

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 405

A bill to amend 1980 PA 497, entitled  
"Construction lien act,"  
by amending sections 110, 115, 202, 203, 204, and 206 (MCL  
570.1110, 570.1115, 570.1202, 570.1203, 570.1204, and 570.1206),  
section 110 as amended by 2001 PA 151, sections 115 and 203 as  
amended by 1982 PA 17, and sections 202 and 206 as amended by  
1981 PA 191.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 110. (1) A contractor shall provide a sworn statement  
2 to the owner or lessee in each of the following circumstances:

3           (a) When payment is due to the contractor from the owner or  
4 lessee or when the contractor requests payment from the owner or  
5 lessee.

1 (b) When a demand for the sworn statement has been made by  
2 or on behalf of the owner or lessee.

3 (2) A subcontractor shall provide a sworn statement to the  
4 owner or lessee when a demand for the sworn statement has been  
5 made by or on behalf of the owner or lessee **AND THE OWNER OR**  
6 **LESSEE HAS COMPLIED WITH THE REQUIREMENTS OF SUBSECTION (6)** .

7 (3) A subcontractor shall provide a sworn statement to the  
8 contractor when payment is due to the subcontractor from the  
9 contractor or when the subcontractor requests payment from the  
10 contractor.

11 (4) ~~The~~ A sworn statement shall list each subcontractor  
12 and supplier with whom the person issuing the sworn statement has  
13 contracted relative to the improvement to the real property. The  
14 sworn statement shall contain a list of laborers with whom the  
15 person issuing the sworn statement has contracted relative to the  
16 improvement to the real property and for whom payment for wages  
17 or fringe benefits and withholdings are due but unpaid and the  
18 itemized amount of such wages or fringe benefits and  
19 withholdings. The sworn statement shall be in substantially the  
20 following form:

21 SWORN STATEMENT

22 State of Michigan)

23 ) ss.

24 County of .....)

25 .....(deponent), being sworn, states the following:

26 ..... is the (contractor) (subcontractor) for an improvement  
27 to the following real property in ..... County, Michigan,

1 described as follows:

2 .....

3 (insert legal description of property)

4 The following is a statement of each subcontractor and  
5 supplier, and laborer for whom payment of wages or fringe  
6 benefits and withholdings is due but unpaid, with whom the  
7 (contractor) (subcontractor) has (contracted) (subcontracted) for  
8 performance under the contract with the owner or lessee of the  
9 property, and the amounts due to the persons as of the date of  
10 this statement are correctly and fully set forth opposite their  
11 names:

12	Name,							Amount
13	ADDRESS,							of
14	AND							laborer
15	TELE-							fringe
16	PHONE							benefits
17	NUMBER							and
18	of							with-
19	subcon-							holdings
20	trac-							due but
21	tor,	Type of	Total	Amount	Amount	Balance	laborer	unpaid
22	sup-	improve-	con-	already	cur-	to com-	wages	unpaid
23	plier,	ment	tract	paid	rently	plete	due	unpaid
24	or	fur-	price		owing	(op-	but	unpaid
25	laborer	nished				tional)	unpaid	unpaid

26 .....

27 Totals

28 (Some columns are not applicable to all persons listed)

29 The contractor has not procured material from, or  
30 subcontracted with, any person other than those set forth and  
31 owes no money for the improvement other than the sums set forth.

1 I make this statement as the (contractor) (subcontractor) or  
2 as ..... of the (contractor) (subcontractor) to represent to  
3 the owner or lessee of the property and his or her agents that  
4 the property is free from claims of construction liens, or the  
5 possibility of construction liens, except as specifically set  
6 forth in this statement and except for claims of construction  
7 liens by laborers that may be provided under section 109 of the  
8 construction lien act, 1980 PA 497, MCL 570.1109.

9 WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE  
10 PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM  
11 OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A  
12 NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF  
13 FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980  
14 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE  
15 IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

16 ON RECEIPT OF THIS SWORN STATEMENT, THE OWNER OR LESSEE, OR  
17 THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS  
18 RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH  
19 SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF  
20 FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS  
21 EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR,  
22 SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A  
23 SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF  
24 FURNISHING OR WHO IS NAMED IN THE SWORN STATEMENT MAKES A  
25 REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE  
26 REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS  
27 AFTER RECEIVING THE REQUEST.

