

2009 SENATE JUDICIARY

SB 2250

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2250

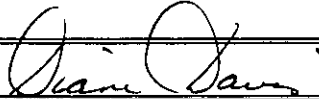
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8015 – 6:49 in

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Related to outdated mechanic's lien provisions.

Malcom Brown – On behalf of the Real Property Section of the State Bar Assoc. See written testimony. The major thrust of this bill is to revise the mechanic's lien law which is a lien law not filed by mechanics but by construction contractors, suppliers and labors. They want to change mechanic's lien to construction liens. He proposes an amendment to the bill.

Senator Nething asks why we are eliminating the notice of intent.

Brown – Said in his opinion it served no purpose.

Senator Nething – Asks the difference between a mechanic's lien and a construction lien.

Brown – Said they are changing the term, they will be no such thing as a mechanic's lien.

Discussion follows on the notice of intention. They are eliminating the notice of intention, they are keeping the 3 years but it now starts at the time you first work on the project.

Senator Nething – Asks about section 11.1814. Does it refer to personal property?

Brown – Yes, but they do not want construction lien's in there or mechanic's liens.

Senator Olafson – Just makes sure a mechanic can still file liens.

Senator Fiebiger – Asks if the word "reasonable" could be added before attorney's fees.

Brown – Replied that would not be a problem.

Howard Malloy – Representing the ND Land Title Association, in support of this bill.

Close the hearing on 2250

Committee does a verbal vote for 2 amendments

All yes

Senator Lyson motions do pass as amended, seconded by Senator Olafson

Vote 6-0

Senator Nething will carry

Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB2250
BILL/RESOLUTION NO.

Brown Amendment

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Nelson Seconded By Sen Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal pass on the amendments

Date: 1/28/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES *SB 2250*
BILL/RESOLUTION NO. *Fiebiger Amendment*

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen. Fiebiger Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) _____ (N) _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Verbal yes vote

Date: 1/28/09
Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2250

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By Sen Lyson Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen Nething

If the vote is on an amendment, briefly indicate intent:

2 amendments verbal pass

REPORT OF STANDING COMMITTEE

SB 2250: Judiciary Committee (Sen. Nethling, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2250 was placed on the Sixth order on the calendar.

Page 1, line 14, overstrike "mechanic's liens,"

Page 1, line 15, remove "construction liens."

Page 6, line 7, after "and" insert "reasonable"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2250

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2250

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10967

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2250.

Malcolm Brown, Real Property Section of State Bar Association of ND: Support (attachment).

Rep. Delmore: In Section 14, we are protecting the person being taken advantage of, to recover costs.

Malcolm Brown: That section will permit the owner that successfully contests the validity or accuracy of a construction lien to recover their costs and reasonable attorney's fees.

Rep. Griffin: What was the reason that the attorney's fees portion of the notice of intention to claim a lien was left in the statute.

Malcolm Brown: We missed it; those words should be taken out.

Rep. Klemin: On that particular section, Section 14, the total amount is all costs and attorney's fees; that's quite a bit different from the usual attorney's fee provisions, where it usually says reasonable attorney's fees, and then the court has some discretion to decide what's reasonable.

Malcolm Brown: The term reasonable was added in the Senate.

Rep. Klemin: Okay. Then, at the beginning, in Section 1 of the engrossed bill, on the original bill, on line 14, the words "mechanic's liens" was not lined through, but it is on the engrossed bill; however, on the original bill, there was the word "construction liens" was inserted but it's not on the engrossment.

Malcolm Brown: That was the other change. That came up with the County Recorders. This section deals with what Recorders are to remove and destroy; it has more to do with personal property type of liens than the real estate liens. So it was at their suggestion that, obviously, mechanic's liens could be taken out because there is no such thing. But those construction liens did not need to be in that section. You will note that line 17 technically doesn't belong in the county recorder's section.

Rep. Klemin: Are there any other changes between the two bills.

Malcolm Brown: I believe not.

Rep. Koppelman: Did the State Bar Association Real Property section consult with the home builders or anyone of that nature that actually does this kind of work about these changes; or was this just the attorneys that file these papers.

Malcolm Brown: We did not formally do that. They have contractors who are clients and sit on this committee, they have all filed mechanic's liens.

Rep. Koppelman: What's the harm in the Notice to File a Lien, in the current law?

Malcolm Brown: There would be no harm, other than just an extra step that does not need to be required, as part of the practical requirements.

