

Senate Study Bill 1215

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mechanic's liens including the establishment
2 of a state construction registry for residential property and
3 providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1167SC 83
6 rh/rj/14

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1 1 Section 1. Section 572.1, Code 2009, is amended to read as
1 2 follows:
1 3 572.1 DEFINITIONS AND RULES OF CONSTRUCTION.
1 4 For the purpose of this chapter:
1 5 1. "Authority" means the Iowa finance authority
1 6 established in section 16.2.
1 7 ~~4. 2. "Building" shall be construed as if followed by the~~
1 8 ~~words "erection, or other improvement upon land".~~
1 9 ~~3. "General contractor" includes every person who does~~
1 10 ~~work or furnishes materials by contract, express or implied,~~
1 11 ~~with an owner. "General contractor" does not include a person~~
1 12 ~~who does work or furnishes materials on contract with an~~
1 13 ~~owner=builder.~~
1 14 ~~2. 4. "Labor" means labor completed by the claimant.~~
1 15 ~~3. 5. "Material" shall, in addition to its ordinary~~
1 16 ~~meaning, include includes machinery, tools, fixtures, trees,~~
1 17 ~~evergreens, vines, plants, shrubs, tubers, bulbs, hedges,~~
1 18 ~~bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire,~~
1 19 ~~fence material, fence posts, tile, and the use of forms,~~
1 20 ~~accessories, and equipment furnished by the claimant.~~
1 21 ~~4. 6. "Owner" means the record titleholder and every~~
1 22 ~~person for whose use or benefit any building, erection, or~~
1 23 ~~other improvement is made, having the capacity to contract,~~
1 24 ~~including guardians.~~
1 25 ~~5. "Owner=occupied dwelling" means the homestead of an~~
1 26 ~~owner, as defined in section 561.1, and without respect to the~~
1 27 ~~value limitations in section 561.3, and actually occupied by~~
1 28 ~~the owner or the spouse of the owner, or both.~~
1 29 ~~"Owner=occupied dwelling" includes a newly constructed~~
1 30 ~~dwelling to be occupied by the owner as a homestead, or a~~
1 31 ~~dwelling that is under construction and being built by or for~~
1 32 ~~an owner who will occupy the dwelling as a homestead.~~
1 33 ~~7. "Owner=builder" means the record titleholder who offers~~
1 34 ~~or intends to offer to sell the owner=builder's property~~
1 35 ~~without occupying or using the structures, properties,~~
2 1 ~~developments, or improvements for a period of more than one~~
2 2 ~~year from the date the structure, property, development, or~~
2 3 ~~improvement is substantially completed or abandoned. An~~
2 4 ~~"owner=builder" retains such status after transferring title~~
2 5 ~~to a new owner.~~
2 6 ~~8. "State construction registry" means a centralized~~
2 7 ~~computer database maintained and posted on the internet by the~~
2 8 ~~authority that provides a central repository for the filing~~
2 9 ~~and managing of certain prelien notices including preliminary~~
2 10 ~~notices and notices of commencement of work on all residential~~
2 11 ~~construction properties.~~
2 12 ~~9. "State construction registry number" means a number~~
2 13 ~~provided by the authority for all construction properties~~
2 14 ~~posted to the state construction registry internet site.~~
2 15 ~~6. 10. "Subcontractor" shall include includes every~~
2 16 ~~person furnishing material or performing labor upon any~~
2 17 ~~building, erection, or other improvement, except those having~~