1  
2

.....  
Deponent

3  
4  
5  
6

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

7  
8  
9  
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Subscribed and sworn to before me on .....(DATE)  
.....  
Notary Public,..... County, Michigan.  
My commission expires: .....

11  
12  
13  
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(5) The contractor or subcontractor is not required to list in the sworn statement material furnished by the contractor or subcontractor out of his or her own inventory that was not purchased specifically for performing the contract.

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(6) ON RECEIPT OF A SWORN STATEMENT, THE OWNER, LESSEE, OR DESIGNEE SHALL GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR WHO IS NAMED IN THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

1           (7) ~~—(6)—~~ After the contractor or subcontractor provides the  
2 sworn statement, the owner or lessee may withhold or, upon  
3 written demand from the contractor, shall withhold ~~—~~ from the  
4 amount due or to become due to the contractor or to the  
5 subcontractor for work already performed an amount sufficient to  
6 pay all sums due to subcontractors, suppliers, or laborers, as  
7 shown by the sworn statement, or due to lien claimants who have  
8 provided a notice of furnishing under section 109. From the  
9 amount withheld, the owner or lessee may directly pay  
10 subcontractors, suppliers, or laborers the amount they are due as  
11 shown by the sworn statement. If the contract provides for  
12 payments by the owner to the general contractor in the normal  
13 course of construction, but the owner elects to pay lien  
14 claimants directly under this section, the first time the owner  
15 elects to make payment directly to a lien claimant, he or she  
16 shall provide at least 5 business days' notice to the general  
17 contractor of the intention to make direct payment. Subsequent  
18 direct disbursements to lien claimants need not be preceded by  
19 the 5-day notice provided in this section unless the owner first  
20 returns to the practice of paying all sums to the general  
21 contractor. As between the owner or lessee and the contractor or  
22 subcontractor, all payments made under this subsection are  
23 considered the same as if paid directly to the contractor or  
24 subcontractor. If an amount is withheld under this subsection  
25 from the contractor or subcontractor, the owner or lessee, upon  
26 request, shall prepare and provide to the contractor or  
27 subcontractor an itemized statement of the sums withheld. If an

1 amount is paid directly to a lien claimant under this section,  
2 the owner or lessee shall, if requested by the contractor or  
3 subcontractor, provide to the contractor or subcontractor an  
4 itemized statement of the sums paid.

5       (8) ~~—(7)—~~ An owner, lessee, designee, mortgagee, or  
6 contractor may rely on a sworn statement prepared by a party  
7 other than himself or herself to avoid the claim of a  
8 subcontractor, supplier, or laborer unless the subcontractor,  
9 supplier, or laborer has provided a notice of furnishing as  
10 required under section 109 or unless the notice of furnishing is  
11 excused under section 108 or 108a.

12       (9) ~~—(8)—~~ If a contractor fails to provide a sworn statement  
13 to the owner or lessee before recording the contractor's claim of  
14 lien, the contractor's construction lien is not invalid. However,  
15 the contractor is not entitled to any payment, and a complaint,  
16 cross-claim, or counterclaim may not be filed to enforce the  
17 construction lien, until the sworn statement has been provided.

18       (10) ~~—(9)—~~ If a subcontractor fails to provide a sworn  
19 statement under subsection (2) to the owner or lessee before  
20 recording the subcontractor's claim of lien, the subcontractor's  
21 construction lien is valid. However, a complaint, cross-claim, or  
22 counterclaim may not be filed to enforce the construction lien  
23 until the sworn statement has been provided.

24       (11) ~~—(10)—~~ A contractor or subcontractor who desires to  
25 draw money and gives or causes to be given to any owner or lessee  
26 a sworn statement required by this section that is false, with  
27 intent to defraud, is guilty of a crime as follows:

1 (a) If the statement involved is for less than \$200.00, the  
2 contractor or subcontractor is guilty of a misdemeanor punishable  
3 by imprisonment for not more than 93 days or a fine of not more  
4 than \$500.00 or 3 times the statement amount, whichever is  
5 greater, or both imprisonment and a fine.

6 (b) If any of the following apply, the contractor or  
7 subcontractor is guilty of a misdemeanor punishable by  
8 imprisonment for not more than 1 year or a fine of not more than  
9 \$2,000.00 or 3 times the statement amount, whichever is greater,  
10 or both imprisonment and a fine:

11 (i) The statement involved is for \$200.00 or more but less  
12 than \$1,000.00.

