

HB

739

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: House Commerce Committee

DATE:

May 24, 1978

Attention Joe McKinnon

FILE NO:

TELEPHONE NO:

FROM: Richard L. Block, Director
Division of Insurance

SUBJECT:

I very much appreciate your making the changes called for in the memorandum of May 15, 1978, to the Chairman of the Rules Committee, in CS for sponsor substitute for HB 739.

As clarification of the need for these amendments, I would like to explain as follows (item numbers refer to the same item numbers as listed in the May 15 memo):

3. The words "as to each apartment" were added to distinguish the impact of recording successive Notices of Completion.

As originally drafted, it would appear that a Notice of Completion could be recorded with respect to construction of the whole building, and that liens would be cut off with respect to remaining apartments if claimants had not properly recorded their mechanic liens within the ten days following the recording of each of the successive Notices of Completion.

This was not the intent of this provision.

It was intended that a Notice of Completion could be recorded as to a single apartment, and that mechanic lien claimants would have to record their liens within ten days after that Notice of Completion, or lose their lien rights on that apartment.

Without the additional language, it is conceivable that it could be misconstrued to mean that failure to record within ten days after a Notice of Completion cut off the rights as to the total property for all work done prior to the Notice of Completion.

8. This language change accomplished the following:
 - a. the language was changed from permissive ("may" in line 17) to mandatory ("shall" in line 17).

It is important to recognize that the provision is of little value unless an obligation is imposed upon the supplier to release his lien, rather than authorizing him to do so should he wish.

- b. the language changes change the concept from that of waiver to that of a release.

In fact, a mechanic lien claimant is not being asked to

waive his rights, but only being asked to release the lien as it pertains to a special portion of property, maintaining his rights as to the balance of the property subject of the lien.

- c. the language clarifies that the liens subject to this provision are those arising out of original construction, and not to the type of liens referred to in the Horizontal Property Regimes Act, which are already subject to being released pursuant to a statute therein contained.

In other words, the special provisions of this Act are limited to original construction liens, and not to all liens, since the Horizontal Property Regimes Act contains a provision for how other liens are to be released.

10. This language changes the release clause to require the construction lender to reduce their loan on the unreleased portions of the property, in accordance with a formula utilized to calculate the mechanic lien claimants release.

As drafted prior to the change, the dollar amount had to be equal to the amount which the mechanic lien claimant waived.

For example, suppose there were a mechanic lien for \$5,000 on a ten unit condominium project and a \$500,000 construction loan. Upon the release of the first apartment the mechanic lien claimant would have to accept 115% of \$500, and release his lien on the first apartment. The lender would have to release an identical amount with the balance being a prior lien on the remaining nine units. This would seriously dilute the equity of the mechanic lien claimant.

As changed, the mechanic lien claimant would release for 115% of \$500, provided the lender reduced his loan balance on the remaining nine units by 115% of \$50,000.

12. The changes in this section were made necessary to clarify the applicability of the law to liens, particularly those liens which are in favor of claimants who do work prior to the effective date of the law, but who do not complete their work until after the effective date of the law.

A number of phrases and clauses were deleted because of redundancy (line 14 and 15 on page 16).

Further, the inclusion of the words ". . . during the 120 day period after the effective date of this Act, . . ." on lines 19 and 20 of page 16, limited the applicability to work done within the 120 day period, whereas it was intended that a person be entitled to have the benefits of this provision for all work done, including prior to the effective date of the Act.

House Commerce Committee
(Attention Joe McKinnon)

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May 24, 1978

These measures are extremely complex and it is understandable that in going through the several amendments and changes that have been made to this bill, a person responsible for drafting would make changes which inadvertently would change the meaning of the sections.

The division is grateful for the work done by Legislative Affairs in drafting of this measure, and trusts that the changes urged in the May 15 memo would be recognized as technical changes necessary to improve the workability of the law.

RLB/mh/3/10



Alaska State Legislature

House of Representatives

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

March 21, 1978

MEMORANDUM

SUBJECT: Committee Substitute for HB 739 - A Summary

TO: House Commerce Committee

FROM: Andrew Brown

Section 1. This section adds two items to the present law. The word "general" has been substituted for "original" in this Section, and throughout the entire bill, so that the law will reflect the industry's terminology. "General contractor" is defined in Section 21 of this bill. An addition to this priority section is that "trustees of benefit for laborers" fall right below laborers in claiming priority over other lien claimants.

Section 2. This section repeals the present law and rewrites it, so that while it does not spell out every possible person who could have a lien, as the present law does, it does clarify the categories under which lien claimants may base their claim. Subparagraphs (1) and (2) cover individual laborers and their trustees of benefit trusts. Subparagraphs (3) and (4) cover general contractors or suppliers of material or equipment used in or on real property. Subparagraph (5) covers persons who perform services relating to the preparation of plans or surveys for the real property.

Section 3. This section repeals and re-enacts the present .060(a) and specifies that a properly recorded encumbrance, which is defined in Section 21 of this bill, will have a preference over any subsequent recorded liens or intents to lien. Recorded liens or recorded intents to lien would have preference over unrecorded prior encumbrances. The last sentence in this new section would allow prior recorded encumbrances to have a preference, even though disbursement of monies may not have taken place at the time of recording.

Section 4. The priority of an individual laborer's lien claim is kept in this section. It would be before even that of an encumbrance under Section 3 of this bill. The deletion of the words "or furnishing material used in" means that suppliers would not have equal priority with individual laborers, but under Section

5 of this bill they would be able to use the "stop-payment notice" system to ensure payment of amounts owed them. Also, this Section requires laborers to be ones not falling within the definition of "contractor" in AS 08.18.171.

Section 5. This Section sets up a new mechanism in the lien system, whereby any lien claimant may give a lender providing construction financing, which is defined in Section 21 of this bill, a "stop-payment notice" 20 days after non-payment of sums due the claimant. Lenders would be required to withhold draws (defined in Section 21 of this bill) from contractors who have not paid their subcontractor or employees. The content of the stop-payment notice is specified in this Section. Once the stop-payment notice is received, the lender would have to withhold, under subparagraph (a) (4), from later draws enough money to pay the amount claimed in the stop-payment notice; however, under subparagraph (a) (5) there could be disbursements if the claimant, owner and general contractor agreed to them. Under subparagraph (a) (6), the amount in the stop-payment notice has to be restricted to that proportion of the contract price expended within 10 days prior to a notice of intent to lien and up to the day of the stop-payment notice. Subsection (b) states the lender's liability if he wrongfully disburses monies. Subsection (c) allows the claimant to file an action in court for sums claimed in the stop-payment notice. This action is not mandatory, but if there is no lawsuit, then the sums withheld under the stop-payment notice may be disbursed by the lender. (Please note that the first sentence in subsection (d) should be deleted because it contradicts subsection (c), and that the second sentence in subsection (d) should be the last sentence in subsection (c); thus eliminating subsection (d) entirely).

Section 6. This is a new section in Chapter 35 creating a "notice of intent to lien" system. The notice may be given to the owner and lender at any time after the contract is made, and must state certain facts, including a warning.

Section 7. This section states when a notice of intent to lien may be recorded. It also sets out that unless a notice of intent to lien has been recorded prior to a recorded encumbrance, the lien for labor, materials, services or equipment furnished will not be valid against the lender.

Section 8. This section repeals and re-enacts the present law, and delineates a lien claim may be recorded at any time after giving or recording a notice of intent to lien, but no later than 90 days after completion. "Completion" is defined in Section 21 of this bill. However, the up to 90 day rule would not apply if the owner of real property complies with Section .071 in Section 11 of this bill.

Section 9. This section rewrites the subsection on the contents of the lien claim. It is more specific than the present law.

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Section 10. This section repeals the present law on the owner's recording a notice of completion and the claimant's subsequent duty to record a lien within a certain time frame. However, it should be noted that the issue of notice of completion is dealt with in a new Section .071 in Section 11 of this bill. The new .070(d) in Section 10 states that the lien of certain delineated claimants is restricted in amount to the proportion "attributable to labor, materials, services or equipment furnished within 10 days before, and at any time after, the claimant gives or records a notice of intent to lien" under Section 6 of this bill.