2 18 contracts directly with the owner.
2 19 Sec. 2. Section 572.2, Code 2009, is amended to read as
2 20 follows:
2 21 572.2 PERSONS ENTITLED TO LIEN.
2 22 1. Every person who shall furnish any material or labor
2 23 for, or perform any labor upon, any building or land for
2 24 improvement, alteration, or repair thereof, including those
2 25 engaged in the construction or repair of any work of internal
2 26 or external improvement, and those engaged in grading,
2 27 sodding, installing nursery stock, landscaping, sidewalk
2 28 building, fencing on any land or lot, by virtue of any
2 29 contract with the owner, general contractor, or subcontractor
2 30 shall have a lien upon such building or improvement, and land
2 31 belonging to the owner on which the same is situated or upon
2 32 the land or lot so graded, landscaped, fenced, or otherwise
2 33 improved, altered, or repaired, to secure payment for the
2 34 material or labor furnished or labor performed.
2 35 2. If material is rented by a person to the owner, general
3 1 contractor, or subcontractor, the person shall have a lien
3 2 upon such building, improvement, or land to secure payment for
3 3 the material rental. The lien is for the reasonable rental
3 4 value during the period of actual use of the material and any
3 5 reasonable periods of nonuse of the material taken into
3 6 account in the rental agreement. The delivery of material to
3 7 such building, improvement, or land, whether or not delivery
3 8 is made by the person, creates a presumption that the material
3 9 was used in the course of alteration, construction, or repair
3 10 of the building, improvement, or land. However, this
3 11 presumption shall not pertain to recoveries sought under a
3 12 surety bond.
3 13 Sec. 3. Section 572.8, subsection 1, Code 2009, is amended
3 14 by adding the following new paragraph:
3 15 NEW PARAGRAPH. d. The address of the property or a
3 16 description of the location of the property.
3 17 Sec. 4. Section 572.9, Code 2009, is amended to read as
3 18 follows:
3 19 572.9 TIME OF FILING.
3 20 The statement of account required by section 572.8 shall be
3 21 filed by a ~~principal~~ general contractor or subcontractor
3 22 within two years and ninety days after the date on which the
3 23 last of the material was furnished or the last of the labor
3 24 was performed.
3 25 Sec. 5. Section 572.10, Code 2009, is amended to read as
3 26 follows:
3 27 572.10 PERFECTING LIEN AFTER LAPSE OF NINETY DAYS.
3 28 A general contractor or a subcontractor may perfect a
3 29 mechanic's lien pursuant to section 572.8 beyond ninety days
3 30 after the date on which the last of the material was furnished
3 31 or the last of the labor was performed by filing a claim with
3 32 the clerk of the district court and giving written notice
3 33 thereof to the owner. Such notice may be served by any person
3 34 in the manner original notices are required to be served. If
3 35 the party to be served is out of the county wherein the
4 1 property is situated, a return of that fact by the person
4 2 charged with making such service shall constitute sufficient
4 3 service from and after the time it was filed with the clerk of
4 4 the district court.
4 5 Sec. 6. Section 572.11, Code 2009, is amended to read as
4 6 follows:
4 7 572.11 EXTENT OF LIEN FILED AFTER NINETY DAYS.
4 8 Liens perfected under section 572.10 shall be enforced
4 9 against the property or upon the bond, if given, by the owner
4 10 ~~or owner=builder~~, only to the extent of the balance due from
4 11 the owner to the general contractor ~~or owner=builder~~ at the
4 12 time of the service of such notice; but if the bond was given
4 13 by the general contractor ~~or owner=builder~~, or person
4 14 contracting with the subcontractor filing the claim for a
4 15 lien, such bond shall be enforced to the full extent of the
4 16 amount found due the subcontractor.
4 17 Sec. 7. Section 572.13, Code 2009, is amended by striking
4 18 the section and inserting in lieu thereof the following:
4 19 572.13 LIABILITY OF OWNER TO GENERAL CONTRACTOR AND
4 20 OWNER=BUILDER == RESIDENTIAL CONSTRUCTION.
4 21 1. a. A general contractor who has contracted or will
4 22 contract with a subcontractor to provide labor or furnish
4 23 material for the property shall include the following notice
4 24 in any written contract with the owner and shall provide the
4 25 owner with a copy of the written contract:
4 26 "Persons or companies furnishing labor or materials for the
4 27 improvement of real property may enforce a lien upon the
4 28 improved property if they are not paid for their

4 29 contributions, even if the parties have no direct contractual
4 30 relationship with the owner. The state construction registry
4 31 provides a listing of all persons or companies furnishing
4 32 labor or materials who may file a lien upon the improved
4 33 property. If the person or company has registered its claim
4 34 with the state construction registry, you may be required to
4 35 pay the person or company even if you have paid the general
5 1 contractor the full amount due. Therefore, please check the
5 2 state construction registry for information about the property
5 3 including persons or companies furnishing labor or materials
5 4 before paying your general contractor. In addition, when
5 5 making payment to your general contractor, please provide any
5 6 lien waivers from your general contractor and from persons or
5 7 companies furnishing labor or materials to your property. The
5 8 information in the state construction registry is posted on
5 9 the internet site of the Iowa finance authority."

