2011 HOUSE POLITICAL SUBDIVISIONS

HB 1151

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1151
January 20, 2011
Job # 13162

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to filing deadlines for a repairman's lien.

Minutes: Testimony 1, 2, 3

Chairman Johnson: Opened the hearing on HB 1151.

Rep. Froseth: Read this information from Robert Palmer too. (See testimony #1 & #2).

Rep. Klemin: I recall a repair's lien for things like if somebody fixed your car and a mechanic's lien was used where someone did work on real property. I am wondering if this bill is really amending the right section or not.

Rep. Froseth: This section of the statue that is being amended is Section 35-13-03. Section 35-13-01 also deals with repairman's lien but that doesn't have the timeframe in it.
The agricultural lien is in a different section. It is in 35-13-02 is the timeframe when to file.

Rep. Klemin: Is that the repairman's lien or a mechanic's lien?

Rep. Froseth: 35-13-02 says the Secretary of State shall proscribe on form to obtain the lien under this section. That is a repairman's lien statue.

Rep. Klemin: The testimony you gave seemed to be related to construction projects like working on a building or on land which is a mechanic's lien, which is a different section. This bill might not be doing what you hoped it to be doing.

Rep. Froseth: It might not be. I am not sure. I did research those two sections of code and was satisfied they were on the repairman's construction lien. I don't know if it is different in another section or not.

Rep. Koppelman: I have always felt those sections of code are probably misnamed because you don't call someone working on property a mechanic. Did you find any

reason why the time periods are different in code for filing liens on various things? Why would agriculture have a wider window than oil or something else?

Rep. Froseth: I did not look into that. I think there are a lot of difference between and agriculture lien and a repairman's lien. Repairman's lien is probably a lot smaller amounts of money than an agriculture lien. I think if you are repairing a combine at the end of August and the farmer takes it out in the field and starts harvesting 90 days goes by quickly before he realizes that bill is past due and if that repairman wants to start filing a lien he has to start the proceeding within 90 days so he has to start the proceedings on filing on that farmer while he is in the busiest time of year. I think that was one of the reasons on changing the dates to give them more timeframe to work with.

Opposition:

Jack McDonald, Independent Community Banks of ND and ND Banker's Association: We oppose the bill because it doubles the timeframe for these common liens. This is the section that deals with personnel property. Basically it is the repair of vehicles. If it is a farm truck for car it is 90 days. If it is a combine it is 120 days and then if it is something that is used in production of oil and gas it is six months. This deals only with personnel property, not with agricultural property or not with real property. The problem is this lien takes a first place over any prior mortgages or any prior financing statements. It makes it very difficult when the bankers are trying to provide financing and operating loans for farmers and then when the farm comes in at the end of the season to pay off the loan to refinance for the coming season the bankers try to assess what the value of the property is and how much we can loan according to what the value of the real property is and also to the value of the personnel property. It is difficult to do that and in this case it is going to be six months later in comes a bill that takes priority over our financing statement and over the payoff we were counting on from the farmer. This law is one of the oldest laws in the books and it was enacted in 1877 and it has worked well. We would ask that this bill be defeated. It will really foul up the financing for farmers and ranchers.

Rep. Koppelman: I understand that banks loan money and they currently allow 120 days like agriculture and oil. This essentially deals with any real estate depending on which section we are talking about or any personnel property and why do you think it is good public policy for us to trump ate that timeframe and yet allow a longer timeframe for our two largest industries in the state, but not allow a small homeowner or small contractor doing a repair to your house have 6 months to file a lien if they are trying to work with you and you are just not paying your bill fast rather than take you to court right away?

Jack McDonald: Those timeframes have been set in law for many years and they have been accepted based upon the type and nature of the industry and the use of equipment and it has been something accepted and part of the operating procedures and the nature of the oil and gas business and the long time it takes to put up some equipment and do the drilling of the wells that is why that was established. The agriculture equipment was established for somewhat the same reason. Because it is

seasonal use and it takes some time. It is the same thing if you go to get a loan on your house they will only give you so much toward the mortgage on your house since you have so many liens against you. If someone could some in 6 months later and we are going to be prior to the lien you would not get that mortgage on your house.