Rep. Koppelman: Does it not give advance notice to the property owner so that they don't find out one day that their property is encumbered. In other words, if someone has an issue or problem, you would assume that the property owner would know that, but they may not. There may be times where somebody does some work on a property, maybe they are a

subcontractor even working on a new construction or a remodeling job, and they don't get paid and they file a construction lien on the property. All of a sudden the owner finds out that there is a lien when a title search is done. That would be inconvenient to say the least.

Malcolm Brown: A notice of lien creates an encumbrance; just by filing the notice of intention of filing a lien. When you file a notice, you have created an encumbrance. Under current law, after filing a notice, at some time within three years after that date, you have to file suit. So I guess, while there might be some unaware owners about not paying, I can't believe that any owner would not know what is going on. Again, filing a notice of a lien creates an encumbrance, just as only filing the lien would do.

Rep. Koppelman: Would there be a way to, I assume the intent in law initially with the provisions to file notice, was just that; for notification purposes. I see your point, saying that here is another filing, another fee, another step. Would there be a middle ground or a way to require that, before a lien can be filed, in other words of notice be given or shown to the owner of the property; similar to service of process, where if you are serving someone with a lawsuit or something like that. Somehow I'm sure that there's a step taken, but other than sort of ambushing the owner and filing on the property and the people find out about it later and they have to go through the process of getting it cleared up. If it isn't in dispute, then that would hopefully be resolved.

Malcolm Brown: From my point of litigating these matters, the notice doesn't do anything except cost a fee.

Rep. Koppelman: What's the problem?

Malcolm Brown: The problem is that you have to mail them a notice; we are just trying to simplify the procedure.

Rep. Zaiser: How prevalent is the term "construction lien" vs. "mechanic's liens". Will there be confusion in changing the terms.

Malcolm Brown: I'm not sure what other states may call it. Some may call it a "repairmen's lien". I can't see that it would be confusing for somebody from out of state.

Rep. Kretschmar: When I looked at the original bill, in section 1, you didn't cross out "mechanic's liens", but in the engrossed bill it is; so that when this bill becomes law and goes into effect, the county recorder's are going to know what to do with those old mechanic's liens that are laying back there and they can throw them away. Now, when you cross it out, in the engrossed bill, now the county recorder isn't going to know what to do with those old liens that are history back there.

Malcolm Brown: Again, this goes to documents that are kept by the county recorders. It doesn't affect the documents that are just of record in the tracking desk in the real estate records. They've got files where these documents are kept; they don't just have it in the tracking desk.

Rep. Kretschmar: You look in the book if you want information.

Malcolm Brown: There is a book of abstracts; there can be mechanic's liens that are 10 years old that are just laying there, you know you can ignore them. If it is two years old, you are going to list it as a lien unless they are released. They are listed as liens if they are three years and under.

Rep. Boehning: In section 9, you talked about no more than three years after the work is completed. So if the contractor builds the house or a subcontractor is working there, you have three years to file a claim.

Malcolm Brown: It is three years to file a lien, to perfect the lien now as long as you don't make me give you the notice, which could be two years later. Realistically, if you are

improving real property, and you haven't been paid in three years, maybe you should get in another line of work.

Rep. Boehning: What happens if the property changes hands; the property is sold that you are working on. Then what happens.

Malcolm Brown: That happens now where you may have an unsuspecting person. Typically the bank will require a new lien that will follow the property that happens now. So that doesn't change.

Rep. Hatlestad: If you file a lien against my property, am I notified that you are filing a lien, or am I just surprised when I sell the property.

Malcolm Brown: You would be given notice that the lien has been filed.

Rep. Hatlestad: By you or the contractor.

Malcolm Brown: The person filing the lien would notify the property owner.

Rep. Wolf: In section 9, you mentioned paying for work. I can envision someone building a house and maybe they have a little money trouble in paying; they pay a little bit and little bit, and then they can't pay for whatever reason. If the project is drawn out longer than 3 years, because you make a little payment here now and pay a little more later. In the end, does it go back to the first date that they started work on the project.

Malcolm Brown: I think a contractor would be aware of that three year statute of limitations. The three years relates to filing liens against the real estate. It does not affect his ability to collect on his contract, because that would be a different statute of limitations. Sure the project could go on, and everybody cooperating. I think if the contractor were sued, and he was concerned that he better have a lien, as opposed to just a lawsuit, that he would in fact file that within the three years.