5 10 b. If no written contract is entered into between the
5 11 general contractor and the owner, the general contractor
5 12 shall, within ten days of commencement of work on the
5 13 dwelling, provide written notice to the owner stating the name
5 14 and address of all subcontractors or suppliers that the
5 15 general contractor intends to use for the construction and,
5 16 that the subcontractors or suppliers may have lien rights in
5 17 the event they are not paid for their labor or material used
5 18 on this site; and the notice shall be updated as additional
5 19 subcontractors and suppliers are used from the names disclosed
5 20 on earlier notices.

5 21 2. A general contractor shall file a copy of the notice
5 22 set forth in subsection 1 with the state construction registry
5 23 internet site along with a dated signature of the owner
5 24 acknowledging receipt of the notice within ten days of
5 25 commencement of work on the property.

5 26 3. A general contractor or owner=builder shall file a
5 27 notice of commencement of work with the state construction
5 28 registry within ten days of commencement of work on the
5 29 property. A notice of commencement of work is effective only
5 30 as to any labor, service, equipment, and material furnished to
5 31 the property subsequent to the filing of the notice of
5 32 commencement of work. A notice of commencement of work shall
5 33 include all of the following information:

5 34 a. The name and address of the property owner.

5 35 b. The name and address of the general contractor or
6 1 owner=builder.

6 2 c. The address of the property if the property can be
6 3 reasonably identified by an address or the name and a general
6 4 description of the location of the property if the property
6 5 cannot be reasonably identified by an address.

6 6 d. A legal description of the property.

6 7 e. Any other relevant information prescribed by the
6 8 authority pursuant to rule.

6 9 4. A general contractor who fails to provide notice under
6 10 subsections 1, 2, and 3 is not entitled to a lien and remedy
6 11 provided by this chapter.

6 12 5. If a general contractor fails to file the receipt of
6 13 notice with the state construction registry pursuant to
6 14 subsection 2, within ten days of commencement of work on the
6 15 property, a subcontractor may obtain and file the receipt.

6 16 6. If a general contractor or owner=builder fails to file
6 17 the required notice of commencement with the state
6 18 construction registry pursuant to subsection 3, within ten
6 19 days of commencement of the work on the property, a
6 20 subcontractor may file the notice in conjunction with the
6 21 filing of the required notice pursuant to section 572.14.

6 22 7. This section shall not apply to commercial construction
6 23 projects.

6 24 Sec. 8. Section 572.14, Code 2009, is amended by striking
6 25 the section and inserting in lieu thereof the following:

6 26 572.14 LIABILITY TO SUBCONTRACTOR AFTER PAYMENT TO GENERAL
6 27 CONTRACTOR OR OWNER=BUILDER == RESIDENTIAL CONSTRUCTION.

6 28 1. Except as provided in subsection 2, payment to the
6 29 general contractor or owner=builder by the owner of any part
6 30 or all of the contract price of the building or improvement
6 31 within ninety days after the date on which the last of the
6 32 materials was furnished or the last of the labor was performed
6 33 by a subcontractor, does not relieve the owner from liability
6 34 to the subcontractor for the full value of any material
6 35 furnished or labor performed upon the building, land, or
7 1 improvement if the subcontractor files a lien within ninety
7 2 days after the date on which the last of the materials was
7 3 furnished or the last of the labor was performed.