Rep. Shirley Meyer: When you refinance on a farm and ranch there is very few things that your banker doesn't know about you. You indicated by your testimony that this could come as a surprise, I could quite possibly be an expert in this area, any kind of combine repair that you are doing, when you set down to refinance it is gone through with a fine tooth comb. I don't understand unless you mean if this bill is passed you would not have priority over what you owe the bank?

Jack McDonald: Yes, if you look at the statue before this one 35-13-01 it says it takes priority over any prior mortgage or lien. That is why our concern is there. I do liens for John Deere and there are surprise things that come up all the time.

Greg Tescher: Mid America Credit Union Association: I got the impression that we are concerned with the banks having too much control but that is not true of credit unions. When some people come in and apply for a loan they are not as candid as you would like them to be. If they think there is a bill out there that is going to jeopardize whether or not they get a line of credit they are going to be tempted not to say anything. I ask you maybe you want to buy some ones combine or vehicle; are you going to wait 6 months before you pay for that to find out whether or not someone is going to file a lien? It doesn't just impact financial institutions. It impacts all of you setting here today when you decide to buy something from a third party. If you buy something from a dealer you are OK since there is an exception under the uniform commercial code for that, but that exception does not apply if you buy an item from a regular person so if I am buying your car and there is a bill outstanding and the seller doesn't tell you could be quite surprised. Worse yet you could lose the vehicle or have to pay the bill. We buy property on eBay or the web all the time and we trust when we are dealing with some other consumer that they are going to be legitimate and there is not guarantee on that. Six months is too long and six months isn't into any other lien section. Why is it so important that we need to change just this one?
Wouldn't it be nice to have a uniform 90 days in all of it? When you are dealing with agriculture or mechanic's liens it is 90 days. I represent contractors and we don't have any trouble fitting within the 90 day limit for filing the mechanic's lien. If someone hasn't paid you after 60 days you should be getting nervous. I think 90 days is more than adequate for people for figure out we have a potential problem. Rep. Koppelman discussed the situation of having to take someone to court. You don't have to go to court to file a lien. You can simply file the lien that ties everything up and controls your priority and sometime later you can foreclosure on your lien if you can't collect. They are simply to file. Most of the time repairman's liens never come up. The reason is the repairman doesn't give you your car back unless you pay for it. I would urge a do not pass.

Rep. Koppelman: How early do you clients have a claim against a title of property that you finance and when does that occur?

Greg Tescher: We don't have priority on liens. We can advance the money, but the lien holder can come in and say you have a security interest in the vehicle or combine, but guess what we are owed $8000 for repairs.

Rep. Koppelman: You have an encumbrance on the title the moment you loan money on that piece of property whether it is an automobile or real estate. Someone doing repair work on that doesn't unless they file a lien.

Greg Tescher: That is correct.

Neutral: None

Hearing Closed.

2011 HOUSE STANDING COMMITTEE MINUTES

House Political Subdivisions Committee
Prairie Room, State Capitol

HB 1151
January 27, 2011
Job # 13552

☐ Conference Committee

Committee Clerk Signature

Minutes:

Chairman Johnson: Reopened the hearing on HB 1151.

Do Not Pass Motion Made By Rep. Zaiser: Seconded by Rep. Kretschmar:

Rep. Kretschmar: As I recall the gentleman who wanted the bill was talking about commercial stuff and real estate and this repairman's stuff is a lien on an automobile or tractor or something like that that is in his shop and as long as he keeps it in his shop he has a lien on it. If you want it, you pay the bill and I will give it to you. If they let it out then under current law they have 120 days to file a lien with the register of deeds or reporter in the county.

Rep. Beadle: I signed onto this bill as one of the co sponsors of it but the way it was explained to me was the intent isn't for mechanic's liens on property. It was more for a repair on your combine when you are starting harvest and there is 90 days and someone had a problem because the 90 days had expired after harvest so that is where this bill came from.

Vote: 10 Yes 0 No 4 Absent Carrier: Rep. Kretschmar

Hearing closed.

Date: 1-27-11
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1151

House Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☑ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Zaiser Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman Nancy Johnson	✓		Rep. Kilichowski	✓	
Vice Chairman Hatelstad	✓		Rep. Shirley Meyer	✓	
Rep. Beadle	✓		Rep. Mock	✓	
Rep. Devlin	✓		Rep. Zaiser	✓	
Rep. Heilman	✓				
Rep. Klemin	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Pietsch	✓				

Total (Yes) 10 No 0

Absent 4

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

HB 1151: Political Subdivisions Committee (Rep. N. Johnson, Chairman) recommends **DO NOT PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1151 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1151

#1

NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL
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COMMITTEES:
Finance and Taxation
Government and Veterans Affairs

HB 1151

Chairman Johnson and members of the House Political Subs Committee, for the record, I am Rep. Glen Froseth of district 6. I would like to present HB 1151 in behalf of a constituent and I urge your favorable consideration.

