

2013 SENATE JUDICIARY

SB 2166

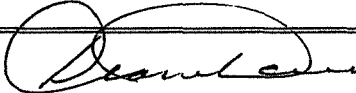
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2166
1/23/2013
Job #17580

Conference Committee

Committee Clerk Signature



Minutes:

Relating to actions for construction liens & miner's liens & to provide for application

Senator David Hogue - Chairman

Grant Shaft - Real Property Section, ND Bar Association - He explains this is more of a technical bill and that it makes a mechanics lien a construction lien. He explains a construction lien. He says the issue they have had is that under the current statute there is a requirement that a construction lien holder enforce their lien under two situations. If you have place a lien against an individual's real estate and that individual challenges that lien and gives you notice of that challenge, statutorily you are required within a 30 period to enforce that lien by commencing an action. That way they can't cloud a record title by having a lien sit there indefinitely. The second issue is by time, if a constructions lien is filed it needs to be enforced by a 3 year period and if not it will expire. He recommends an amendment, which says with proof of the same filed.

Senator Nelson - Asks the definition of lis pendens

Shaft - Replies it is a document that is recorded that is a notice of pending action against real estate in district court.

Senator Hogue - Asks if there is a statute that tells the homeowner to remove that from the records.

Shaft - He says that is the difference in current practice and what is proposed here. Current practice says you have the clerk generate a document that indicates no suit has been commenced, then that document is recorded against the real estate. He said the issue is that clerks vary on their opinions as to what type of document that it is and whether they want to generate a document. He mentions it has moved away from the burden being placed on the clerks.

Senator Hogue - Responds what this bill does is, the person that is asserting the construction lien doesn't file the lis pendens, the title examiner has the right to assume it was never enforced.

Nick Hacker - ND Land Title Association - He says this bill will lend some efficiency to the process of mechanics liens. He says the question from the insurability standpoint is whether or not in the examination if proper delivery had occurred on the 30 day notice. He said with that amendment they would support the bill.

Opposition - 0

Neutral - 0

Close the hearing

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2166
1/23/2013
Job #17645

Conference Committee

Committee Clerk Signature



Minutes:

Committee work

Senator David Hogue - Chairman

The committee discusses the proposed amendment.

Senator Sitte moves to amend
Senator Armstrong seconded

Verbal vote - All in favor

Discussion

Senator Hogue states this is a very good bill because it is a recurring problem. He gives examples of contractors that file lis pendens all the time. This statute says to the contractor if you are serious you must file the lawsuit within 30 days or lose the lien. He said it's a very cumbersome process to get the notice released. Senator Berry asks if a mechanics lien is filed cannot it be without the owner knowing. Senator Hogue replies no you would be served. He said this encourages settlement and resolution.

Senator Armstrong moves a do pass as amended
Senator Berry seconded

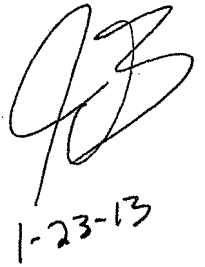
Vote - 7 yes, 0 no
Motion passes

Senator Hogue will carry

13.0460.01001
Title.02000

Adopted by the Judiciary Committee

January 23, 2013



Handwritten signature and date: 1-23-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2166

Page 1, line 13, overstrike the comma

Page 1, line 14, after "~~lien~~" insert "which has been"

Page 1, line 14, after "lienor" insert "and filed with the county recorder"

Renumber accordingly

Date: 1/23/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2466**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0460.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|------------------------|------------------------|-----|----|
| Chairman David Hogue | 1 | | Senator Carolyn Nelson | 1 | |
| Vice Chairman Margaret Sitte | | Senator John Grabinger | | | |
| Senator Stanley Lyson | | | | | |
| Senator Spencer Berry | | | | | |
| Senator Kelly Armstrong | | | | | |
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Total (Yes) _____ No _____