7 4 2. A subcontractor shall file a preliminary notice with

7 5 the state construction registry within ten days of
7 6 commencement of work on the property. A preliminary notice
7 7 filed prior to the balance paid to the general contractor or
7 8 owner=builder by the owner is effective as to all labor,
7 9 service, equipment, and material furnished to the property.
7 10 The preliminary notice shall contain all of the following
7 11 information:
7 12 a. The name of the owner.
7 13 b. The state construction registry number.
7 14 c. The name, address, and telephone number of the
7 15 subcontractor furnishing the labor, service, equipment, or
7 16 material.
7 17 d. The name and address of the person who contracted with
7 18 the claimant for the furnishing of the labor, service,
7 19 equipment, or material.
7 20 e. The name of the general contractor or owner=builder
7 21 under which the claimant is performing or will perform the
7 22 work.
7 23 f. The address of the property or a description of the
7 24 location of the property.
7 25 g. Any other information required by the authority
7 26 pursuant to rule.
7 27 3. A mechanic's lien perfected under this chapter is
7 28 enforceable only to the extent of the balance due the general
7 29 contractor or owner=builder prior to the filing of a
7 30 preliminary notice specified in subsection 2.
7 31 4. A subcontractor who fails to file a preliminary notice
7 32 pursuant to this section shall not be entitled to a lien and
7 33 remedy provided under this chapter. If the receipt of notice
7 34 prescribed in section 572.13, subsection 2, is not filed with
7 35 the state construction registry prior to the balance being
8 1 paid to the general contractor or owner=builder by the owner,
8 2 a subcontractor is not entitled to the lien and remedy
8 3 provided under this chapter.
8 4 5. This section shall not apply to commercial construction
8 5 projects.
8 6 Sec. 9. Section 572.15, Code 2009, is amended to read as
8 7 follows:
8 8 572.15 DISCHARGE OF SUBCONTRACTOR'S LIEN == BOND.
8 9 A mechanic's lien may be discharged at any time by the
8 10 owner, principal contractor, or intermediate subcontractor
8 11 filing with the clerk of the district court of the county in
8 12 which the property is located a bond in twice the amount of
8 13 the sum for which the claim for the lien is filed, with surety
8 14 or sureties, to be approved by the clerk, conditioned for the
8 15 payment of any sum for which the claimant may obtain judgment
8 16 upon the claim.
8 17 Sec. 10. Section 572.17, Code 2009, is amended to read as
8 18 follows:
8 19 572.17 PRIORITY OF MECHANICS' LIENS BETWEEN MECHANICS.
8 20 Mechanics' liens shall have priority over each other in the
8 21 order of the filing of the statements ~~or of~~ accounts as ~~herein~~
8 22 provided in section 572.8.
8 23 Sec. 11. Section 572.18, subsections 1 and 3, Code 2009,
8 24 are amended to read as follows:
8 25 1. Mechanics' liens filed by a principal general
8 26 contractor or subcontractor within ninety days after the date
8 27 on which the last of the material was furnished or the last of
8 28 the claimant's labor was performed and for which notices were
8 29 required to be filed with the state construction registry
8 30 pursuant to sections 572.13 and 572.14 shall be superior to
8 31 all other liens which may attach to or upon a building or
8 32 improvement and to the land upon which it is situated, except
8 33 liens of record prior to the time of the original commencement
8 34 of the claimant's work or the claimant's improvements, except
8 35 as provided in subsection 2.
9 1 3. The rights of purchasers, encumbrancers, and other
9 2 persons who acquire interests in good faith, for a valuable
9 3 consideration, and without notice of a lien perfected pursuant
9 4 to this chapter, are superior to the claims of all general
9 5 contractors or subcontractors who have perfected their liens
9 6 more than ninety days after the date on which the last of the
9 7 claimant's material was furnished or the last of the
9 8 claimant's labor was performed.
9 9 Sec. 12. Section 572.22, unnumbered paragraph 1, Code
9 10 2009, is amended to read as follows:
9 11 The clerk of the court shall endorse upon every claim for a
9 12 mechanic's lien filed in the clerk's office the date and hour
9 13 of filing and ~~make an abstract thereof in the mechanic's lien~~
9 14 ~~book kept for that purpose. Said book shall be properly~~
9 15 indexed and index every claim in the office of the clerk of

9 16 the county where such real estate is situated. Each claim
9 17 shall contain the following items concerning each claim:

9 18 Sec. 13. Section 572.23, subsection 1, Code 2009, is
9 19 amended to read as follows:

9 20 1. When a mechanic's lien is satisfied by payment of the
9 21 claim, the claimant shall acknowledge satisfaction thereof
9 22 upon the mechanic's lien book, or otherwise in writing, and,
9 23 if the claimant neglects to do so for thirty days after demand
9 24 in writing is personally served upon the claimant, the
9 25 claimant shall forfeit and pay twenty-five dollars to the
9 26 owner or general contractor or owner=builder, and be liable to
9 27 any person injured to the extent of the injury.