Rep. Klemin: Where in here does it say that the owner is going to get notice of the filing of the construction lien?

Malcolm Brown: I'm not sure.

Rep. Klemin: I see on page 3, line 19, that the word "notice" is in there and probably should be taken out of that head note, because that seems to refer to the notice of intention.

Malcolm Brown: I'm not sure where that appears. Maybe there should be some kind of written notice; we were just trying to eliminate the two step process.

Rep. Klemin: I understand that, but it is probably appropriate to give the owner notice that a construction lien has been filed so that he actually doesn't find out about it, a couple of years later, when he tries to sell the property.

Malcolm Brown: In my experience, the contractor would sue to enforce the lien, probably in a short period of time, and that would provide notice.

Rep. Klemin: Sure, but I've seen mechanic's liens on record that have never been enforced. If you don't give the owner notice that it's actually there, he may not know about it, even though the contractor might know about it, if it's a subcontractor that has the lien.

Malcolm Brown: We did not intend to eliminate the notice of the lien. We only intended to eliminate the requirement of filing a notice to file a lien, and then having to wait for 15 days before you file your actual lien.

Rep. Klemin: I see a couple of places where we have to make some amendments that we've talked about already, but in the meantime you could take a look at that issue and let us know, so that we do have a provision in here for giving notice of the filing of the construction lien. It may already be in here or in the law that's not changing.

Malcolm Brown: I'll do that.

Rep. Boehning: I heard about this happening in Fargo. Someone closed on a home, and then once they are in the house, within 6 months or a year later, they get notice of a lien, the contractor hasn't been paid. The contractor was paid, but a subcontractor wasn't paid by the contractor. Now the contractor doesn't pay the subcontractor. What recourse does the homeowner have because this wasn't their bill?

Malcolm Brown: I guess most lending agencies, especially on a new home, are going to require lien waivers from all the subcontractors, the contractor, etc. If they don't get them, the homeowner may not know about it, but from the lender's standpoint I would be concerned if I can't get a lien waiver from the plumber. But that happens today, and this bill wouldn't change that.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2250

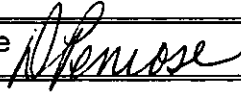
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11096

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at Engrossed SB 2250.

Rep. Klemin: Explained amendment 90617.0301. We asked Malcolm Brown to find out if a Notice is provided for in the law or in this bill. It turns out that it isn't. So Malcolm proposed a couple of amendments, one of which is to give a written notice that the lien is going to be claimed. The notice would have to be given to the owner 10 days before the recording of the construction lien. So on page 3, line 1, after "lien" insert "-Notice". Then on page 3, line 16, after the period insert "written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien."; page 3, line 19, overstrike "Notice-"; page 6, line 6, remove "or of a notice of intention to claim a construction lien". I move the amendment.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote, motion carried.

Rep. Delmore: I move that we remove section 1, on page 1, lines 9-19.

Rep. Boehning: Second.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended.

What are the committee's wishes?

Rep. Boehning: I move a Do Pass as amended.

Rep. Koppelman: Second.

12 YES 1 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Koppelman

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2250

Page 3, line 1, after "lien" insert "- Notice"

Page 3, line 16, after the period insert "Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien."

Page 3, line 19, overstrike "Notice -"

Page 6, line 6, remove "or of a notice of intention to claim a construction lien"

Renumber accordingly

VR
3/17/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2250

Page 1, line 3, remove "11-18-14,"

Page 1, remove lines 9 through 19

Page 3, line 1, after "lien" insert "- Notice"

Page 3, line 16, after the period insert "Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien."

Page 3, line 19, overstrike "Notice -"

Page 6, line 6, remove "or of a notice of intention to claim a construction lien"

Renumber accordingly

Date: 3/17/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2250

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee LC Amendment # _____

Action: DP DP / As Amended & Rerefer to Approp.
 DNP DNP / As Amended

Motion Made By Rep. Boehning Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 (No) 1 (Absent) 0

Floor Carrier: Rep. Koppelman

Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2250, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed SB 2250 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "11-18-14,"

Page 1, remove lines 9 through 19

Page 3, line 1, after "**lien**" insert "**- Notice**"

Page 3, line 16, after the period insert "Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien."

