

## Assembly

MINUTES OF MEETING - COMMITTEE ON JUDICIARY, 53rd Legislature, February 16, 1965

A Public Hearing on Mechanics Lien Law, A. B. 236 and Construction Control Law, A. B. 294 was held. Hearing commenced at 2:00 P. M.

Present: Close, Jacobsen, Delaney, Kean, Parsons, Knisley, Olsen, Swobe, Rosaschi

Mr. Fike read a letter from the State Bar Lien Law Committee, which was written December 7th. He then introduced Mr. Charles Miles, attorney, who reviewed the proposed amendment. Mr. Miles stated that it is felt by the industry at large that the statute was not sufficiently broad as to cover all the industry. Section 4 page 1 has expanded provisions covering rentals of equipment, electrical services, professional engineers services and rental of equipment on premises.

With reference to Sections 3 and 4, page 2, the lien will not be attached until actual work, labor or materials are on the premises.

MR. DAVID GOLDWATER asked if several bids were received on architectural or landscape architecture and only one plan chose, would all architects submitting plans be entitled to place lien?

MR. HARRY LAHR asked if this could be spelled out as to only the person obtaining the bid. He stated this expense is normally absorbed by the architect making the bid.

MR. MILES stated that every person making a bid is not entitled to a lien. Just the one whose bid is accepted.

MR. GOLDWATER questioned Section 7, page 3, paragraph 2, line 29, "or the materials thereof were commenced to be furnished". He feels this conflicts with Section 4.5, paragraphs 2 & 3. It was suggested this be changed to "delivery of materials".

MR. MILES stated that under the statute now existing it is the first physical act on the premises which establishes the priority of all liens, and that a lien is established in the first place.

MR. GOLDWATER felt that as it now reads it would be any work that has been done or any materials that have commenced to be furnished.

Section 4 is interpreted as actual material furnished to premises.

MR. MILES reviewed Section 8 and stated this has the same intent as A. B. 313. To clarify time to obtain the lien. There is a period of 90 days after delivery of material or last performance of work by person seeking lien, or 90 days after completion. The time is shortened to 30 days if an appropriate notice of completion is filed.

MR. KEAN asked, "If a painter has lien and does not want lien period to expire could he keep going back to touch up his work?"

MR. MILES stated that he could do this, but if Notice of Completion has been filed this would take care of it.

MR. GOLDWATER - Page 4, Paragraph 4, line 16: "This broad language leads to much controversy as to what is fair".

A description of labor and materials should be included when filing lien, with an indication as to when they were provided. Such a claim should be verified. If it is proved this claim is not fair lien will be null & void.

MR. GOLDWATER referred to Section 4e, Line 23, page 4 which includes a legal description so there would be no problem as to which parcel of land is involved.

Hearing adjourned to Senate Chambers

MR. MILES stated that this should be to provide a simple method for an individual to file a lien. Additional items included with lien are not beneficial.

MR. SANFORD stated that a proper legal description can only come from a Title Company. This may take a week or more. In some instances it would be very hard to provide an accurate legal description.

MR. MILES reviewed Section 9, Page 4. This section relates to A. B. 312 and extends time in which to serve notice. In many instances a lien is perfected in the required time, but the 15 days allowed does not always provide enough time for the lien to go through the proper channels before being served. This change proposes 30 days be allowed.

MR. GOLDWATER pointed out a printer's error in Section 10, Line 8, Page 5. "Notices should be verified by 'owner' not 'lien claimant'".

MR. MILES POINTED out that in Section 10 the time to file notice of completion - 10 days is inadequate so this is changed to 15 days. This would take care of any final touch-ups.

Section 11, Paragraph 4, page 5, Notice of Completion should be given proper legal description. Lien can be perfected from this description.

MR. WILLIAM FRANCIS asked what effect would this have on multiple legal descriptions such as tract homes. There are times when 50 homes are being built and only 10 included. The legal description will show the total area. Mr. Miles stated that only property where Notice of Completion has been filed.

MR. LAHR asked if a contractor had not been paid one tenth of his bill would he have a claim against ten houses or just one. Mr. Miles stated that this claim would be against the ten houses. This covers total contract on all houses. Lien is proportioned to the lots. Mr. Miles felt this takes care of itself in a practical manner.

MR. SANFORD did not agree with this as he felt that in a case where 100 houses were to built over a period of years at separate times, any lien claimant could file on this until completion of 100th house. Mr. Miles stated that this is correct. However, it may be that the individual contractor will have a contract just for the one house. Architects, etc., will have a lien period extended until the 100th house is completed.