Section 11. This section specifies the method by which an owner may record a notice of completion. If he chooses to record a notice of completion, it must be done under subsection (a) after the completion of construction, alteration or repair, and must be preceded by at least 5 days by a notice to all claimants who served a notice of intent to lien, of the fact that a notice of completion will be recorded. Under subsection (c) of this section, if a notice of completion is recorded then a lien claimant would have to record his claim no later than 10 days after the recordation of the notice of completion. Subsection (d) states that premature notices of completion are ineffective, and subsection (e) specifies that a lien cannot be claimed for work done to satisfy breach of warranty or other defective material or workmanship.

Section 12. This is the present law only with the addition of the word "general" to contractor, and the specification of the laws under which surety bonds may be issued.

Section 13, 14, 15, 16, & 17. These sections substitute the word "general" for "original", and in addition Section 13 uses the grouping "other claimants", rather than "workman, laborer, lumber merchant, or materialman", so that the statute can be more inclusive.

Section 18. This new section would allow any claimant, except an individual laborer, to waive his lien or stop-payment notice rights which have arisen up to the time of the waiver. Allowing waivers would facilitate project financing. Any attempted waiver by an individual laborer would be void.

Section 19. This new section would give owners, contractors, and lenders recourse for inequitable stop-payment notices, notices of intent to lien or lien claims.

Section 20. This new section encompasses the area of condominium construction. Subsection (a) allows for liens either limited to particular units upon which a claimant worked or to commonly owned property and all individual units. Subsection (b) limits the claim to the area of the building covered by a construction loan and worked upon.

Section 21. This is the definition section of the bill. The words or phrases newly defined are "completion", "contract price", "draws", "encumbrance", "general contractor", "give notice", "construction financing", "lender", "owner", and "potential lien claimant".

Section 22. This section amends the present law so as to permit lien waivers as accorded under Section 18 of this bill.

Section 23. This section repeals three current laws or parts of them. The repeal of .060(b) is due to the fact that the new .060(a) and (c) in Section 3 of this bill clarify the priority of liens subject. .070(e) on notice of completion is repealed, because it is unnecessary. .095 is repealed, due to the fact that the new .070(d) in Section 10 of this bill covers the area of claimants recovery limits, and thus the present statute on contractor's lien recovery is unnecessary.

Section 24. This states the effect of the bill, if it becomes law, upon actual or potential liens at the time the act goes into effect. Those with claims under the current law would have to record their lien claims within 90 days of this bill's becoming law, and would have lien and stop-payment notice rights only for labor, services, materials or equipment furnished after recordation of those lien claims.

Section 25. This states when the act takes effect.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Representative Sam Cotten
Chairman, Rules Committee
House of Representatives
Alaska State Legislature

May 15, 1978

Richard L. Block, Director
Division of Insurance

CS for Sponsor
Substitute for
LB 739

Commerce Committee

This measure, when passed out of the House, included in substance all of the changes which have been recommended by the Division of Insurance and the other various interested parties. However, although the substantive material found its way into the legislation, there are a number of technical drafting errors which we did not see before the bill was signed out by the committee, and which must be changed before the bill can be properly adopted as a law.

For convenience, I shall refer to amendments to CSSSHB 739.

1. Page 2, line 2. Amend AS 34.35.050(6) to read as follows:

"(6) is a [Prime] general contractor."

2. Page 7, line 15. Amend Section 34.35.071(b)(5) to read as follows:

"(5) the name of the [Prime Contractors] general contractor, if any."

3. Page 8, line 5. Amend Section 34.35.071(f) to read as follows:

"(f) after recording a condominium declaration as provided in AS 34.07 (Horizontal Property Regimes Act), an owner may record a Notice of Completion under this section as to each apartment after completion of the original construction of each condominium apartment."

4. Page 9, line 22. Amend Section 34.35.095(c) by changing the word "contract" to the word "employment."

5. Page 11, line 8. Amend Section 34.35.112(a)(5) to read as follows:

"(5) the [Prime Contractors] general contractor."

6. Page 11, line 21. Amend Section 34.35.112(b)(4) to read as follows:

"(4) out of the remainder the subcontractors, including prime contractors except the general contractor, shall be paid in full or pro-rated if the remainder is insufficient to pay them in full; and"

7. Page 11, lines 24 and 25. Amend Section 34.35.112(b)(5), by changing the words "prime" to the word "general."
8. Add page 12, line 13-13. Amend Section 34.35.119(a) to read as follows:

"(a) liens created under AS 34.35.050-34.35.120 arising out of original construction which becomes subject to the Horizontal Property Regimes Act (AS34.07) before the first sale of any portion of the property after commencement of construction shall be subject to the provisions of this section."

9. Page 12, line 20. Amend Section 34.35.119(b) by changing the word "waiver" to the word "release."
10. Page 13, lines 4 and 5. Amend Section 34.35.119(c) by amending line 4 to read as follows:

"also reduced by an amount [Equal To The Amount Waived By the Lien Claimant] calculated in the same manner as provided in Section (b)."

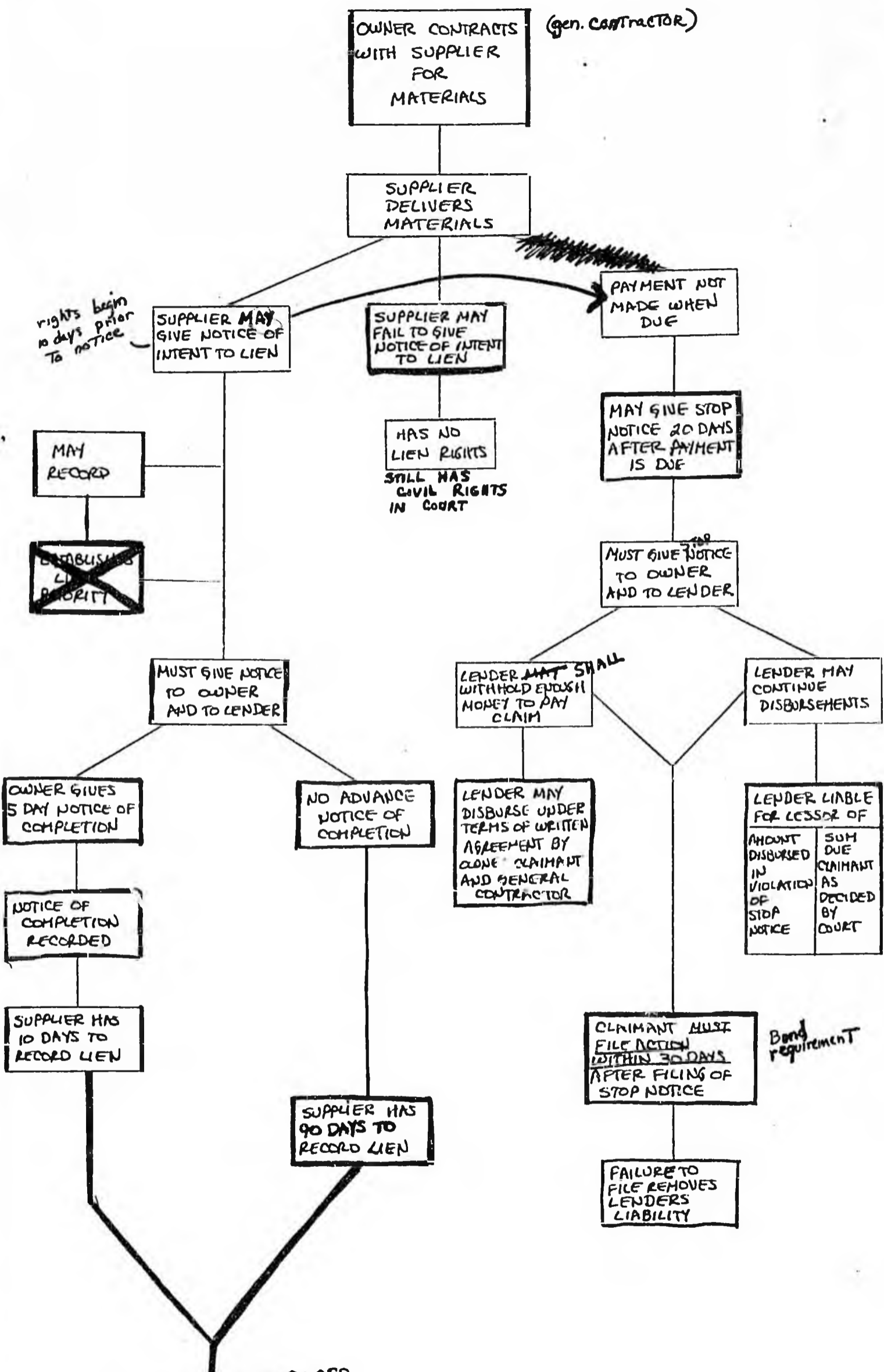
11. Page 13, lines 6 and 7. Delete all of Section 34.35.119(d)
12. Page 16, lines 11 through 25. Amend Section 20(b) to read as follows:

"(b) this act is applicable to

(1) lien claims arising out of construction, alteration or repair projects commenced after the effective date of this Act;

(2) lien claims arising out of construction, alteration or repair projects commenced before the effective date of this Act in favor of claimants who first furnish labor, materials, services, or equipment after 120 days after the effective date of this Act; and

(3) liens arising out construction, alteration or repair projects commenced before the effective date of this Act [And Not Completed Within 120 Days After The Effective Date of This Act] claimed by claimants whose furnishing or delivery of labor, materials, services or equipment is first furnished before and continues beyond 120 days after the effective date of this Act; however, in order to preserve the right to claim a lien for all of the labor, materials, services or equipment furnished or delivered [During the 120 Days Period After The Effective Date of This Act] the claimant must give a Notice of Right to Lien required under AS 34.35.064 contained in Section 4 of this Act, within 130 days after the effective date of this Act. A Notice of Right to Lien given under this subparagraph (3) is effective for all labor, materials, services, or equipment furnished from the date of commencement of the claimant's portion of the construction, alteration or repair project."



CURRENT PROCEDURES EXCEPT FOR CHANGE IN LIEN PRIORITY

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D
JUNEAU, ALASKA 99811

April 3, 1978

House Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Gentlemen:

Re: CSSS HB 739
(March 24, 1978)

I have just received a copy of CSSS HB 739 which is the printed work draft version dated March 24, 1978 and prepared by the Legislative Affairs Agency.

To my knowledge this is the last printed draft of this bill and incorporates most all of the suggestions which have been made by the various interested parties.

In reviewing the bill, however, I note that there are some changes that must still be made in order to make it conform to the recommendations which were made by the Division of Insurance, many of which were agreed to at the last meeting of the House Commerce Committee.

Because I feel these changes are necessary in order to make the legislation clear and workable, I will set them forth here:

1. [Page 1, Section 34.35.050(2)]

It is the intent to permit a lien in favor of an employee benefit trust which runs in favor of individuals, which is later defined as natural persons performing labor on the job.

The reference in line 16 to "persons described in (1) of this section" refers to language that includes corporate subcontractors. I recommend that the language on line 16 read as follows:

"...of individuals performing labor on the building or improvements and has a direct contract..."

2. [Page 1, Section 34.35.050(6)]

There is an attempt to either define or limit the category of general contractors and neither effect is desirable.

It is unnecessary to limit the category of general contractors since all general contractors would fall into category 6. In addition, it is unwise to try to define them, at least with the language used here, since they are already defined in Section 120 of the law, and the two definitions are slightly in conflict.

I recommend that all the language of Subsection 6 be deleted starting with the words "...who is responsible for the..." This pertains to page 1, line 29, through page 2, line 3.

3. [Page 2, Section 34.35.060(a)]

There is language which is redundant and ought to be clarified. I suggest that lines 7 through 9 read as follows:

"...Sections 50-120 of this chapter except that a lien created under Secs...."

4. [Page 2, Section 34.35.060(c)]

The word "individual" is defined in Section 120 and it is unnecessary that it be duplicated in this section. I recommend that the language added on line 20 be deleted so that line 20 will read:

"...-struction is pre-..."

5. [Page 4, Section 34.35.062(c)]

This section needs to be totally rewritten for two reasons.

(a) There is need to combine some sentences for proper phrasing in order to convey what was intended by the legislation; and

(b) In order to make it clear that the bank is entitled to notice of the filing of the Superior Court action within 30 days after receipt of the stop notice. As currently drafted, the action must be filed within 30 days, but the bank need not be notified until a substantially later period of time.

I suggest that the section be rewritten between line 8 and line 18 as follows:

"(c) within 30 days after filing a stop payment notice the claimant shall file an action in a court of competent

jurisdiction, to obtain the sums claims in the stop payment notice. The complaint shall be accompanied by a bond in an amount equal the amount claimed with sufficient sureties as approved by the court. The claimant shall give notice to the lender that the action has been filed and include a copy of the bond filed with the action. If a claimant fails to file an action under this subsection and serve notice of the filing and a copy of the bond within 30 days after filing the stop notice, or execute a written agreement under (a)(5) of this section, the lender may disburse the money withheld under the claimant's stop payment notice without incurring liability to the claimant."

6. It was my understanding that subcontractors dealing directly with the owner or the general contractor need not file notice of intent to lien. This fundamental matter has been changed so that subcontractors are required to file the notice of intent to lien. If it is the desire to adopt the original concept then the legislation will have to be changed in the following place:

- (a) Page 4, Section 34.35.064(a) [Line 20] and the following language would have to be added:

"..., a subcontractor in direct contract with the owner or general contractor,..."

7. [Page 5, Section 34.35.064, Line 17]

The intention of requiring a person who exercises his claim rights to disclose the potential amount of his claim is to give the owner, lender or general contractor an opportunity to find out not only what is owed at the date of the giving of notice of intent to lien, but also to enable the owner, lender or general contractor to have an opportunity to know what further work is expected to be performed or goods furnished to the job by the same claimant. The concerns expressed by suppliers and by certain of the legislators who view with concern imposing an obligation on suppliers and subcontractors to disclose the cost of future work deals with the obligation to give dollar values. I believe the problem can be overcome by requiring the supplier or subcontractor-claimant to give information concerning the dollars incurred to date and, with respect to future work, to describe in-kind, what additional services or materials will be furnished.

To accomplish that the following language needs to be added at the end of line 17:

"...and a description of labor, materials, or equipment which the claimant reasonably anticipates furnishing the job."

8. [Page 5, Section 34.35.067(b), Line 24]

This section establishes the priorities of mechanic liens with respect to incumbrances securing financing and is a true statement except with respect to labor liens on original construction. An exception has to be included in the language, therefore, to recognize that fact. I recommend the following language be added so that line 24 reads as follows:

"(b) a claim of lien, except the claim of an individual performing work on original construction, for labor, materials, services or equipment...."

9. [Page 6, Section 34.35.070(a), Lines 6 and 7]

The drafter has redrafted this section even from the immediately preceding draft and inadvertently created the impression that liens could be lodged even after the 90-day period in subsection (b) of this section. In order to clarify that subsection (b) is the final outside date for recording of claims, the following language must be deleted from lines 6 and 7:

"Except as provided under Section 71(c) of this chapter,..."

There, of course, will have to be a reference in another section, dealt with later.

10. [Page 7, Section 34.35.071(a)(2), Line 7]

The committee agreed that language would be added in this subsection to clarify that five-day notices prior to recording notice of completion need not be given to those persons performing work at the very end of the job, since their 10-day notices of intent to lien may not be received until after the five-day notices have been sent. In order to clarify this point, the following language must be added so that line 7 reads as follows:

"...intent to lien or a stop payment notice to the owner prior to 10 days before recording the notice of completion. The notice shall..."

11. [Page 7, Section 34.35.071(c), Lines 20 to 22]

The committee agreed that there would be some clarification language added to this subsection in order to make it clear that the failure to properly send the five-day pre-notification of recording notice of completion would affect only those claimants not receiving the notice, not all mechanic lien claimants. Further, language must be added in order to reference the fact that there is a 90-day recording period in another section.

[Page 7, Sec. 34.35.071(c), Lines 23-24]

Subsection (c) should be totally rewritten as follows:

"(c) Notwithstanding the provisions of Section .070(a) and (b), if an owner has complied with (a) and (b) of this section, a claimant shall record his claim of lien no later than 10 days after the date the notice of completion is recorded. Any claimant who has given or recorded notice of intent to lien prior to 10 days before recording notice of completion and who has not given five-day notice of recording of notice of completion, shall have 90 days from completion to record his claim of lien, but it shall not extend the time to file claim of lien for claimants who were given the five-day notice of recording notice of completion."

12. [Page 9, Section 34.35.095, Lines 4 - 8]

It is the intent of the drafter to impose the time period for which lien rights arise for both stop notices and mechanic liens in one section. Although this is a slightly different approach than taken in the earlier drafts, it is fully acceptable; however, as drafted, it applies only to mechanic liens and makes no mention of stop notices. To cure that problem, the following changes should be made so that lines 4 through 8, read as follows:

"The amount to which a claimant, other than a general contractor, for a building or improvement or of an individual described in Section 120(10) of this chapter or of a claimant having a direct contract with the owner or general contractor for alteration or repair of a building is entitled,..."