13 (ii) The **STATEMENT INVOLVED IS FOR LESS THAN \$200.00 AND THE**  
14 contractor or subcontractor ~~violates subdivision (a) and~~ has 1  
15 or more prior convictions for committing or attempting to commit  
16 an offense under this act.

17 (c) If any of the following apply, the contractor or  
18 subcontractor is guilty of a felony punishable by imprisonment  
19 for not more than 5 years or a fine of not more than \$10,000.00  
20 or 3 times the statement amount, whichever is greater, or both  
21 imprisonment and a fine:

22 (i) The statement involved is for \$1,000.00 or more but less  
23 than \$20,000.00.

24 (ii) The **STATEMENT INVOLVED IS FOR MORE THAN \$200.00 BUT LESS**  
25 **THAN \$1,000.00 AND THE** contractor or subcontractor ~~violates~~  
26 ~~subdivision (b) (i) and~~ has 1 or more prior convictions for  
27 violating or attempting to violate this act. For purposes of this



1 subparagraph, however, a prior conviction does not include a  
 2 conviction for ~~violating or attempting to violate~~ **A VIOLATION**  
 3 **OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a) or (b) (ii).

4 (d) If any of the following apply, the contractor or  
 5 subcontractor is guilty of a felony punishable by imprisonment  
 6 for not more than 10 years or a fine of not more than \$15,000.00  
 7 or 3 times the statement amount, whichever is greater, or both  
 8 imprisonment and a fine:

9 (i) The statement involved is for \$20,000.00 or more.

10 (ii) The **STATEMENT INVOLVED IS FOR \$1,000.00 OR MORE BUT LESS**  
 11 **THAN \$20,000.00 AND THE** contractor or subcontractor ~~violates~~  
 12 ~~subdivision (c) (i) and~~ has 2 or more prior convictions for  
 13 committing or attempting to commit an offense under this act. For  
 14 purposes of this subparagraph, however, a prior conviction does  
 15 not include a conviction for ~~violating or attempting to violate~~  
 16 **A VIOLATION OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a)  
 17 or (b) (ii).

18 **(12) ~~(11) Statements~~ FOR PURPOSES OF SUBSECTION (11),**  
 19 **STATEMENTS** involved in separate incidents pursuant to a scheme or  
 20 course of conduct within any 12-month period may be aggregated to  
 21 determine the total amount involved in the statements.

22 **(13) ~~(12)~~** If the prosecuting attorney intends to seek an  
 23 enhanced sentence **FOR A VIOLATION UNDER THIS SECTION** based upon  
 24 the defendant having 1 or more prior convictions, the prosecuting  
 25 attorney shall include ~~on~~ **IN** the complaint and information a  
 26 statement listing the prior conviction or convictions. The  
 27 existence of the defendant's prior conviction or convictions

1 shall be determined by the court, without a jury, at sentencing  
2 or at a separate hearing for that purpose before sentencing. The  
3 existence of a prior conviction may be established by any  
4 evidence relevant for that purpose, including, but not limited  
5 to, 1 or more of the following:

6 (a) A copy of the judgment of conviction.

7 (b) A transcript of a prior trial, plea-taking, or  
8 sentencing.

9 (c) Information contained in a presentence report.

10 (d) The defendant's statement.

11 **(14)** ~~—(13)—~~ If the sentence for a conviction under this  
12 section is enhanced by 1 or more convictions, those prior  
13 convictions shall not be used to further enhance the sentence for  
14 the conviction pursuant to section 10, 11, or 12 of chapter IX of  
15 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,  
16 and 769.12.

17 Sec. 115. (1) A person shall not require, as part of any  
18 contract for an improvement, that the right to a construction  
19 lien be waived in advance of work performed. A waiver obtained as  
20 part of a contract for an improvement is contrary to public  
21 policy, and shall be invalid, except to the extent that payment  
22 for labor and material furnished was actually made to the person  
23 giving the waiver. Acceptance by a lien claimant of a promissory  
24 note or other evidence of indebtedness from an owner, lessee, or  
25 contractor shall not of itself serve to waive or discharge  
26 otherwise valid construction lien rights.