9 28 Sec. 14. Section 572.30, Code 2009, is amended to read as
9 29 follows:

9 30 572.30 ACTION BY SUBCONTRACTOR OR OWNER AGAINST GENERAL
9 31 CONTRACTOR OR OWNER=BUILDER.

9 32 Unless otherwise agreed, a principal general contractor or
9 33 owner=builder who engages a subcontractor to supply labor or
9 34 materials or both for improvements, alterations or repairs to
9 35 a specific ~~owner-occupied dwelling property~~ shall pay the
10 1 subcontractor in full for all labor and materials supplied
10 2 within thirty days after the date the principal general
10 3 contractor or owner=builder receives full payment from the
10 4 owner. If a principal general contractor or owner=builder
10 5 fails without due cause to pay a subcontractor as required by
10 6 this section, the subcontractor, or the owner by subrogation,
10 7 may commence an action against the general contractor or
10 8 owner=builder to recover the amount due. Prior to commencing
10 9 an action to recover the amount due, a subcontractor, or the
10 10 owner by subrogation, shall give notice of nonpayment of the
10 11 cost of labor or materials to the principal general contractor
10 12 or owner=builder paid for the improvement. Notice of
10 13 nonpayment must be in writing, delivered in a reasonable
10 14 manner, and in terms that reasonably identify the real estate
10 15 improved and the nonpayment complained of. In an action to
10 16 recover the amount due a subcontractor, or the owner by
10 17 subrogation, under this section, the court in addition to
10 18 actual damages, shall award a successful plaintiff exemplary
10 19 damages against the general contractor or owner=builder in an
10 20 amount not less than one percent and not exceeding fifteen
10 21 percent of the amount due the subcontractor, or the owner by
10 22 subrogation, for the labor and materials supplied, unless the
10 23 principal general contractor or owner=builder does one or both
10 24 of the following, in which case no exemplary damages shall be
10 25 awarded:

10 26 1. Establishes that all proceeds received from the person
10 27 making the payment have been applied to the cost of labor or
10 28 material furnished for the improvement.

10 29 2. Within fifteen days after receiving notice of
10 30 nonpayment the principal general contractor or owner=builder
10 31 gives a bond or makes a deposit with the clerk of the district
10 32 court, in an amount not less than the amount necessary to
10 33 satisfy the nonpayment for which notice has been given under
10 34 this section, and in a form approved by a judge of the
10 35 district court, to hold harmless the owner or person having
11 1 the improvement made from any claim for payment of anyone
11 2 furnishing labor or material for the improvement, other than
11 3 the principal general contractor or owner=builder.

11 4 Sec. 15. Section 572.31, Code 2009, is amended to read as
11 5 follows:

11 6 572.31 CO=OPERATIVE AND CONDOMINIUM HOUSING.

11 7 A lien arising under this chapter as a result of the
11 8 construction of an apartment house or apartment building which
11 9 is owned on a co-operative basis under chapter 499A, or which
11 10 is submitted to a horizontal property regime under chapter
11 11 499B, is not enforceable, notwithstanding any contrary
11 12 provision of this chapter, as against the interests of an
11 13 owner in an ~~owner-occupied dwelling~~ a unit contained in the
11 14 apartment house or apartment building acquired in good faith
11 15 and for valuable consideration, unless a lien statement
11 16 specifically describing the ~~dwelling~~ unit is filed under
11 17 section 572.8 within the applicable time period specified in
11 18 section 572.9, but determined from the date on which the last
11 19 of the material was supplied or the last of the labor was
11 20 performed in the construction of that ~~dwelling~~ unit.

11 21 Sec. 16. Section 572.32, Code 2009, is amended to read as
11 22 follows:

11 23 572.32 ATTORNEY FEES == REMEDIES.