Page 3, line 19, overstrike "**Notice -**"

Page 6, line 6, remove "or of a notice of intention to claim a construction lien"

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2250

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2250

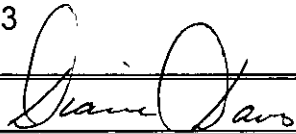
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/20/09

Recorder Job Number: 12003

Committee Clerk Signature



Minutes:

Senator Nething, Chairman

Representative Koppelman

Senator Olafson

Representative Kretschmar

Senator Fiebiger

Representative Griffin

Senator Nething asks Representative Koppelman explains the amendments put on by the House. Rep. Koppelman said they did some clean up changes recommended by the Bar Association. The bigger change on page 3, looking at the original law and how the bill proposes to amend it, it basically takes out the requirement of filing a notice. He said the House committee felt strongly about having some notice before a lien is filed. Filing a lien is not always correct, maybe it is a dispute. They felt by requiring a certified letter indicating the intent of filing a lien that could well lead to negotiations or settlement. Rep. Griffin says under current law you have to record the notice of intention to file a lien, then record the lien with the court, so even though there was a notice in statute you had the two step process. It made sense to them to move down to a one filing process but you should also have notice. Senator Nething asked if they discussed with the Bar committee the changes. Rep. Griffin said yes, they agreed with the notice. He said Malcom Brown worked on the amendments. Senator

Nothing said on section one the only change on the bill was to change mechanics liens to construction liens, he asks why did the House remove the whole section. Rep. Koppelman said those that proposed that amendment in the House committee was that it had to do with removing or destroying documents, they told them they don't keep those documents anymore so it was unnecessary to have them remove them. Senator Nothing responds that it seems to him if you take that section out they will have to keep them. This gives them permission to remove and destroy them. Rep. Griffin said his understanding from the testimony at the time was that they are currently not recording them, they don't have the files there anyway to destroy so leaving the term mechanic's liens in there is because if there are any that remain, but they are not keeping them right now. Rep. Koppelman explains that these are not recorded in the recorder's office as other legal things are, they become part of the title of the property rather than a record in the recorder's office. The thinking was having it here didn't make much sense. Senator Nothing said his concern is that we are now creating a construction lien, if we don't have construction liens as part of the authority to move and destroy, they will have to keep construction liens. Mechanics lines are different and we can take that out but there will be no authority for them to remove or destroy a construction lien. Rep. Koppelman said it is his understanding is that the recorder doesn't have those in the first place, they don't actually file them with the recorder. Therefore, they have no need to destroy or keep them, they don't have them, that is what they were told. Senator Nothing states the reason they don't have them is because they haven't had a construction lien before. Rep. Koppelman said that was the case with mechanic's lien too, apparently it became a note on the title, they never did go to the recorder's office. Senator Nothing asks if now the since they are replacing a mechanic's lien with a construction lien will it be recorded somewhere. Rep. Koppelman said it would be recorded with the deed or title to the property. Senator Nothing

reads from the bill where it says it will be recorded. He said having that requirement that it should be filed, if we give the same flexibility that mechanic's lien have previously we have to put construction lien in the new law. Rep. Griffin mentions that all they are doing is switching the word mechanic to construction, so that was in the law previously. He knows the question was asked and Malcom Brown and someone from the recorder's office, they don't have currently, they are not falling under 11-18-14. There is no document to destroy. Senator Nething wonders if they didn't overlook something, now we are creating a construction lien, we didn't have one before. The committee said they are confused where these would be recorded. Senator Fiebiger said he would like to run this by some attorneys to see what they think. Senator Nething said he wants to make sure if they are substituting a construction lien with a mechanic's lien that the recorder can deal with the construction lien as he did with the mechanic's lien. He wonders if we need to keep section one to resolve this. Senator Nething asks Senator Fiebiger to talk to Malcom Brown. Rep. Koppelman said the real public policy change in the amendments has more to do with the issue of wanting folks to be notified. Senator Nething adjourned, subject call of the chair.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2250

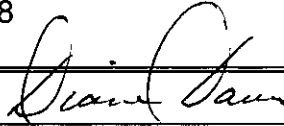
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/22/09

Recorder Job Number: 12128

Committee Clerk Signature



Minutes:

Senator Nething, Chairman

Representative Koppelman

Senator Olafson

Representative Kretschmar

Senator Fiebiger

Representative Griffin

Senator Nething said let the record show that everyone is present.

Senator Olafson – Moves that the Senate accede to House Amendments.