27 (2) A lien claimant who receives full payment for his or her

Senate Bill No. 405 (H-1) as amended December 12, 2006

1 contract shall provide to the owner, lessee, or designee a full  
2 unconditional waiver of lien.

3 (3) A lien claimant who receives partial payment for his or  
4 her contract shall provide to the owner, lessee, or designee a  
5 partial unconditional waiver of the lien for the amount which the  
6 lien claimant has received, if the owner, lessee, or designee  
7 requests the partial unconditional waiver.

8 (4) A partial conditional waiver of lien or a full  
9 conditional waiver of lien shall be effective upon payment of the  
10 amount indicated in the waiver.

11 (5) For purposes of this act, retainage ~~which~~ **THAT** is not  
12 payable under a contract until the happening of a certain event  
13 in addition to the providing of an improvement ~~—~~ is not due as  
14 of the date of the providing of the improvement.

15 (6) A waiver of a lien under this section shall be effective  
16 when a person makes payment relying on the waiver unless at the  
17 time payment was made the person making the payment has written  
18 notice that the consideration for the waiver has failed.

19 (7) **SUBJECT TO SUBSECTION (8), AN OWNER, LESSEE, OR DESIGNEE**  
20 **[SHALL] NOT RELY ON A FULL OR PARTIAL UNCONDITIONAL OR CONDITIONAL**  
21 **WAIVER OF LIEN PROVIDED BY A PERSON OTHER THAN THE LIEN CLAIMANT**  
22 **NAMED IN THE WAIVER IF THE LIEN CLAIMANT HAS EITHER FILED A**  
23 **NOTICE OF FURNISHING UNDER SECTION 109 OR IS EXCUSED FROM FILING**  
24 **A NOTICE OF FURNISHING UNDER SECTION 108 OR 108A UNLESS THE**  
25 **OWNER, LESSEE, OR DESIGNEE HAS FIRST VERIFIED THE AUTHENTICITY OF**  
26 **THE LIEN WAIVER WITH THE LIEN CLAIMANT EITHER IN WRITING, BY**  
27 **TELEPHONE, OR PERSONALLY.**

1           (8) ~~—(7)—~~ An agent who is authorized to prepare and serve a  
2 notice of furnishing ~~on behalf of a laborer or group of laborers~~  
3 ~~or an agent who is authorized~~ **OR** to prepare, record, and serve a  
4 claim of lien on behalf of a laborer or group of laborers is  
5 automatically authorized to provide **AND RESPONSIBLE FOR PROVIDING**  
6 waivers of lien, unless or until the laborer or group of laborers  
7 notifies the designee in writing that someone other than ~~a~~  
8 ~~previously authorized~~ **THE** agent is ~~duly~~ authorized to provide  
9 appropriate waivers. ~~An agent who is authorized to prepare and~~  
10 ~~serve a notice of furnishing or a claim of lien on behalf of a~~  
11 ~~laborer or group of laborers shall be responsible for providing~~  
12 ~~waivers on behalf of such laborer or laborers pursuant to this~~  
13 ~~section. An agent who is authorized to prepare and serve a claim~~  
14 ~~of lien on behalf of a laborer or group of laborers shall be~~  
15 ~~responsible for providing waivers of lien on behalf of such~~  
16 ~~laborer or laborers pursuant to this section.~~ An individual  
17 laborer may also provide waivers ~~pursuant to~~ **UNDER** this section  
18 instead of the agent.

19           (9) ~~—(8)—~~ The following forms shall be used in substantially  
20 the following format ~~in executing~~ **TO EXECUTE** waivers of  
21 construction liens:

22           (a)                   **PARTIAL UNCONDITIONAL WAIVER**  
23 I/we have a contract with ..... to  
24   (other contracting party)  
25 provide ..... for the improvement to the property  
26 described as ....., and ~~hereby~~

1 **BY SIGNING THIS WAIVER** waive my/our construction lien to the  
2 amount of \$ ....., for labor/materials provided  
3 through .....

4 (date)

5 This waiver, together with all previous waivers, if any,  
6 (circle one) does does not cover all amounts due to me/us for  
7 contract improvement provided through the date shown above.