11 24 1. In a court action to enforce a mechanic's lien, ~~if the~~
11 25 ~~plaintiff furnished labor or materials directly to the~~
11 26 ~~defendant~~, a prevailing plaintiff may be awarded reasonable

11 27 attorney fees.
11 28 2. In a court action to challenge a filed mechanic's lien
11 29 ~~filed on an owner-occupied dwelling~~, if the person challenging
11 30 the lien prevails, the court may award reasonable attorney
11 31 fees and actual damages. If the court determines that the
11 32 mechanic's lien was filed in bad faith or the supporting
11 33 affidavit was materially false, the court shall award the
11 34 owner reasonable attorney fees plus an amount not less than
11 35 five hundred dollars or the amount of the lien, whichever is
12 1 less.

12 2 Sec. 17. Section 572.33, Code 2009, is amended to read as
12 3 follows:

12 4 572.33 REQUIREMENT OF NOTIFICATION FOR COMMERCIAL
12 5 CONSTRUCTION.

12 6 1. The notification requirements in this section shall
12 7 apply only to commercial construction.

12 8 ~~1- 2.~~ 2. A person furnishing labor or materials to a
12 9 subcontractor shall not be entitled to a lien under this
12 10 chapter unless the person furnishing labor or materials does
12 11 all of the following:

12 12 a. Notifies the ~~principal~~ general contractor or
12 13 ~~owner-builder~~ in writing with a one-time notice containing the
12 14 name, mailing address, and telephone number of the person
12 15 furnishing the labor or materials, and the name of the
12 16 subcontractor to whom the labor or materials were furnished,
12 17 within thirty days of first furnishing labor or materials for
12 18 which a lien claim may be made. Additional labor or materials
12 19 furnished by the same person to the same subcontractor for use
12 20 in the same construction project shall be covered by this
12 21 notice.

12 22 b. Supports the lien claim with a certified statement that
12 23 the ~~principal~~ general contractor or ~~owner-builder~~ was notified
12 24 in writing with a one-time notice containing the name, mailing
12 25 address, and telephone number of the person furnishing the
12 26 labor or materials, and the name of the subcontractor to whom
12 27 the labor or materials were furnished, within thirty days
12 28 after the labor or materials were first furnished, pursuant to
12 29 paragraph "a".

12 30 ~~2. This section shall not apply to a mechanic's lien on~~
12 31 ~~single-family or two-family dwellings occupied or used or~~
12 32 ~~intended to be occupied or used for residential purposes.~~

12 33 3. Notwithstanding other provisions of this chapter, a
12 34 ~~principal~~ general contractor or ~~owner-builder~~ shall not be
13 1 prohibited from requesting information from a subcontractor or
13 2 a person furnishing labor or materials to a subcontractor
13 3 regarding payments made or payments to be made to a person
13 4 furnishing labor or materials to a subcontractor.

13 5 Sec. 18. NEW SECTION. 572.34 STATE CONSTRUCTION REGISTRY
13 6 == RESIDENTIAL CONSTRUCTION.

13 7 1. A state construction registry is created within the
13 8 authority. The authority shall adopt rules pursuant to
13 9 chapter 17A for the creation and administration of the
13 10 registry.

13 11 2. The state construction registry shall be accessible to
13 12 the general public through the authority's internet site.

13 13 3. The registry shall be indexed by owner name, general
13 14 contractor name, state construction registry number, property
13 15 address, legal description, and any other identifier
13 16 considered appropriate as determined by the authority.

13 17 4. A general contractor, owner-builder, or subcontractor
13 18 who files fictitious, forged, or false information in the
13 19 registry shall be subject to a penalty as determined by the
13 20 authority by rule.

13 21 5. The authority shall charge and collect fees as
13 22 established by rule necessary for the administration and
13 23 maintenance of the registry.

13 24 6. A state construction registry fund is created within
13 25 the authority. Moneys collected by the authority pursuant to
13 26 subsection 5 shall be for the maintenance and administration
13 27 of the state construction registry. Moneys in the fund shall
13 28 not revert to the general fund and interest on the moneys in
13 29 the fund shall be deposited in the housing trust fund
13 30 established in section 16.181 and shall not accrue to the
13 31 general fund. If the authority determines that there are
13 32 surplus funds in the title guaranty fund after providing for
13 33 adequate reserves and operating expenses of the division, the
13 34 surplus funds shall be transferred to the housing assistance
13 35 fund created pursuant to section 16.40.