13. [Page 12, Section 34.35.120(4), Line 17]

Everyone is in agreement the construction financing refers only to the first construction on the property; however, the word "new" is language not currently used in the code and over which there has been no history of litigation. The terminology used throughout the section, and for which there is a body of interpretive law, is the word "original" and that is the word which should be used on line 17.

14. [Page 13, Section 34.35.120(10), Lines 26 and 27]

This section needs to be revised for two reasons.

- (a) It currently limits the rights of an individual to individuals working original construction and it must be clear that individuals have rights even with respect to repairs, alterations or maintenance or existing structures. In other sections, their rights to a priority lien are limited to original construction, but that is dealt with in appropriate sections. Here it is necessary only to define the individual as being a natural person but not limited to original construction.
- (b) In order to clarify that individuals include persons who may have contractors licenses but who are employees on a

April 3, 1978

particular job, additional language must be added. This is another matter that was agreed upon by the committee and not included in the last draft.


Section 10 should be rewritten as follows:

"(10)'individual' means a natural person who actually performs labor upon a building or other improvement, and who is not a 'contractor' as defined in AS 08.18.171, or, if a contractor, is not acting as a contractor on the job but acting as an employee, including having payroll deductions made from all remuneration paid him."

The effective date and applicability clauses as well as the section dealing with condominiums and other multiple unit structures have been omitted and it will be necessary to reserve the right to comment on those until they have been submitted.

It is of some concern to the Division of Insurance that there seems to be some question about the effective date. It the recommendation of the division that the law be made effective immediately, even though the applicability clause may provide for some deferral of the application with respect to certain liens.

Sincerely,



Richard L. Block
Director

RLB/va16-11


STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 22, 1978

SUBJECT: House Bill 739
TO: Representative Joe L. Hayes
FROM: James L. Baldwin 
Legislative Counsel

I have been requested by John Crandall to prepare a brief memorandum on the amendments HB 739 would make in existing law.

Section 1. Simplifies the language of existing section 50 and decreases the number of persons entitled to claim a lien. Under existing law any laborer, supplier, architect, or engineer may claim a lien; while after enactment of HB 739, only those persons performing labor upon or delivering supplies to the job site (or a person who directs them to work or deliver there) may claim a lien.

Section 2. The intent of this section is, with certain exceptions, to reorder the priorities accorded liens. Under existing law a lender may not have priority over a subsequent unrecorded construction lien for his recorded mortgage or deed of trust. HB 739 specifies that the priority of a construction lien is fixed on the date of recording of the lien claim.

Section 3. Allows a person to record a lien immediately after materials are delivered or work begins. Under existing law a lien claim may be recorded within 90 days after the materials are furnished or the work is completed.

Section 4. Under existing law, a supplier and a person furnishing labor at the site of new construction has a preference over a prior recorded lien, mortgage, deed of trust or other encumbrance. HB 739 would delete this priority for suppliers and qualify the priority for laborers by providing that they must not be a "contractor" as defined under AS 08.18.171.

Section 5. Adds a new section which establishes procedures for the administration of construction financing. Lenders would be required to withhold draw from contractors who have not paid their subs or employees. The withholding is mandatory after receipt of a stop payment notice by a person entitled to claim a lien. The notice may be sent if payment is not received within 20 days after the claimant's contract requires. Lenders who don't comply with these new procedures will lose any priority obtained under a recorded mortgage or deed of trust to the extent of funds wrongfully disbursed after receipt of the stop payment notice.

Section 6. Adds a new section to existing law which requires a potential lien claimant to give a notice of lien liability to the owner of the property and lender within 20 days after entering into a construction contract. The intent is to notify the owner of the sources of lien liability that have the potential for encumbering his property. Under existing law, an owner may be subjected to double liability unless he makes certain that all subcontractors are paid by the general contractor. A mechanic's or materialman's lien is not enforceable unless a notice of lien liability is given and recorded when required.

Section 7. Under existing law, a lien claim may not be recorded by a general contractor until completion of the construction contract. That section is repealed and reenacted to generally provide for the recording of lien claims and provides that they attach and are capable of enforcement only upon recording.

Section 8. Specifies the contents of a claim of lien. Existing law is similar to this repealed and reenacted section, except that additional specific information is required about the lien claimant and the work or materials furnished.

Section 9. Adds new subsections to AS 34.35.070, which provide that:

- (1) a premature notice of completion is ineffective;
- (2) a lien may not be claimed for work performed to satisfy a breach of warranty or other defective material or workmanship unless funds are placed in escrow to pay for the work; and

Representative Joe L. Hayes
Page 3
February 22, 1978

(3) a general contractor can waive his right to claim a lien if he has substantially completed the work under contract, he will complete the remaining work within six months, and funds have been placed in escrow to pay for the work.

Section 10. Specifies amounts and conditions for a bond that may be required by a lender in lieu of withholding money from draws when a stop-notice is filed under sec. 62. (It appears that the internal citation to sec. 64 on page 7, line 7 of HB 739 is incorrect, and should be changed to read sec. 62 vice sec. 64).

Section 11. Conforming amendments.

Section 12. Definitions.

I hope that the foregoing has answered your questions concerning HB 739; if I can be of further assistance, please call me at 465-4627.

JLB:hjd:jpd



ANCHORAGE BOARD OF REALTORS.® INC.

1818 WEST NORTHERN LIGHTS BOULEVARD

ANCHORAGE ALASKA 99503

(907) 272-3833

March 1, 1978

Attn: ANCHORAGE AREA LEGISLATORS

Whereas a serious situation now exists in the State of Alaska with regard to materialmen and mechanics lien legislation, and

Whereas the legislature is now considering HB 739 and suggested amendments and revisions to HB 739 by the Homebuilders Association, and

Whereas we as Realtors are involved with all aspects of the real estate industry,

Therefore, be it resolved that the Anchorage Board of Realtors supports the enactment of effective legislation during this session to provide for protection of all parties involved in the creation, insuring, and financing of residential dwellings; and to further provide 1) protection for the individual homeowner from injudicious lien filing, 2) definition of procedures guaranteeing labor's rights to lien for work performed, 3) suppliers right to lien for materials provided to job site, & 4) definition of procedures allowing for prompt issuance of ALTA Title Insurance and subsequent long-term financing.

Board of Directors
Anchorage Board of Realtors

Shayne Oakley, Pres.

Al Christensen

Robert A. Becker

George J. Oliver

Robert E. ...

Barbara J. Hill

Jean Sheppard

Juan A. Gastock

REALTOR®—IS A COLLECTIVE MEMBERSHIP MARK WHICH MAY BE USED ONLY BY REAL ESTATE PROFESSIONALS WHO ARE MEMBERS OF THE NATIONAL ASSOCIATION OF REALTORS®



ALASKA ASSOCIATION OF REALTORS®

1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

March 1, 1978

Honorable Joseph H. McKinnon, Chairman
Alaska House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: H. B. 739

Dear Joe:

We know that you are aware of the considerable hardship now being felt by homebuilders and home buyers because of the inability to receive prompt issuance of ALTA Title Insurance as required by the lenders financing these homes.

We have no specific recommendations at this time but we are aware that the Homebuilders Association, the suppliers, banks and title companies will be giving testimony before your committee in the immediate future.

Inasmuch as we are involved in all the various aspects of the Real Estate Industry we can sympathize with each of these factions. However, small builders are going broke and prospective purchasers are being greatly inconvenienced because of the great length of time now needed for closing of sales requiring the issuance of ALTA title policies.

We urge you to consider the testimony, amend the bill as fairly as possible and report it out of committee. We will lend any assistance we can, thereafter, to secure quick passage of a bill in the House and Senate that would relieve the present chaotic condition.

Sincerely,

Audie L. Moore, Acting Chairman
Legislative Committee
Alaska Association of Realtors

ALM:pw



Alaska State Legislature

REPRESENTATIVE
STEVE COWPER
210 NERLAND BUILDING
FAIRBANKS, ALASKA 99701



WALL IN JUNEAU
FIDELITY
JUNEAU ALASKA
99801
1007 462 3706

House of Representatives

March 16, 1978

Mr. Edgar S. Philleo
President
Philleo Engineering &
Architectural Service Inc.
529 Sixth Avenue
Fairbanks, Alaska 99701

Dear Ed:

Thank you for your letter of March 3, 1978, in which you raise an important point in opposition to HB 739, which relates to materialmen and mechanics' liens.