8 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**  
9 **DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US**  
10 **OR IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,**  
11 **OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF**  
12 **US, THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT**  
13 **CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR**  
14 **PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.**

15 .....  
16 .....  
17 (signature of lien claimant)

18 Signed on: ..... Address: .....  
19 (date) .....  
20 Telephone: .....

21 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

22 (b) **PARTIAL CONDITIONAL WAIVER**

23 I/we have a contract with ..... to  
24 (other contracting party)

25 provide ..... for the improvement to the property  
26 described as: ....., and hereby

27 **BY SIGNING THIS WAIVER** waive my/our construction lien to the  
28 amount of \$ ....., for labor/materials provided  
29 through.....

30 (date)

31 This waiver, together with all previous waivers, if any,

1 (circle one) does does not cover all amounts due to me/us for  
2 contract improvement provided through the date shown above.  
3 This waiver is conditioned on actual payment of the amount  
4 shown above.

5 IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S  
6 DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR  
7 IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE, OR  
8 DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF US,  
9 THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT  
10 CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR  
11 PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.

12 .....  
13 .....  
14 (signature of lien claimant)

15 Signed on: ..... Address: .....  
16 (date) .....  
17 Telephone: .....

18 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

19 (c) **FULL UNCONDITIONAL WAIVER**

20 My/our contract with ..... to  
21 (other contracting party)  
22 provide ..... for the improvement of the property  
23 described as: ..... ~~having~~ **HAS** been  
24 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER,** all my/our  
25 construction lien rights against ~~such~~ **THE DESCRIBED** property  
26 are ~~hereby~~ waived and released.

27 IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S  
28 DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR  
29 IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,  
30 OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF  
31 US, THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT

1 CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR  
2 PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.

3 .....  
4 .....  
5 (signature of lien claimant)  
6 Signed on: ..... Address: .....  
7 (date) .....  
8 Telephone: .....

9 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

10 (d) **FULL CONDITIONAL WAIVER**

11 My/our contract with ..... to  
12 (other contracting party)

13 provide ..... for the improvement of the property  
14 described as: ..... ~~having~~ **HAS** been  
15 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER**, all my/our  
16 construction lien rights against ~~such~~ **THE DESCRIBED** property  
17 are ~~hereby~~ waived and released.

18 This waiver is conditioned on actual payment of .....  
19 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**  
20 **DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR**  
21 **IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,**  
22 **OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF**  
23 **US, THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT**  
24 **CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR**  
25 **PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.**

26 .....  
27 .....  
28 (signature of lien claimant)  
29 Signed on: ..... Address: .....  
30 (date) .....  
31 Telephone: .....

1 DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

2 Sec. 202. (1) The director of ~~licensing and regulation~~ **THE**  
3 **DEPARTMENT** shall manage the ~~affairs of the fund pursuant~~ **FUND**  
4 **ACCORDING** to this act. A detailed financial statement of the  
5 condition of the fund shall be published by the director  
6 annually. ~~This~~ **THE** fund shall be subject to an audit by the  
7 auditor general. The state treasurer shall deposit or invest  
8 money from the fund, in the same manner **AS** and subject to all  
9 provisions of law ~~with respect~~ **THAT APPLY** to the deposit or  
10 investment of state funds by the state treasurer, and interest  
11 earned shall be credited to the fund. The unexpended fund balance  
12 shall carry forward to the new fiscal year at the end of each  
13 fiscal year.

14 (2) The department may employ ~~such~~ office clerical and  
15 professional help and claims investigators as ~~are~~ necessary to  
16 carry out ~~the provisions of~~ this act. The attorney general  
17 shall assign members of his or her staff and may supplement that  
18 staff by contracting with ~~those~~ private attorneys as ~~are~~  
19 necessary to adequately defend ~~the~~ actions against the fund.  
20 All wages, professional fees, and other administrative  
21 expenditures necessary for operation and defense of the fund,  
22 including legal counsel, shall be charged to and payable from the  
23 fund. Except ~~as provided in subsection (3)~~ **FOR LEGAL COUNSEL**  
24 **FEES, THE AMOUNT PAID IN A FISCAL YEAR FOR** wages, professional  
25 fees, and other administrative expenditures ~~necessary for the~~  
26 ~~operation of the fund~~ shall not exceed 20% of ~~funds collected~~



1 by the fund in the previous fiscal year **THE AVERAGE OF THE**  
 2 **ENDING BALANCES IN THE FUND FOR THE PREVIOUS 2 FISCAL YEARS.**