MR. FRED HILL, regarding Section 12, asked if a supplier wants to file a lien on one tract house and he had delivered material in carloads how would he file on just that one house. He feels something should be written into the law to take care of a situation such as this.

MR. SANFORD stated that in regard to 100 houses, if bills are not paid on house No. 1 period of time for lien to be filed would be until the completion of the 100th house because the supplier of materials could not perfect his lien.

Mr. Miles stated the lien may be filed within 90 days of completion.

Section 14 - Period of lien. Once a lien is perfected the lien will only last for six months unless (1) action to foreclose is filed within six months or (2) 90 day extension of credit. Then the period of lien is extended for 90 days. This has been changed. There can be an extension of time period to file but it must be by agreement. This will affect only those who sign and agree to extension.

Mr. Miles stated that nothing has been changed in Sections 16, 17, 18, 19, & 20. This section must be read as a whole. The general contractor is obligated to pay the subcontractors. He is only entitled to net figure after subcontractors have been paid. Mr. Goldwater would like this to clearly state "general contractor".

MR. SANFORD stated that in regard to Section 15 he felt the owner should be relieved of responsibility in the event the optioneer has requested work to be done. He stated that in the case of a lessor and lessee the lessor can post notice of no responsibility to improvements. A lessee has an interest in the land where an optionee does not.

MR. KNISLEY asked if it is the practice in Nevada that to record a notice of no responsibility you always have to post the property? Mr. Goldwater stated that was the law until the last legislation. Since that time it is necessary only for filing and recording.

MR. GUINAN stated that he felt there was direct conflict between Section 18, Line 3, and Section 24 regarding attorney's fees.

MR. SANFORD pointed out that in the instance of attorney's fees if offer is made ten days before trial and the adverse party decides to pay off, the attorney will be paid but this will be by the Lien Claimant. Under this section the lien claimant should be entitled to the court costs, attorney's fees in connection with preparation, and interest.

Mr. Miles stated that a fair lien should receive attorney's fees, but an excessive lien should not.

It was suggested that some clarification be made in the wording of this Section 24.

Section 21 (a) is similar to A. B. 315 which provides for discharge of mechanic's lien upon filing of surety bond by lienee. Mr. Miles stated that A. B. 315 should be substituted for Section 21 (a).

Section 22 should clarify that lien is assignable, but only after perfection.

Section 23 coincides with A. B. 314 and prevents filing of action within 30 days of perfection of the lien.

Section 24, the word "and" should be added under line (b) of 1.

MR. GOLDWATER stated that he felt the owner should be served with notice of lien in order to have the opportunity to see these liens are paid and so he will have knowledge of who is doing the various jobs. He feels the lien claim act is designed to protect the workers and the contractor, but should also protect the owner.

It was asked if this would make it mandatory for all involved in the work to file lien, and Mr. Goldwater stated that if he were drafting this he would omit laborers.

MR. HILLIS, an electrical subcontractor, stated that in many cases several hundred vendors work on one project. If this is mandatory would each vendor have to file lien?

MR. SANFORD stated that his objection is permissive giving of notice. He feels this section is meaningless.

MR. KEAN stated that in some instances he felt it would upset the owner if a notice of lien was filed with the first delivery. Although if it became mandatory they would learn to accept it.

MR. LAHR feels that the owner is entitled to protection from his subcontractors. He should have notification in advance so check may be made to subcontractor and supplier jointly.

It was felt that there are subcontractors and suppliers who would take offense to the fact that a notice would go out. This section permits the right of notice to go out.

No one in the industry would want anything to become of record which would effect the lien or clear title. This is just an implement to request payment.

MR. KEAN felt that from a practical standpoint this could create some doubt with the customer as to his intention to pay.

MR. GOLDWATER felt that there is nothing in the present act which would give owner the opportunity to protect himself unless this is made mandatory. He feels this should be rewritten.

MR. FRANCIS feels that something along this line should be done in order to make this a strong bill.

MR. GOLDWATER stated that the owner and contract<sup>or</sup> are most interested parties. This should not be designed just for lien claimant. The owner should not be penalized if someone has overlooked notifying him.

SENATOR MONROE stated that he feels the owner should know who is supplying materials in order to protect himself, and should know to whom contractors are paying and that bills are being paid.

MR. MILES stated that it is not possible to include everything. If a supplier sends out a notice to the owner and the owner knows which subcontractor is doing the work he should make out a joint check. This is the crux of the area we are talking about.

MR. KEAN stated that we all feel Mr. Miles and his committee have done a terrific job even though some amendments are needed.

Section 4: A portion was taken out and put under 108.030. Work in the streets, sidewalks, etc., provides that lien will attach to lot itself. This will have to go to printer to be added under Section 4.