HB1151 will change the time frame to file a repairman's lien on property from 90 days to six months. It also changes the time frame on property used for agricultural purpose from 120 days to 6 months, making both types of filings uniform with liens filed on property used for oil or gas exploration.

The purpose for the change is to allow for a less aggressive approach to collect for services rendered.

Thank you for your consideration and again, I urge your support for HB1151.

#2

January 16, 2011

[redacted]litical Subdivision Subcommittee
North Dakota House of Representatives
Bismarck, North Dakota

RE: 1151

Ladies and Gentlemen:

Due to some mechanical problems with my vehicle, I am reluctant to travel to appear in person to testify on this matter, as I reside some 3 hours north of Bismarck. It is my hope that this statement will suffice to persuade you to bring the bill to the floor for a vote.

This bill concerns NDCC 35-13-03 wherein repairmen working on residential or commercial real estate are required to file a lien within 90 days of the work being completed in the event of nonpayment of the bill, while granting longer periods of time for work performed on property used for agriculture (120 days) and property used for energy production (6 months.) I ask that the language be struck in this section of the code that limits the time frame in which to file a lien to less than 6 months regardless of the type of property upon which the work is done. Perhaps striking "6 months" and replacing that with "180 days" would be more clear as well.

Discovery of this provision: I had a client that was some 4 months in arrears on a bill due and had already exceeded the deadline for filing a lien. It took several collection attempts, acceptance of partial payments and over a year to finally get paid. Time lost on this transaction exceeded the value of the job even with the late fees.

Payment from large entities: In 2008, I was a subcontractor for a firm that had a nationwide account with Wal-Mart. This firm stated it was routinely paid in 90 to 120 days by Wal-Mart and wanted to pay its subcontractors accordingly, an arrangement that I never agreed to prior to being subcontracted and was forced to try to work it out with the contractor. [redacted]merous attempts to collect in a timely fashion or at least prior to the loss of my right to file a lien resulted in a strained [redacted]siness relationship and our unwillingness to keep working with them. This was my largest client and the loss of revenue noticeably affected our bottom line.

It is common practice for large entities to hold payment for a variety of reasons for up to 120 days. In this economy, they are frankly able to get away with it because no one wants to lose a client like Wal-Mart, especially if you are in a position to float the loan that long without real harm to your own business.

As the economy is still good in North Dakota, the effects of the national economy are causing strain. At some point in the near future, our state economy will suffer at least some of the effects of the recession. I feel that most people intend to pay for the services and repairs that they order (as a real deadbeat is rare) but I may be forced to extend short-term credit in the future to avoid losing work. In fact, I already do so at my own risk.

The change to this law could benefit any service business in the state, as it only allows more flexibility on the part of the business owner pertaining to collections, while not affecting any prerogatives of the state, counties or municipalities. I have no way of knowing how long this law has been in force in its current form but I suspect that it dates back to when a "handshake would do" and just does not reflect the realities of today.

Thank you for your consideration of this change and again, I apologize that I cannot be there to testify before you in support of this bill in person.

Sincerely,

Robert Palmer
[redacted]ist. 6

#3

Johnson, Nancy

From: Froseth, Glen A.
Sent: Friday, January 21, 2011 7:46 AM
To: Johnson, Nancy
Subject: FW: Bill 1151

Nancy: I thought I would forward this to you. It is a reply from the constituent that I sponsored the bill for. He should have been here to present this to the committee. Maybe the bill could be amended to 120 days rather than 90 and leave the oil & gas time frame at 180. Just a thought. Do what you need to. Thanks, Glen

From: Rob Palmer [mailto:robpalmer@srt.com]
Sent: Thursday, January 20, 2011 11:34 PM
To: Froseth, Glen A.
Subject: Re: Bill 1151