I have taken the liberty of sending a copy of your letter to Rep. Joe McKinnon, chairman of the House Commerce Committee, to which that bill has been referred. I think your comments will prove valuable to them in their review of the bill.

Thank you for keeping me informed of your views on this. I look forward to hearing from you again.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper

SCC/mas
cc. Rep. Joe McKinnon

March 3, 1978

Steve Cowper
210 Nerland Bldg.
Fairbanks, Alaska 99701

Dear Steve:

I am writing to express my opposition on House Bill #739 which as I understand it would eliminate Architects and Engineers from any lien rights in that it would require manual labor to have been performed on a property before a lien could be filed.

I have availed myself of lien rights on several occasions in the past and see no reason that professional services should not be entitled to the same rights as laborers.

Very truly yours,



Edgar S. Philleo, P.E.
President

ESP/pal

Page 1 of 2 Roll of Persons attending
Rep McLean Lien hour forum/meeting 3/28/78

HB 739 hours

NAME	COMPANY	Phone
RAY Holson	ace Electric	333 4071
Michael P. Kiel	" "	"
Red Smith	Ding hot Electric	694-2677
Frank Day	Western Utility Supp	272-1219
Vern White	AK Truss + Millwork	279-3522
Logan White	Alaska Truss Millwork	277-3522
Jerry Day	Builders Millwork	279-0901
Charlie Hamilton	Mike's Supply	274-1538
Jack Peterson	Arrow Lumber	
Mike Sanden	Susitna Supply	276-2818
Jerry Earp	" "	276-2818
Mr. ^{Roy} Cassel	Decor Ind.	277-7444
Mark NARDINI	DESIGN SUITE 204	274-6322
Joe De Costa	Bel Corp	277-5451
Roy L. Cassel	Decor Ind Inc	272-1593
Raenay Shimshava	Daily News	272-8561
Ray Hamilton	Hamilton Sons	
Slim Smith	General Prof.	2774682
Candice Schriber	Alaska Brick	344-0531

ROLL OF PERSONS ATTENDING
 LIEN LAW forum/meeting 3/28/77

NAME	COMPANY	Phone
Howard Holmstrom	United Lbr Co	274-5602
SWEDE Holmstrom	UNITED LBR. Co	274-5602
Bernie Hawthorn	self-emp	274-0116
Ray Rainwater	self-emp	349-4951
Berg, Walter	Stolt	277-7654
C. Lee Cooper	Jones Const.	
Leon T Brown	Brown Ect.	
Hodge Woods	Northwest Door	
Don McLeod	"	
Vern Rhode	AK Truss & Millwork	279-3522
Judy Russell	Allen & Peterson	279-3537
Jake Nevez	Nevez Const	337-4944
Jerry Pruitt	Associated Enterprises	
Ware Mero	Flintstone Inc.	344-2416

To: Rep Joe McKinnon

Page 1 of 2

From: ~~Bernie Gauthier~~

RE: House Bill No. 739, Tentative Draft Dated
March 24, 1978 (copy attached)

DATE: March 28, 1978

I have reviewed the tentative draft and will herein briefly outline my thoughts concerning the legislation. I have some general comments which I will set forth first and this will be followed by some specific comments.

I. General Comments

- (1) The overall approach taken by this legislation is wrong. First the Act gives the bank or lending institution priority over the materialman's lien rights and then makes numerous additional burdensome requirements upon the lien claimant. The bank is not required to do anything and is given first priority.
- (2) ~~This Act gives the laborer priority and subordinates the materialman. Under the current law, these two claimants are equal. This change is simply unfair and gives undue preference to the laborer (Page 2, Line 17; Page 2, Line 5).~~
- (3) The legislation not only encourages litigation, it requires it (see Page 4, Line 8). See 2.
- (4) The legislation is far too complex. In order to fully protect his interest, the lien claimant must prepare, record and serve a "notice of intent to lien", a "stop payment notice", file a lawsuit in superior court, and, finally record his lien within ten days from the recording of a notice of completion". This places so many technical requirements upon the lien claimant that it is a virtual certainty that one mistake along the line could result in the loss of lien rights and the imposition of liability upon the claimant. In short, the legislation will discourage the filing of lien claims.

To: Rep Joe McCann
Re: HB 739 Hearing

To: FBX
Re: HB 739 Hearing

PREPARED BY: THE
Home BUILDERS ASSN
OF ALASKA

OWNER OR GENERAL CONTRACTOR

SUPPLIER OR SUBCONTRACTOR

SUBCONTRACTOR (ONLY)

SUPPLIER OF SUBCONTRACTOR

SUPPLIER GIVES NOTICE OF RIGHT TO LIEB TO OWNER AND TO LENDER, AND FURNISHES INFORMATION ON AMOUNT DUE, OR AMOUNT TO BECOME DUE, UPON DEMAND OF OWNER, LENDER OR GENERAL CONTRACTOR

NOTICE OF RIGHT TO LIEB TO LENDER AND TO OWNER

NO NOTICE OF RIGHT TO LIEB

OWNER OR GEN CONTRACTOR RECEIVES NOTICE

RIGHT TO STOP NOTICE IF PAYMENT IS 30 DAYS LATE

NO LIEB RIGHT

OWNER OR LENDER GIVES NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

OWNER OR LENDER DOES NOT GIVE NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

LENDER WITH FUNDS ASIDE FROM CONSTRUCTION LOAN - 30 DAYS

FUNDS DISPERSED PER AGREEMENT BETWEEN OWNER, CLAIMANT, AND LENDER

NO AGREEMENT IN 30 DAYS

LIEB RIGHTS EXPIRE 30 DAYS AFTER RECORDING NOTICE OF COMPLETION

LIEB RIGHTS EXTEND 30 DAYS AFTER COMPLETION

CLAIMANT MAY SUE AND BOND OUT WITHIN 30 DAYS

CLAIMANT DOES NOT ENTER BOND OUT; LENDER RELEASES FUNDS

COURT DETERMINES OUTCOME; LENDER HOLDS FUNDS

NOTICE OF RIGHT TO LIEB TO LENDER AND TO OWNER

NO NOTICE OF RIGHT TO LIEB

OWNER OR GEN CONTRACTOR RECEIVES NOTICE

RIGHT TO STOP NOTICE IF PAYMENT IS 30 DAYS LATE

NO LIEB RIGHT NO RIGHT TO STOP NOTICE

OWNER OR LENDER GIVES NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

OWNER OR LENDER DOES NOT GIVE NOTICE 5 DAYS PRIOR TO RECORDING NOTICE OF COMPLETION

LENDER WITH FUNDS ASIDE FROM CONSTRUCTION LOAN - 30 DAYS

FUNDS DISPERSED PER AGREEMENT BETWEEN OWNER, CLAIMANT, AND LENDER

NO AGREEMENT IN 30 DAYS

LIEB RIGHTS EXPIRE 30 DAYS AFTER RECORDING NOTICE OF COMPLETION

LIEB RIGHTS EXTEND 30 DAYS AFTER COMPLETION

CLAIMANT MAY SUE AND BOND OUT WITHIN 30 DAYS

CLAIMANT DOES NOT ENTER BOND OUT; LENDER RELEASES FUNDS

COURT DETERMINES OUTCOME; LENDER HOLDS FUNDS

LA 11 4003 16.13 JA01 0032 16.13 02/16/78

TO REPRESENTATIVE JOE MCKINNON CHAIRMAN, HOUSE COMMERCE
FROM SIGVALD STRANDBERG, 555 WEST NORTHERN LIGHTS BLVD, SUITE 201,
ANCHORAGE 99503 - PHONE 276-4555

WOULD APPRECIATE BEING ADVISED WHEN HEARINGS ARE SCHEDULED ON
HB 739, MATERIALMENS AND MECHANICS LIENS.