3 ~~—— (3) If the \$50.00 fee is not assessed against license~~  
 4 ~~applications and renewals during a year under section 201, the~~  
 5 ~~limitation on fund expenditures provided in subsection (2) shall~~  
 6 ~~be calculated on the basis of the closest previous year in which~~  
 7 ~~the \$50.00 fee was assessed and collected for license application~~  
 8 ~~and renewals under section 201.~~

9       Sec. 203. (1) A claim of construction lien ~~shall~~ **DOES** not  
 10 attach to a residential structure, to the extent payments have  
 11 been made, if the owner or lessee files an affidavit with the  
 12 court indicating that the owner or lessee has done all of the  
 13 following:

14       (a) Paid the contractor for the improvement to the  
 15 residential structure ~~and~~ **ACCORDING TO THE CONTRACT, INDICATING**  
 16 **IN THE AFFIDAVIT** the amount of the payment. **THE OWNER OR LESSEE**  
 17 **SHALL ATTACH TO THE AFFIDAVIT COPIES OF THE CONTRACT, ANY CHANGE**  
 18 **ORDERS, AND ANY EVIDENCE OF THE PAYMENT THAT THE OWNER OR LESSEE**  
 19 **HAS, INCLUDING, BUT NOT LIMITED TO, A CANCELED CHECK OR A CREDIT**  
 20 **CARD OR OTHER RECEIPT.**

21       (b) Not colluded with any person to obtain a payment from  
 22 the fund.

23       (c) Cooperated and will continue to cooperate with the  
 24 department in the defense of the fund.

25       (2) ~~In the absence of a~~ **IF THERE IS NO** written contract  
 26 ~~pursuant to~~ **AS REQUIRED BY** section 114, the filing of an  
 27 affidavit under this section ~~shall create~~ **CREATES** a rebuttable

1 presumption that the owner or lessee has paid the contractor for  
2 the improvement. The presumption may be overcome only by a  
3 showing of clear and convincing evidence to the contrary.

4 (3) Subject to section 204, a person who has recorded a  
5 claim of lien and who is precluded from ~~recovering~~ **HAVING** a  
6 construction lien under subsection (1) may recover from the fund  
7 the amount ~~for which the lien is established~~ **HE OR SHE WOULD**  
8 **HAVE BEEN ENTITLED TO RECOVER BUT FOR SUBSECTION (1)**. A person  
9 who seeks recovery from the fund shall establish all of the  
10 following:

11 (a) That he or she would be entitled to a construction lien  
12 on a residential structure except for the defense provided in  
13 subsection (1).

14 (b) That payment was made by the owner or lessee to the  
15 contractor or subcontractor.

16 (c) That the contractor or subcontractor has retained or  
17 used the proceeds or any part of the proceeds paid to the  
18 contractor or subcontractor without having paid the person  
19 claiming the construction lien.

20 (d) That he or she has complied with section 201.

21 (e) That he or she has not colluded with another person to  
22 obtain a payment from the fund.

23 (f) That he or she has complied with any applicable  
24 licensing acts.

25 (g) That he or she has made a reasonable effort to obtain  
26 payment from the contractor or subcontractor.

27 (h) That the contractor or ~~the~~ subcontractor ~~—~~ with whom

1 the person claiming the construction lien contracted ~~with,~~ is  
2 licensed if required by law to be licensed.

3 (I) THAT THE CONTRACTOR OR SUBCONTRACTOR WITH WHOM THE  
4 PERSON CLAIMING THE CONSTRUCTION LIEN CONTRACTED IS THE SAME  
5 INDIVIDUAL OR LEGAL ENTITY WITH WHOM THE OWNER OR LESSEE  
6 CONTRACTED.

7 (J) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A  
8 SUPPLIER, THAT HE OR SHE HAS DOCUMENTARY PROOF THAT, UNLESS THE  
9 SUPPLIER HAD PROVIDED MATERIAL OR EQUIPMENT TO THE CONTRACTOR OR  
10 SUBCONTRACTOR WITHIN THE PRECEDING YEAR, BEFORE HE OR SHE  
11 PROVIDED THE MATERIAL OR EQUIPMENT THAT IS THE SUBJECT OF THE  
12 LIEN WITHOUT OBTAINING ADVANCE PAYMENT IN FULL, HE OR SHE DID  
13 BOTH OF THE FOLLOWING:

14 (i) REQUIRED THE CONTRACTOR OR SUBCONTRACTOR TO WHOM HE OR  
15 SHE PROVIDED THE MATERIAL OR EQUIPMENT TO COMPLETE AND SUBMIT A  
16 CREDIT APPLICATION.