Hi Glen,

I would sure like to hear or read the transcript of the testimony. The effect of 35-13-03 is that a repairman is going to be reluctant to use heavy-handed collection tactics within 75 days of the completion of a job. As a repairman, I lose 30 to 40 of the 90 days just getting through the first billing cycle. I am at 60 or 70 days by the end of the second billing cycle and have less than one month to file a lien or lose the right to. If they (the lending industry) have any concern about this, it should be pointed out that nothing in 1151 fundamentally changes their position, because the right to place a lien on a property by a repairman is already there in NDCC 35. The value of this right by a repairman is that he will eventually get paid all he is due. Referring an unpaid bill to a collection agency is a loss of 1/3 of the money, assuming it is ever collected. Going to court is very time-consuming and not worth it at all unless the bill is quite large.

Frankly, I find the arguments against this both specious and disingenuous. I doubt that they testified to the fact that a repairman's lien is superior to a mortgage holder's lien. This only means that a repairman will be paid first from proceeds of a sale by whatever means, voluntary or forced. I think this is the real reason they oppose this but the fact of the matter is, the provision 35-13-03 is already there. We can still file within 90 days if we need to. My argument is that, with the extension of time, repairmen wouldn't be forced to file so soon after the transaction.

If the lending industry thinks that opposing this would result in fewer or no repairman's liens being filed because repairmen may be reluctant to file until and unless they see that is it necessary, they may be right - that is certainly my argument. All that says is that they would like to keep us out of the way for their own convenience. As I mentioned, repairman's liens are superior to lender's liens even though they usually occur later than the mortgage. The only lien I know of that is superior to a repairman's lien is a tax lien.

Taking the two concerns separately in your email:

testified that a lien would tie up property in a person's loan portfolio

Yes, this is true in a sense but let's not forget that the provision for the repairman's lien is already there. We are strictly talking about extending the time frame for 90 additional days. However, as the mortgage holder, they are free to enforce their contract in any way that is consistent with the contract. They can sell the loan or foreclose. What will happen is that the repairman's lien will have to be satisfied and removed to obtain a clear and clean title. Repairman's liens do not expire, so as a last resort, we can wait until the property changes hands at which point someone is going to have to pay the debt.

make it impossible for them to foreclose or collect on a loan.

This change (HB1151) has no effect on whether or not they can collect on a loan. How could it? The contrac still exists between the lender and the borrower. If they (the lender) have a troubled loan then the existence of . repairman's lien does not prevent any collection effort including foreclosure. The effect of the lien is that the lender would have to pay off the lien in order to take clear title to the property because the repairman's lien is superior to the mortgage holder's lien. In fact, the repairman can foreclose on the property should he choose to and once the lien is satisfied, the remainder is divided up between the other entities that have an interest.

It should be pointed out that the repairman is not entitled to more than what is owed regardless of the sale price of the property. Having a superior position or lien does not mean we have the right to all the proceeds.

All of this is already reality now. If repairman's liens are a problem for the mortgage industry, then they will be no more of a problem by making this change because the provision to put a lien on the property is already there in 35-13-03.

I understand that no one has complained, I doubt there are very many in my position that even look for things like this. Certainly the lending industry would not complain, as it favors them because this law as written discourages repairmen from using it. However, what is the spirit of the law? Was it not written to be used to right a wrong? The law as written is simply not user-friendly for either the repairman or his client. The lender is really irrelevant to my transaction with a property owner. The lender cannot prevent the property owner from entering an agreement with me, the repairman, and the remedy for the repairman is built into the law now and the lender is aware of that already. There are standard provisions in real-estate contracts covering what will happen in the event that a mortgagee does not pay a repairman, vender or any other third party entitled to a lien or lack of performance on the part of the mortgagee. To exercise my rights under the current law as written, I risk alienating my clientele. Once it is changed, it only adds a little extra time for a client to pay without adverse consequences.

The lending industry is arguing this change as if the provision (NDCC35) does not exist, but it does. This change cannot materially affect their standing. There are no new legal obstacles in the way of them protecting their interests. If a superior lien is in place at the time of sale, it must be satisfied; if there is no lien, there is no issue. A more reasonable time frame to file a lien should make no difference to a lender.

When I read it (35-13-03), it looked like a mistake. There seems to be no rhyme or reason behind the different time frames based on different types of property, residential and commercial, agricultural, and energy production. It is all still improved land and the repairman is still the repairman.

No matter what happens, I sure appreciate your help.

Rob