JH-EOM/

LA 11 3337 15.51 JA01 0049 15.51 03/15/78

TO REP MCKINNON CHAIR H. COMMERCE
ATTN: ALL MEMBERS

FROM BUILDERS MILLWORK & SUPPLY
999 E. TIDOR
ANCHORAGE, AK 99503
TEL: 279-0401

*Copies distributed
CBB*

RE: HB 739

AS A MATERIAL SUPPLIER AND SUBCONTRACTOR WE TAKE EXCEPTION TO
MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED. WE REQUEST A COPY
OF THE NEWLY REVISED DRAFT AND TIME TO STUDY REDRAFT OF FINAL BILL.
AND AN OPPORTUNITY TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH C. B. JANTNER, P.O. BOX 3546, ANCH.
AK 99501, 278-0115. 208

CER/EOM

LA 11 2097 12.03 JA01 0021 12.03 03/15/78

TO REPRESENTATIVE JOE MCKINNON

FROM SUPERSTRUCTURES, BOX 1227, SOLDOTNA 99589, PHONE 262-5338
DICK RUCKMAN, OWNER AND MISS COOPER, BOB CHILDRY, PAUL WALSTRAN,
TERRY EVALVIN, BOB LINTZ

WE ARE NOT IN AGREEMENT WITH MANY OF THE CLAUSES IN PROPOSED BILL
HB 739. WE REQUEST TIME TO STUDY REDRAFT AND ALLOW OTHER INTERESTED
PARTIES TO BECOME FAMILIAR WITH PROVISIONS PRIOR TO PASSAGE.

JH EOM/

St. Mary's Suburban Realty, Inc.
St. Mary's Suburban Realty, Inc.

LA11 1909 11.37 JAD1 0019 11.37 03/16/78

TO REP. JOE MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

FROM: DON MCLEOD
NORTHWEST DOOR OF ANCHORAGE
6721 ARCTIC SPUR RD
ANCHORAGE, ALASKA 99502
TEL: 274-8103

Copies distributed to Commerce members

AS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO MANY CLAUSES IN HB 739 AS PRESENTLY DRAFTED. WE REQUEST TIME FOR ALL INTERESTED PARTIES TO REVIEW ANY REDRAFTS PRIOR TO PASSAGE.
EDM

LA11 1183 15.39 JAD1 0015 15.39 03/15/78

TO REP. MCKINNON, CHAIR, H. COMMERCE COMMITTEE
ATTN: ALL MEMBERS

FR. UNITED BUILDING SUPPLY, INC
UNITED BROS. CO. INC. AND SUBSIDIARIES
D. HOLSTON, SALES MANAGER
P.O. BOX 5005
ANCH., AK 99502
TEL. 374-1604

REF: H-739

AS A MATERIAL SUPPLIER WE TAKE EXCEPTION TO MANY CLAUSES IN THE PROPOSED BILL AS PRESENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED MARCH 14TH, 1978, AND COPIES ARE NOT YET AVAILABLE. WE UNDERSTAND THERE WILL BE A COMMITTEE HEARING THURSDAY, MARCH 15, AT 7 P.M. TO REJECT CERTAIN PROPOSALS. WE ARE DESIROUS OF OBTAINING A COPY OF THE REDRAFT AND WE URGENTLY REQUEST TIME TO STUDY IT AND SUBMIT SUGGESTIONS IF NECESSARY, PRIOR TO SUBMITTAL TO THE LEGISLATURE FOR PASSAGE.
EDM

CINDY JNU
FR CHARITY ANCH

THIS MESSAGE WAS SENT YESTERDAY AFTERNOON BUT WAS GARBLED
AND PRINTED OUT AT ANOTHER SITE. I WAS TOLD BY THAT SITE
THIS MORNING SO AM RESENDING IT.

TO REP MCKINNON CHAIR. U. COMMERCE
ATTN: ALL MEMBERS

RE HB 739

THE UNDERSIGNED AS MATERIAL SUPPLIERS AND SUB CONTRACTORS
OBJECT TO MANY CLAUSES IN THE PROPOSED BILL AS DRAFTED.
WE UNDERSTAND THAT A COMMITTEE MEETING FOR 3/16/78 WILL
REDRAFT THIS BILL. WE REQUEST A COPY OF THE NEWLY DRAFTED
PROPOSAL AND TIME TO STUDY IT. WE REQUEST AN OPPORTUNITY
TO COMMENT BEFORE COMMITTEE TAKES FINAL ACTION.

WE CAN BE CONTACTED THROUGH G.M. GAUTHIER, P.O. BOX 3-546
ANCH., AK 99510, 274-0116.

- S/ WAY DEBENHAM...DEBENHAM ELECTRIC & SUPPLY INC
- MIKE NEVES.....NEVES CONSTRUCTION
- BEN DIGGINS.....DIGGINS CONCRETE
- SAM GIAMMALVA....ALASKA ASPHALT PAVING
- JOE GIAMMALVA...JOE'S TRUCKING INC
- RICHARD JOYSEN....JOYSEN TRUCK ASPHALT INC.

EO4

CBK/EO4

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LA 4765 18.08 03/15/78 JA01 0005 07.32 03/16/78

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

FROM FRED STEENMEYER
2433 POST RD
ANCHORAGE, AK 99501
TELE 276-5055

AS A CONTRACTOR AND SUPPLIER WE OPPOSE HB 739
AS DRAFTED. WE UNDERSTAND THERE IS A COMMITTEE
HEARING, THURS. 3/16 AT 7 P.M. TO REDRAFT THIS
PROPOSAL. WE REQUEST ADDITIONAL TIME TO STUDY
THIS REDRAFTED BILL BEFORE LEGISLATIVE ACTION
TAKES PLACE. EOM.

COPY OF P.O.W. REQUESTED: ATTN: JOANNA CBK/EOM

LA 4772 18.13 03/15/78 JA01 0006 07.32 03/16/78

TO REP MCKINNON, CHAIR, H. COMMERCE
ATTN ALL MEMBERS

FROM INLET GLASS INC
245 POST RD
ANCHORAGE, AK 99501
TEL 276-4551

AS A MATERIAL SUPPLIER IN THE ANCHORAGE AREA WE TAKE
EXCEPTION TO NUMEROUS CLAUSES IN HB 739 AS WRITTEN. WE
UNDERSTAND A COMMITTEE HEARING TO REDRAFT THIS BILL IS
SCHEDULED FOR THURS, 3/16, AT 7 P.M. WE REQUEST TIME TO
STUDY THIS REDRAFT PROPOSAL BEFORE COMMITTEE ACTION
IS TAKEN ON FINAL DRAFT. EOM

CBK/EOM

TO REPRESENTATIVE JOE MCKINNON
FROM ALLEN W. SMITH FOR HOME DECORATING

RE HB 739: AS A MATERIAL SUPPLIER AND SUBCONTRACTOR I TAKE EXCEPTION
TO MANY OF THE PROVISIONS OF THIS BILL AS DRAFTED. WE REQUEST COPY
OF REDRAFTED PROPOSAL FOR STUDY AND COMMENT BEFORE THE COMMITTEE
TAKES FINAL ACTION. 1950 FAIRBANKS STREET, ANCHORAGE 99503.
PHONE 279-3537.

Moore Business

LA 11 2505 13.47 JA 01 0023 13.51 03/16/79

TO REPRESENTATIVE JOE MC KINNON AND MEMBERS OF HOUSE COMMERCE COMMITTEE
RE HB 739

AS MATERIAL SUPPLIERS AND SUBCONTRACTORS WE TAKE EXCEPTION TO
MANY CLAUSES IN THE PROPOSED BILL AS CURRENTLY DRAFTED. WE REQUEST
TIME TO STUDY THE REDRAFT OF THE FINAL BILL AND AN OPPORTUNITY TO
COMMENT BEFORE THE COMMITTEE TAKES FINAL ACTION. WE CAN BE
CONTACTED THROUGH B. W. GAUTHIER, P. O. BOX 3-546, ANCHORAGE 99501
PHONE 274-0116.

SIGNED B.W. GAUTHIER, CONSTRUCTION CREDIT CONSULTANT
DAN JORDAN, JORDAN'S CARPET CENTER
CHARLES S. HAMILTON, MIKE'S SUPPLY, INC.
DAVID MERRO, FLINTSTONE, INC.
WAYNE STOLT, STOLT'S ELECTRIC
MIKE HAYDEN, QUALITY ASPHALT
LEON T. BROWN, BROWN'S SUPPLY COMPANY
ROBERT E. LINDSTROM, MC KINLEY FENCE
GLEN SMART, GENERAL ROOFING

Copies distributed to Commerce members

JH EOM/

LA 11 3343 15.45 JA 01 0047 15.45 03/16/79

TO REPRESENTATIVE JOE MC KINNON

FROM HELMUT WETZEL, MASTERCRAFT KITCHENS AND FIXTURES
4560 QUARTZ WAY ANCHORAGE 99503 PHONE 272-3433

PLEASE DELAY FINAL CONSIDERATION OF HB 739 UNTIL WE HAVE
HAD AN OPPORTUNITY TO REVIEW AND COMMENT ON YOUR COMMITTEE'S
PROPOSAL.

