW SECTION. Section 19. Saving clause. This act does
4 not affect rights and duties that matured, penalties that
5 were incurred, or proceedings that were begun before the
6 effective date of this act.

7 NEW SECTION. Section 20. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 21. Applicability. This act
14 applies to real estate improvement contracts made after
15 September 30, 1987.

-End-

1 SENATE BILL NO. 20

2 INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,

3 RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN

4 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
8 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
9 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
10 MCA; AND PROVIDING AN APPLICABILITY DATE."
11

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

13 NEW SECTION. Section 1. Scope. This part creates and
14 provides for the attachment and enforceability of a
15 construction lien against real estate in favor of a person
16 furnishing services or materials under a real estate
17 improvement contract. A nonconsensual lien against real
18 estate for improvements made thereon may not arise except as
19 provided in this part.

20 NEW SECTION. Section 2. Definitions. (1)
21 "Commencement of work" means the date of the first visible
22 change in the physical condition of the real estate caused
23 by the first person furnishing services or materials
24 pursuant to a particular real estate improvement contract.

25 (2) "Construction lien" or "lien" means a lien against

THERE ARE NO CHANGES ON
SB 20 AND WILL NOT BE
REPRINTED. PLEASE REFER
TO SECOND READING (YELLOW)
OR THIRD READING (BLUE)
FOR COMPLETE TEXT.

REFERENCE BILL