17 (ii) BEFORE BEGINNING TO SUPPLY MATERIAL OR EQUIPMENT TO THE  
18 CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN  
19 FULL, DID EITHER OF THE FOLLOWING, AS APPLICABLE:

20 (A) IF THE CONTRACTOR OR SUBCONTRACTOR IS A CORPORATION  
21 WHOSE SHARES ARE PUBLICLY TRADED, OBTAINED A REPORT ON THE  
22 CONTRACTOR OR SUBCONTRACTOR FROM A NATIONALLY OR REGIONALLY  
23 RECOGNIZED ORGANIZATION THAT PROVIDES CREDIT RATINGS OF  
24 BUSINESSES TO DETERMINE THE FINANCIAL STABILITY OF THE CONTRACTOR  
25 OR SUBCONTRACTOR.

26 (B) IF SUB-SUBPARAGRAPH (A) DOES NOT APPLY, DID BOTH OF THE  
27 FOLLOWING:

1 (I) OBTAINED A CREDIT REPORT ON THE OWNER OR QUALIFYING  
2 OFFICER OR THE PRINCIPAL PARTNERS, OFFICERS, SHAREHOLDERS, OR  
3 MEMBERS OF THE CONTRACTOR OR SUBCONTRACTOR TO DETERMINE THE  
4 FINANCIAL STABILITY OF THE CONTRACTOR OR SUBCONTRACTOR.

5 (II) IF THE CONTRACTOR OR SUBCONTRACTOR IS LESS THAN 4 YEARS  
6 OLD, OBTAINED A PERSONAL GUARANTY FROM THE OWNER OR 1 OR MORE OF  
7 THE PARTNERS, OFFICERS, DIRECTORS, MANAGING MEMBERS, TRUSTEES, OR  
8 SHAREHOLDERS OF THE CONTRACTOR OR SUBCONTRACTOR.

9 (K) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A  
10 SUPPLIER SEEKING TO RECOVER FOR MATERIAL OR EQUIPMENT SUPPLIED TO  
11 A CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT  
12 IN FULL, THAT A CREDIT REPORT OBTAINED BY THE SUPPLIER ON THE  
13 CONTRACTOR OR SUBCONTRACTOR DID NOT DISCLOSE ANY OF THE  
14 FOLLOWING:

15 (i) THAT THE CONTRACTOR OR SUBCONTRACTOR WAS, AT THE TIME OF  
16 THE APPLICATION, OR HAD BEEN, WITHIN 2 YEARS BEFORE THE  
17 APPLICATION, INSOLVENT.

18 (ii) THAT THE CONTRACTOR OR SUBCONTRACTOR WAS, AT THE TIME OF  
19 THE APPLICATION, SUBJECT TO A RECEIVERSHIP.

20 (iii) TOTAL DELINQUENT JUDGMENTS OF MORE THAN \$1,000.00.

21 (4) A subcontractor, supplier, or laborer who seeks  
22 enforcement of a construction lien on a residential structure  
23 through foreclosure shall join the fund as a defendant in the  
24 foreclosure action ~~—, and—~~ **WITHIN THE PERIOD PROVIDED IN SECTION**  
25 **117(1). THE SUBCONTRACTOR, SUPPLIER, OR LABORER SHALL SERVE a**  
26 **summons and complaint ~~—shall be served—~~ on the ~~—director—~~ OFFICE**  
27 **OF THE FUND ADMINISTRATOR WITHIN THE DEPARTMENT** by certified or

1 registered mail ~~—~~ or by leaving a copy ~~thereof~~ at the office.  
2 ~~of the director.~~ The failure to serve a summons and complaint  
3 ~~upon the fund shall constitute a bar to~~ **UNDER THIS SUBSECTION**  
4 **BARS** recovery from the fund. After ~~service upon the defendant of~~  
5 **A DEFENDANT IS SERVED WITH** a summons and complaint in an action  
6 ~~in which enforcement of~~ **TO FORECLOSE** a construction lien,  
7 ~~through foreclosure is sought,~~ the department may intervene in  
8 the action as a party defendant with respect to other  
9 construction liens.