JH EOM/

RE: HB 739
WE ARE TAKING EXCEPTION TO HB 739. PLEASE RECONSIDER AND DELAY
FOR THE TIME BEING IN ORDER TO GIVE SUPPLIERS AND THE BUSINESS
SIDE AND DAMAGING TO ALL SUPPLIERS AND SUB-CONTRACTORS. THANK
YOU. EOM/

FROM: GERALD E. EARP, PRES.
SUSTAIN SUPPLY, INC.
P.O. BOX 3-1033
ANCH., AK 99501 276-2810

TO: REP. JIM MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL HOUSE COMMERCE COMMITTEE MEMBERS

DATE: 03/16/78 07:31 AM

*Copies given to
all members
EOM*

CRK/EOM

"THE PROPOSED BILL, HB 739, AS CURRENTLY DRAFTED CONTAINS
CONDITIONS UNACCEPTABLE TO A SUBCONTRACTOR. WE UNDERSTAND
THERE HAVE BEEN REVISIONS AND PENDING REVISIONS ARE BEING
DRAFTED CURRENTLY IN A COMMITTEE HEARING 3/16/78 AT 7 PM.
WE RESPECTFULLY REQUEST A COPY OF THE DRAFT AND A FEW DAYS
TO STUDY IT, AND OFFER SUGGESTIONS IF NECESSARY PRIOR TO
SUBMISSION TO THE LEGISLATURE FOR PASSAGE. EOM"

FROM RICHARD HOLMSTROM, ALASKA MGR.
CONCRETE COING CO.
1425 VIKING DR.
ANCH., AK 99501

TO: REP. MCKINNON, CHAIR, H. COMMERCE
ATTN: ALL MEMBERS

DATE: 03/16/78 14:53

*Copies
Mackinon
EOM*

LA11 4359 16.53 03/15/78 JA01 0001 07.31 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: GORDON HILL, MANAGER
PACIFIC PLUMBING SUPPLY CO.
6260 OLD SEWARD HIGHWAY
ANCHORAGE, AK 99502 344-4523

RE: HB 739

PACIFIC PLUMBING SUPPLY CO. TAKES EXCEPTION TO THE BILL AS CURRENTLY DRAFTED. IT IS OUR UNDERSTANDING THAT THE BILL WAS SUBSTANTIALLY REVISED 3-14-78, AND COPIES ARE NOT YET AVAILABLE.. WE UNDERSTAND THAT THERE WILL BE A COMMITTEE HEARING ON MARCH 16, 1978, AT 7:00 PM TO REDRAFT CERTAIN PROPOSALS.

PACIFIC PLUMBING SUPPLY CO. IS EXTREMELY INTERESTED IN OBTAINING A COPY OF THE REDRAFTED BILL AND REQUESTS TIME TO STUDY IT AND SUBMIT RECOMMENDATIONS PRIOR TO SUBMITTAL FOR PASSAGE IN THE LEGISLATURE.

THANK YOU. EOM/

LA11 1383 10.23 JA01 0015 10.23 03/16/78

TO REPRESENTATIVE JOE MCKINNON
FROM TIM DUGAN 6501 A STREET ANCHORAGE 99502 PHONE 276-5614
R. GAYLOR ELECTRIC

I REQUEST A COPY OF THE NEWLY MARKED-UP CS FOR HB 739. I WOULD LIKE AN OPPORTUNITY TO REVIEW AND COMMENT ON THE REDRAFT BEFORE FINAL COMMITTEE ACTION.

JH EOM/

LA11 3471 17.29 03/16/78 JA01 0001 08.05 03/17/78

TO REPRESENTATIVE JOE MCKINNON

FROM LILLIAN CASTLE DECOR INDUSTRIES INC 4263 W MINNESOTA DRIVE
ANCHORAGE 99503 PHONE 272-1592

DECOR INDUSTRIES IS A MATERIAL SUPPLIER. WE ARE NOT IN AGREEMENT WITH SOME OF THE PROVISIONS IN THE PROPOSED SUBSTITUTE FOR HB 739 AND WOULD APPRECIATE HAVING A CHANCE TO READ AND COMMENT ON THE COMMITTEE'S FINAL PROPOSAL BEFORE COMMITTEE ACTION IS TAKEN.

JH EOM/

LA21 3673 17.40 03/16/73 JA01 0002 08.06 03/17/73

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO THE HOUSE
COMMERCE COMMITTEE:

RE: HB 739

I STRONGLY OPPOSE THE WEAKENING OF THE LIEN RIGHTS OF
MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY HOUSE
BILL 739. SUGGEST ORIGINAL MORTGAGE BE REPLACED AS SHOWN
IN SECTION 4, AS 34.35.060, PARA C IN BRACKETS: (OR FURNISHING
MATERIAL USED IN) AS OPPOSED TO NEW MORTGAGE. THE LIEN RIGHTS
OF MATERIAL SUPPLY COMPANIES AT WHOLESALE, RETAIL, OR
CONTRACTOR LEVELS NEED TO BE PLAIN AND CLEARLY WORDED. KEEP
IN MIND THAT MATERIAL SUPPLIERS PROVIDE AS IMPORTANT A FUNCTION
AS BANKS AND LABOR WITHOUT THE SECURITY OF MORTGAGES, DEEDS OF
TRUST, OR WEEKLY PAY CHECKS. SUPPLIERS PROVIDE MILLIONS OF
DOLLARS IN CREDIT WITH THEIR LIEN RIGHTS AS THEIR ONLY BASIC
SECURITY. TO INSURE A HEALTHY CONSTRUCTION INDUSTRY MATERIAL
SUPPLIERS MUST HAVE THE PROTECTION OF PREFERENTIAL LIEN RIGHTS
EQUAL TO LABORS.

THE BILL IN PRESENT FORM IS EXTREMELY CUMBERSOME AND DIFFICULT
FOR FAST MOVING INDUSTRIES SUCH AS WHOLESALERS TO CONFORM TO.
BILLINGS AND COLLECTIONS ARE OUR INDICATORS OF CREDIT EXPOSURE
AND THESE ARE FIFTEEN TO THIRTY DAYS AT BEST.

RESPECTFULLY REQUEST YOU ALLOW FAIRBANKS SUPPLIERS ENOUGH TIME
TO FORMULATE THEIR IDEAS AND PROVIDE INPUT OR ALLOW US TIME
TO REVIEW THE BILL BEFORE IT IS PUT IN ITS FINAL FORM AND
MAKE SUGGESTED REVISIONS.

JAMES HADD
CENTRAL SUPPLY COMPANY
P.O. BOX 140, ENKO, 92707
PH: 452-2125

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS, /A/ 50M

LAH 3562 16.17 JAD1 0052 16.17 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: ROBERT E. LINDSTROM
MT. MCKINLEY FENCE COMPANY
1855 E. THIRD AVENUE
ANCHORAGE, AK 99501 279-1567

RE: HB 739

AS A SUBCONTRACTOR AND MATERIALMAN WE DO NOT AGREE WITH PROPOSED
BILL 739 AND REQUEST TIME TO STUDY THE FINAL REDRAFT PRIOR TO ITS
PASSAGE FROM COMMITTEE. EOM/

LAH 3594 16.29 JAD1 0053 16.29 03/16/78

TO: REP. JOE MCKINNON, CHAIRMAN, HOUSE COMMERCE COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: MARCIE CLARK
TOXIC PLUMBING AND HEATING
3100 MOUNTAIN VIEW DRIVE
ANCHORAGE, AK 99501 279-9333

RE: HB 739

WE ARE NOT IN AGREEMENT WITH THE PRESENT PROVISIONS OF THIS
BILL AND REQUEST A COPY OF A REDRAFTED BILL. EOM/

L111 4064 15.19 J401 0042 16.21 03/15/78

TO REP MCKIRNON, CHR. H. COMMERCE
FROM KEVIN J. WELLS

KENNAI SUPPLY INC
P.O. BOX 499
KENNAI, AK 99511
TEL: 283-7521

RE: HB 739

AS A MATERIAL SUPPLIER, WE TAKE EXCEPTION TO HB 739 AS
CURRENTLY DRAFTED. WE UNDERSTAND THERE WILL BE A COMMITTEE
HEARING THURS., 7 P.M., 3/15/78, TO REDRAFT CERTAIN PROPOSALS.
WE REQUEST TIME TO DOY THE REDRAFT PRIOR TO SUBMITTAL TO
THE LEGISLATURE FOR PASSAGE. EOM

CRK/FOH

L111 4071 15.20 J401 0043 16.22 03/15/78

CINDY, THE PRIOR MESSAGE FOR MCKIRNON WAS ALSO ENTERED FOR
RUSSE WELLS. SORRY, BOB

Mc Manus Business Forms, Inc

LA21 3700 18.18 03/16/78 JA01 0003 08.07 03/17/78

TO: CINDY, JMI
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

AM ADAMENTLY OPPOSED TO BILL IN ITS PRESENT FORM WHICH APPEARS TO WEAKEN LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS AS PROPOSED BY THIS BILL.