Senator Fiebiger – Seconded

Roll call vote – 6 yes, 0 no – motion carries

Senator Fiebiger will carry

Date: 4/20/09
4/22/09
 Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB2250 as (re) engrossed

Senate Judiciary Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House Amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Sen. Olafson Seconded By Sen. Fiebiger

Senators				Representatives			
	Attend	Y	N		Attend	Y	N
		e	o			e	o
		s				s	
Senator Nething-Chair	X	X		Rep. Koppelman	X	X	
Senator Olafson	X	X		Rep. Kretschmar	X	X	
Senator Fiebiger	X	X		Rep. Griffin	X	X	

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier Sen. Fiebiger House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2250, as engrossed: Your conference committee (Sens. Nething, Olafson, Fiebiger and Reps. Koppelman, Kretschmar, Griffin) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 907 and place SB 2250 on the Seventh order.

Engrossed SB 2250 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2250

Testimony of Malcolm H. Brown in support of SB 2250

My name is Malcolm H. Brown. I am an attorney appearing on behalf of the Real Property Section of the State Bar Association of North Dakota. This bill was drafted and introduced by Senators Holmberg and Triplett at the request of our Section.

The major thrust of this bill is to revise the "mechanic's" lien law found in Chapter 35-27 of the Century Code and calling it a "construction" lien, which is really what it is. Mechanic's liens/construction liens are permitted under North Dakota law for persons that make improvements to real estate.

Sections 1, 2, 3, 4 and 5 are proposed amendments to other sections of the Century Code to eliminate the term "mechanic's" and substitute the term "construction".

Section 6 through 15 of the bill is a re-writing of the existing law to substitute the term "construction" for "mechanic's" as to the statement of lien. Some additions suggested by our Section are found in Section 9 of the bill where we are proposing a statute of limitations on the filing of a lien to be three years after the date of the first item of materials is furnished.

Section 14 is proposing a new section to Chapter 35-27 that would permit an owner that contests the validity of a construction lien in district court, in other words, the lawsuit by the person claiming the lien, must be awarded all costs and attorney's fees incurred by the owner. Our committee is aware that on occasion construction lien situations have taken place where the threat of

filing a lien or the filing of a notice of intention to claim a lien has been done in order to coerce an owner into settling a situation as opposed to litigating it. This new section would certainly cause an individual that might have an ambiguous construction lien from filing same in order to secure some settlement.





PROPOSED AMENDMENTS TO SENATE BILL NO. 2250

Page 1, line 14, overstrike "mechanic's liens,"

Page 1, line 15, remove "construction liens."

Re-number accordingly



Testimony of Malcolm H. Brown in support of SB 2250

My name is Malcolm H. Brown. I am an attorney appearing on behalf of the Real Property Section of the State Bar Association of North Dakota. This bill was drafted and introduced by Senators Holmberg and Triplett at the request of our Section.

The major thrust of this bill is to revise the “mechanic’s” lien law found in Chapter 35-27 of the Century Code and calling it a “construction” lien, which is really what it is. Mechanic’s liens/construction liens are permitted under North Dakota law for persons that make improvements to real estate.

Initially we are proposing that the current law that requires that the claimant file a “notice of intent to claim lien” (35-27-05 NDCC) be repealed as it seems redundant to file a notice when a claimant can just file the lien. Other sections to be repealed, 35-27-11 and 12 deal with that same topic. We are also suggesting the repeal of 35-27-26 that makes the filing of an “unlawful” lien a misdemeanor. Section 14 allowing for the recovery of attorneys fees might be a better tool for that purpose.

Sections 1, 2, 3, 4 and 5 are proposed amendments to other sections of the Century Code to eliminate the term “mechanic’s” and substitute the term “construction”.

Section 6 through 15 of the bill is a re-writing of the existing law to substitute the term “construction” for “mechanic’s” as to the statement of lien. Some additions suggested by our Section are found in Section 9 of the bill where we are proposing a statute of

limitations on the filing of a lien to be three years after the date of the first item of materials is furnished.

Section 14 is proposing a new section to Chapter 35-27 that would permit an owner that contests the validity of a construction lien in district court, in other words, the lawsuit by the person claiming the lien, must be awarded all costs and attorney's fees incurred by the owner. Our committee is aware that on occasion construction lien situations have taken place where the threat of filing a lien or the filing of a notice of intention to claim a lien has been done in order to coerce an owner into settling a situation as opposed to litigating it. This new section would certainly cause an individual that might have an ambiguous construction lien from filing same in order to secure some settlement.