10 (5) The attorney general shall make every reasonable effort  
11 to defend the fund and may assert any defense to a claim of lien  
12 that would have been available to the owner or lessee.

13 (6) **A PAYMENT FROM THE FUND SHALL NOT INCLUDE INTEREST ON**  
14 **THE UNPAID PRINCIPAL AMOUNT DUE, INCLUDING, BUT NOT LIMITED TO, A**  
15 **TIME-PRICE DIFFERENTIAL OR A FINANCE CHARGE, THAT ACCRUED AFTER**  
16 **90 DAYS AFTER THE CLAIM OF LIEN WAS RECORDED.**

17 (7) **A PAYMENT FROM THE FUND TO A SUPPLIER SHALL NOT INCLUDE**  
18 **MONEY DUE FOR MATERIAL OR EQUIPMENT SUPPLIED TO A CONTRACTOR OR**  
19 **SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN FULL IF EITHER**  
20 **OF THE FOLLOWING APPLIES:**

21 (A) **THE CONTRACTOR OR SUBCONTRACTOR WAS DELINQUENT IN PAYING**  
22 **THE SUPPLIER FOR MATERIAL OR EQUIPMENT FOR MORE THAN THE**  
23 **FOLLOWING NUMBER OF DAYS AFTER THE FIRST BUSINESS DAY OF THE**  
24 **MONTH FOLLOWING THE SHIPMENT OF THE MATERIAL OR EQUIPMENT:**

25 (i) **IN 2007, 180 DAYS.**

26 (ii) **IN 2008, 150 DAYS.**

27 (iii) **IN 2009, 120 DAYS.**

1 (iv) IN 2010 AND EACH YEAR AFTER 2010, 90 DAYS.

2 (B) THE CONTRACTOR OR SUBCONTRACTOR WAS INDEBTED TO THE  
3 SUPPLIER IN AN AMOUNT EQUAL TO OR MORE THAN THE CREDIT LIMIT  
4 ESTABLISHED BY THE SUPPLIER FOR THE CONTRACTOR OR SUBCONTRACTOR  
5 AT THE TIME THE MATERIAL OR EQUIPMENT WAS SUPPLIED.

6 (8) ~~-(6)-~~ Payment from the fund shall be made only if the  
7 court finds that a subcontractor, supplier, or laborer is  
8 entitled to payment from the fund. Subject to section 204, after  
9 the judgment has become final the department shall pay the amount  
10 of the judgment out of the fund.

11 Sec. 204. The department shall not pay out of the fund to  
12 subcontractors, suppliers, and laborers more than ~~-\$75,000.00~~  
13 \$100,000.00 per residential structure. When it appears that the  
14 amount claimed from the fund ~~—,~~ with respect to a residential  
15 structure ~~—,~~ will exceed ~~-\$75,000.00~~ \$100,000.00, the  
16 department may delay payment until the total amount to be paid  
17 can be ascertained. If the total amount payable to  
18 subcontractors, suppliers, and laborers exceeds ~~-\$75,000.00~~  
19 \$100,000.00, they shall be paid their proportional shares of that  
20 amount.

21 Sec. 206. (1) THE DEPARTMENT SHALL MAINTAIN A WEBSITE. IF  
22 THE DEPARTMENT MAKES A PAYMENT FROM THE FUND AS THE RESULT OF A  
23 CONTRACTOR'S FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, THE  
24 DEPARTMENT SHALL POST ON THE WEBSITE THE NAME AND LICENSE NUMBER  
25 OF THE CONTRACTOR AND THE NAME AND LICENSE NUMBER OF ANY  
26 QUALIFYING OFFICER OF THE CONTRACTOR. THE WEBSITE SHALL BE  
27 DESIGNED TO ALLOW A VISITOR TO SEARCH THE POSTED NAMES AND

1 **LICENSE NUMBERS OF CONTRACTORS AND QUALIFYING OFFICERS.**

2           (2) If the department makes a payment from the fund as the  
3 result of a licensee's failure to pay a lien claimant, the  
4 department shall enter a complaint against the licensee with the  
5 appropriate licensing agency to be addressed by the disciplinary  
6 proceedings under the appropriate licensing law.

7           Enacting section 1. This amendatory act does not take effect  
8 unless Senate Bill No. 459 of the 93rd Legislature is enacted  
9 into law.