REQUEST THAT BILL INCLUDE MATERIAL SUPPLIERS TO RETAIN EQUAL LIEN RIGHTS TO LABOR.

ALSO, BILL IN ITS PRESENT FORM IS EXTREMELY CUMBERSOME FOR MATERIAL SUPPLIERS AS OURS IS A FAST MOVING INDUSTRY AND REQUIRES SUFFICIENT TIME FOR BILLING AND COLLECTIONS. FEEL THAT TWENTY DAY PERIOD IS NOT SUFFICIENT TIME AND WOULD REQUIRE US TO SHOW INTENT TO LIEN UPON INITIAL SALES CONTRACT.

REQUEST SUFFICIENT TIME TO REVIEW BILL IN ITS FINAL FORM BEFORE ITS PRESENTED TO THE HOUSE FOR ACTION.

DAN RAMOS
PRESIDENT, TOTAL ELECTRIC SUPPLY COMPANY
2113 CUSHMAN ST, FBKS 99701
PH: 452-1931

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. ZM/ EOM

LA21 3740 18.33 03/16/78 JA01 0004 08.08 03/17/78

TO: CINDY, JMI
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO HOUSE COMMERCE:

RE: HB 739

WE ARE STRONGLY OPPOSED TO THIS BILL AS WRITTEN. IT ALL BUT DESTROYS LIEN RIGHTS FOR MATERIAL SUPPLIERS AND CONTRACTORS.

WE REQUEST THE BILL BE ALTERED TO INCLUDE MATERIAL SUPPLIERS RETAINING LIEN RIGHTS EQUAL TO LABOR AND CONTRACTORS.

THE NATURE OF OUR INDUSTRY REQUIRES A CERTAIN TIME PERIOD FOR BILLING AND COLLECTION. THE TWENTY DAY PERIOD PROVIDED IN THIS BILL IS NOT SUFFICIENT AND WOULD FORCE US TO NOTIFY INTENT TO LIEN UPON INITIAL SALE.

REQUEST WE BE ALLOWED TO REVIEW THE BILL BEFORE IT IS SENT TO THE HOUSE.

MR. ROYAL BIRDWELL
AMFAC SUPPLY
2700 CUSHMAN ST, FBKS 99701
PH: 452-4424

TELEGRAM
PMA ALASKA TELECOMMUNICATIONS
PRIME SERVICE

#

02067 NL ANCHORAGE ALASKA 50 02-22 127P AST
PMS REP JOE MCKINNON

JUN

URGE HEARING HERE ON HB739 LITTLE GUY NEEDS CHANCE VS LARGER
PROponents OF BILL. THIS BILL WILL WORK HARDSHIP FOR SMALL
CONTRACTORS

BERTHA MIDYETT 1011 WEST 12TH APT 3 ANCHORAGE AK 99501

1978 FEB 22 PM 5 54

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ORIGINAL.

April 4, 1978

Alaska State Legislature

Attn: Russ Meekins, Joe L. Hayes, Larry Carpenter,
Ed Darkworth, Terry Gardiner, Clark Gruening,
Kris Lethin, Hugh Malone, Alvin Osterback,
Charles H. Park, Sandy Phillips, Leo House,
Richard Union.

Re: House Bill No. 739
Tentative Draft dated March 24, 1978

"General Comments"

In reviewing the Tentative Draft it is the opinion of the signers that this legislation is entirely too complex. It appears to be designed for the purpose of defeating a claimants lien rights through a series of complicated procedures which a claimant cannot comply with. It not only defeats a legitimate claimants rights, but it also exposes a supplier to fraud which could be perpetrated by a dishonest owner and sub-contractor. For a supplier to comply with the complicated procedures of sending notices of "Intent to Lien" and "Stop Payment" notices it not only encourages litigation but it requires it. While a supplier would be expected to comply with the above unworkable procedures, the bank or lending institution would be in a first priority position without having to do anything to protect their interest.

Needless to say this legislation will drive the cost of construction upward through a supplier needing additional personnel and increasing his credit risk factor. At a time when inflation is a major concern, it appears that little thought has been given to this aspect.

If any changes were to be made in the lien statute, we would have the following recommendation. It seems to us that the principal problem is that title companies are unable to write title policies on property until 90 days after completion. If this is indeed a problem in the real estate industry, it could simply be solved by requiring lien claimants to file their liens within ten days of completion. Certainly the delays involved in closing will not make this ten day provision a burden. If the supplier wishes to be informed of the exact date the completion occurs, he can simply send the bank a Notice of Intent to Lien. The statute could require that the bank then notify each such claimant prior to recording the Notice of Completion. Once the supplier receives notice that the completion will be recorded, he can take steps to immediately perfect his rights by recording his lien. This appears to be the only change which really is necessary and the remainder of this statute is simply overkill.

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"Specific Comments"

Page (1) Line (18). It is nearly impossible to require a supplier to actually deliver material to a job site under contract with the owner. A large portion of materials used in construction are picked up at a suppliers place of business. All reference to any delivery requirements is contrary to existing practice. Proof that material was used on a specific project is provided by the legal property description written on the invoice and acknowledged by the owner or his agent at the time of purchase. This is sufficient and any delivery requirement simply creates a loophole to defeat a legitimate claim.

Page (1) Defining who may perfect a lien:

A supplier who provides material to a sub-contractor rarely if ever has a contract with the owner. Under this section such a supplier has no lien rights. This is not only unfair but it opens the door to possible fraud. A dishonest owner and sub-contractor through collusion could cause the majority of material to be purchased by the sub-contractor. Under this section the supplier has no lien rights and consequently would be unable to recover his money.

Page (3)&(5) Sec(4). "Stop Payment Provision":

This section not only encourages litigation but it requires it. This section should be dropped and the materialman be allowed to maintain a first position supported by invoices. Sub-Section "C" requiring a lawsuit within thirty (30) days should be dropped for obvious reasons. A materialman should only be required to send a stop payment notice to the bank since they are the one disbursing funds. An owner only has to refuse a registered letter containing a stop payment notice to invalidate the materialmans claim.

Page (4) Line (19).

Notice of Intent et Lien.

This notice appears to be just another device to defeat a claimants lien rights. Obviously if an owner fails to accept or pick up a registered letter containing this notice the claimants rights are invalid. This section should be optional and not mandatory.

Page (6) Lines (1) thru (24). Claim of Lien:

This again makes the notice of intent to lien mandatory. The notice of intent to lien should be an optional requirement sent only to the bank to establish a materialmans priority over the banks mortgage. If a notice is not given the materialman should still have a right to lien even though he would be second to the bank.

Page (6) Line (26). Notice of Completion:

This is another complex device which does not give a supplier time to respond. It also makes the notice of intent to lien mandatory before a supplier can be informed of the notice of completion. Also to give notice five (5) days prior to recording is unrealistic. Even if a supplier could comply with the other requirements his claim could be invalidated by slow mail delivery.

From:

Dobbenham Electric Supply Company, Inc.
Stoll's Electric Supply Company
Stoll's Home Builders Center
Jordan's Carpet Center
United Lumber Company
Concrete Cutting Company, Inc.
Alaska Wood Products
United Building Supply
Concrete Coring Company, Inc.
Decor Industries, Inc.
Susitna Supply, Inc.
Alaska Truss and Millwork
Tom's Plumbing and Heating Supply Inc.
Brown's Electrical
Inlet Glass Company