Absent Verbal Vote - all yes

Floor Assignment _____

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

Date: 1-23-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2166**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0460.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Armstrong Seconded By S. Berry

| Senators | Yes | No | Senator | Yes | No |
|------------------------------|-----|----|------------------------|-----|----|
| Chairman David Hogue | X | | Senator Carolyn Nelson | X | |
| Vice Chairman Margaret Sitte | X | | Senator John Grabinger | X | |
| Senator Stanley Lyson | X | | | | |
| Senator Spencer Berry | X | | | | |
| Senator Kelly Armstrong | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Hogue

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

REPORT OF STANDING COMMITTEE

SB 2166: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2166 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike the comma

Page 1, line 14, after "~~ien~~" insert "which has been"

Page 1, line 14, after "lienor" insert "and filed with the county recorder"

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2166

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2166
March 26, 2013
JOB #20493

Conference Committee

Marly Kienle

Explanation or reason for introduction of bill/resolution:

Relating to actions for construction liens and miner's liens; and to provide for application.

Minutes:

Chairman Kim Koppelman: Opens SB 2166.

Grand Shaft: Testifying in behalf of the State Bar Association. (:05 to 5:29) Explains the bill about construction Liens. Where 35-27-25 comes into play is if there is a lien that is placed against real property and there is a dispute as to whether that lien should be there or not. Sometime we find the construction liens are utilized essentially to cloud the title. So the property owner can enforce this lien. From line 12 through 18, what is being proposed is that a written demand for enforcement of the lien has to be delivered to the person holding the lien and filed with the County Recorder. The 30 day requirement of enforcing the lien would apply regardless of the method of delivery to the leaner.

This is important to attorney so that they are able to be able to keep track of the status of a construction lien. The status is one of three: One is valid, Two is there has been a 30 day demand presented to the lien holder, Three is if you are 4 years beyond the date of the lien.

Rep. Lois Delmore: Is the 30 day in the bill different than what was in here previously?

Grand Shaft: It has always been the 30 day. What we are looking at is the filing of the clerk and has the ability to check to see if something has taken place.

Chairman Kim Koppelman: I am thinking that a holder of lien like this is not going to know what a lis pendens is. I was wondering if there is another word that can be used.

Grand Shaft: I don't disagree with you but I think you would be amending some other provisions which I don't have ready for you. Lis Pendens is what we refer to as a pending action against real estate.

Chairman Kim Koppelman: Is there a clear definition in this section?

Grand Shaft: Not in this section. They are elsewhere in the century code but not here.

Chairman Kim Koppelman: What about in this chapter?

Grand Shaft: It would not be in this chapter as this chapter relates only to construction liens. It is listed in 28-05-07. Attorneys usually look for lis pendens.

Rep. Diane Larson: The title says in action for construction liens and miner's liens what are miner liens?

Grand Shaft: It is an antiquated term but it would have been a lien that is a companion to mechanics lien.

Nick Hacker: North Dakota land and Title Association: One of the statues this does as well is the filing and written demand would occur at the County Recorder versus the Clerk of Court. This is an easier process.

Chairman Kim Koppelman: Closes the hearing. Stated SB 2165 But is in error should be SB 2166.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2166
March 26, 2013
JOB #20497

Conference Committee

Carmen Heible

Explanation or reason for introduction of bill/resolution:

Relating to actions for construction liens and miner's liens; and to provide for application.

Minutes:

Chairman Kim Koppelman: Opens SB 2166 for committee work.

Rep. Andy Maragos: On line 17 it says this thirty-day requirement applies regardless of the method. I think I understand that time may not be allowed in the thirty-day requirements. But on line 22, 23 and 24 it says unless the lienor commences an action and records with the county recorder a lis pendens within three years after the date of recording of the lien. How does the thirty-day requirement conforms with the three year requirement? What is the distinction between the two are they part of the same process? If they don't follow the thirty days then the lien is forfeited is that correct?

Vice Chairman Larry Klemin: There is two time limits here, one happens when somebody demands that you file suit then you have thirty days to do it, that's current law. The other is three years which says if you don't file suit even if nobody demands it, then your lien will expire in three years. That's the statute of limitations. On the first one the only thing we are doing here with the lis pendens is recording the notice in the land title records that something is happening in the court, otherwise you wouldn't know it.