MR. KNISLEY suggested that the gentlemen have suggestions filed with the committee in the form of amendments they propose, and for Mr. Miles to provide the committee with section to be corrected.

Mr. Kean made a motion to this effect  
Mr. Swobe seconded

Motion passed unanimously

Mr. Close declared a five minute recess.

Mr. Close reopened the Hearing to discuss A. B. 294 and turned it over to Mr. Miles for review.

Mr. Miles stated that under existing construction loan agreements, Deeds of Trust, and other instruments relating to loans for construction there is a right for a lender to declare default if monies are insufficient to complete project, or if there is a mechanics lien filed indicating improper disbursement of monies. The lending agency is shown on the Title Insurance Policy as having priority with their Deed of Trust over all mechanics liens. Mr. Miles felt that if they have this priority they should know they have sufficient monies to complete the project.

Mr. Miles reviewed Section 25, page 5 of the Bill. He informed the committee that there was an 88% increase in construction in Las Vegas in 1963 over 1962, and a drop of 48% in the first six months of 1964 over 1963.

Many times a loan will generate excess funds. In some instances these funds are released and money spent before completion. 10% should be retained until the completion of project, and payment of all bills. This is under No. 8, Section 25. If monies that are excess are generated by subordination all excess monies will be retained until completion of project.

In No. 11 the word "for" should be "and".

Mr. Miles stated that No. 12 is the heart of prior provisions.

In the event a subcontractor has misjudged his bid and is short funds to complete his part of the job it is the responsibility of the construction control lender to get the money from another source, such as the borrower. He has the right to freeze the job and declare the project in default until money is produced, or he may foreclose.

Mr. Goldwater stated that there is a lot of judgment which enters in beginning with the lender. Should the lender become insurer of all those participating in the construction of this building? He stated that the lender is responsible for only that money which he feels property is worth, and has agreed to loan.

In discussing No. 14 Mr. Miles re-emphasized that without this act construction loan people can declare this project in default and may foreclose. He feels this legislature is needed.

Sec. 28 pertains to Construction Control Bond and Real Estate bonds; or direct right of action against construction control lender. This direct right of action in the event of default is the main reason of the bill.

Mr. Lahr stated that the savings and loan companies in Las Vegas have authorized him to report they are opposed to this bill. He asked, "Who are you trying to protect by this bill?"

Mr. Miles stated that the bill would protect the people who perform work, supply material, etc., on this construction, and who are second on the lien to the lending agency.

Mr. Lahr: "Are you not trying to legislate good judgment on the part of the lender?"

Mr. Miles: "No. We are trying to establish proper relationship between the responsibility of lender and mechanics people."

Many projects in Southern Nevada have been foreclosed on due to insufficient funds.

Mr. Lahr stated that in 1961 200 unit apartment building was constructed. All contractors were bonded. One contractor went bad and the case is still in court trying to collect \$60,000 from the bonding company. He does not feel a bond is the answer.

SENATOR MONROE suggested a provision that any bonded contractor would not need to come under these provisions.

SENATOR DODGE asked, "Are we getting owner and contractors into legal contracts before they obtain the money? If after bids are received and money is not available are contracts still binding?"

Mr. Miles stated that contracts could be made conditional upon receiving money.

Mr. Miles also stated that the construction control gets the information on bids. This is not revealed to the owner. No subcontractor has the right to inquire into breakdowns.

Mr. Francis stated that as a practical matter any subcontractor has the opportunity to find out the bids.

Mr. Goldwater stated that he is the president of an association making construction loans. He does not feel this legislation is necessary. They are very careful in disbursing funds on construction loans in order to protect the company and limit foreclosures. He feels this legislation would impose an additional penalty on lender by requiring additional records to be kept. It places no responsibility on anyone other than the lender.

Mr. Close: "What do you do if subcontractor goes broke"?

Mr. Goldwater: "Require borrower to come up with additional funds or if he is unable to do so they would foreclose. After foreclosure they may add additional funds in order to complete the job and dispose of it."

Mr. Miles stated that lenders are not acting as insurers, but if they undertake disbursement of funds without contracts in their files then they are responsible.

Mr. Knisley stated than when a committee gets as tired as this it is not a fair hearing. In all fairness to the subject he feels a second hearing should be held and an afternoon set aside for this bill.

Mr. Close agreed with this. He stated that if Mr. Francis has any recommendations we would appreciate receiving them. Mr. Close will notify him of future meetings.

Tuesday, February 23rd, at 2:00 P. M. was set for the next hearing on A. B. 294.

Hearing was adjourned at 5:50 P. M.