Rep. Andy Maragos: If the thirty day requirement has been requested how does that affect the three year portion of it? The lien holder takes action in those thirty days and files an action, does the three year mean anything or does that just go away?

Vice Chairman Larry Klemin: It just goes away, that's a limitation period. If you are going to file an action you have to within three years, if somebody demands you file it you have to do that within thirty days. Either way you have to file a lis pendens if you file an action.

Chairman Kim Koppelman: The three year period becomes a statute of limitation?

Vice Chairman Larry Klemin: That's what it is. On line 15 is the first time lis pendens words are used, we could say and a lis pendens as provided in Chapter 28-05 is recorded. This would give someone a cross reference to that.

Rep. Gary Paur: If a new house was constructed and it was a spec home and it was sold would the construction lien would that follow the house or would it go to the original builder?

Vice Chairman Larry Klemin: It goes with the property. What you are not seeing in this bill are the other provisions of construction lien chapter that required the notice a notice of intention to claim the lien also be recorded and also the lien be recorded. Once both of those have been recorded then if the person who owes the money doesn't pay it then the person who has the lien can commence an action to foreclose on that lien. What this deals with is the situation where the person who holds the lien did not commence an action and

the person who owns the property says you either commence an action or get lost. So if the person who owns the property demands you commence an action then you have thirty days to do it. The outside limit is three years even if nobody demands it you lose your lien unless you have commenced an action within two years after you first recorded it.

Rep. Andy Maragos: In your experience is there any way to extend the three year period by the lien holder?

Vice Chairman Larry Klemin: No there aren't. Unless the property owner consented to it, but that wouldn't happen.

Vice Chairman Larry Klemin: Made a motion on amendment page 1 line 15 after "pendens" insert "as provided in chapter 28-05 is".

Rep. Andy Maragos: Second the motions.

Voice vote carried.

Rep. Andy Maragos: Made a motion for a do pass as amended on engrossed Senate bill 2166.

Rep. Lois Delmore: Second the motion.

Vote 14-0-0.

Chairman Kim Koppelman: Will carry the bill to the floor.

13.0460.02001
Title.03000

Adopted by the Judiciary Committee

VK
3/26/13

March 26, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2166

Page 1, line 15, after "pendens" insert "as provided in chapter 28-05 must be"

Renumber accordingly

Date: 3-26-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2166

House Judiciary 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. Klemin Seconded By Rep. Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | | | Rep. Lois Delmore | | |
| Vice Chairman Lawrence Klemin | | | Rep. Ben Hanson | | |
| Rep. Randy Boehning | | | Rep. Kathy Hogan | | |
| Rep. Roger Brabandt | | | | | |
| Rep. Karen Karls | | | | | |
| Rep. William Kretschmar | | | | | |
| Rep. Diane Larson | | | | | |
| Rep. Andrew Maragos | | | | | |
| Rep. Gary Paur | | | | | |
| Rep. Vicky Steiner | | | | | |
| Rep. Nathan Toman | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote Carried

Date: 3-26-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2166

House Judiciary 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. Maragos Seconded By Rep. Delmore

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman | / | | Rep. Lois Delmore | / | |
| Vice Chairman Lawrence Klemin | / | | Rep. Ben Hanson | / | |
| Rep. Randy Boehning | / | | Rep. Kathy Hogan | / | |
| Rep. Roger Brabandt | / | | | | |
| Rep. Karen Karls | / | | | | |
| Rep. William Kretschmar | / | | | | |
| Rep. Diane Larson | / | | | | |
| Rep. Andrew Maragos | / | | | | |
| Rep. Gary Paur | / | | | | |
| Rep. Vicky Steiner | / | | | | |
| Rep. Nathan Toman | / | | | | |
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Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2166, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2166 was placed on the Sixth order on the calendar.

Page 1, line 15, after "pendens" insert "as provided in chapter 28-05 must be"

Renumber accordingly