14 1 Sec. 19. Section 572.16, Code 2009, is repealed.

14 2 Sec. 20. EFFECTIVE DATE. This Act takes effect July 1,
14 3 2010.

EXPLANATION

14 3
14 4 This bill relates to mechanic's liens including the
14 5 establishment of a state construction registry for residential
14 6 property and provides an effective date.

14 7 The bill amends all references to "principal contractor"
14 8 and "contractor" to "general contractor" defined in the bill
14 9 to mean a person who does work or furnishes materials by
14 10 contract, express or implied, with an owner. "General
14 11 contractor" does not include a person who does work or
14 12 furnishes materials on contract with an owner=builder.

14 13 The bill creates the definition of "owner=builder" to mean
14 14 the record titleholder who offers or intends to offer to sell
14 15 the owner=builder's property without occupying or using the
14 16 structures, properties, developments, or improvements for more
14 17 than one year from the date the structure, property,
14 18 development, or improvement is substantially completed or
14 19 abandoned. An "owner=builder" retains such status after
14 20 transferring title to a new owner. The bill extends
14 21 provisions currently in the Code for general contractors to
14 22 owner=builders. These provisions relate to perfecting a lien,
14 23 the acknowledgment of a lien that has been satisfied by
14 24 payment of a claim, actions by subcontractors or owners to
14 25 recover amounts due, and certain notification requirements.
14 26 The bill also extends provisions for general contractors
14 27 relating to notification requirements for commercial
14 28 construction to owner=builders.

14 29 The bill provides that a person who intends to perfect a
14 30 mechanic's lien shall include the address of the property or a
14 31 description of the location of the property in the person's
14 32 verified statement.

14 33 The bill provides that a general contractor who has
14 34 contracted or will contract with a subcontractor to provide
14 35 labor or furnish material for the property shall include a
15 1 notice in any written contract with the owner stating that
15 2 persons or companies furnishing labor or materials for the
15 3 improvement of real property may enforce a lien upon the
15 4 improved property if they are not paid, even if the parties
15 5 have no direct contractual relationship with the owner. The
15 6 notice shall also provide information relating to the
15 7 availability of information posted on the state construction
15 8 registry, detailed below, and shall provide the owner with a
15 9 copy of the written contract to be signed by the owner. If no
15 10 written contract is entered into between the general
15 11 contractor and the owner, the general contractor shall provide
15 12 written notice to the owner. The general contractor shall
15 13 file a copy of the notice with the state construction registry
15 14 along with a dated signature of the owner acknowledging
15 15 receipt of the notice within 10 days of commencement of work
15 16 on the property.

15 17 The bill provides that a general contractor or
15 18 owner=builder shall file a notice of commencement of work,
15 19 including certain specific information, with the state
15 20 construction registry within 10 days of beginning work on a
15 21 residential property. A notice of commencement of work is
15 22 effective only as to any labor, service, equipment, and
15 23 material furnished to the property subsequent to the filing of
15 24 the notice of commencement of work. A general contractor who
15 25 fails to provide the requisite notice under the bill is not
15 26 entitled to a mechanic's lien and remedies provided pursuant
15 27 to Code chapter 572.

15 28 The bill provides that payment to the general contractor or
15 29 owner=builder by the owner of any part or all of the contract
15 30 price of the building or improvement within 90 days after the
15 31 date on which the last of the materials was furnished or the
15 32 last of the labor was performed by a subcontractor, does not
15 33 relieve the owner from liability to the subcontractor for the
15 34 full value of any material furnished or labor performed upon
16 35 the building, land, or improvement if the subcontractor files
16 1 a lien within 90 days after the date on which the last of the
16 2 materials was furnished or the last of the labor was
16 3 performed.

16 4 The bill requires a subcontractor to file a notice of
16 5 commencement of work, including certain specific information,
16 6 with the state construction registry within 10 days of
16 7 beginning work on a residential property. A perfected
16 8 mechanic's lien is enforceable only to the extent of the
16 9 balance due the general contractor or owner=builder prior to
16 10 the filing of a preliminary notice. A subcontractor who fails
16 11 to file a preliminary notice pursuant shall not be entitled to
16 12 a lien and remedy provided under Code chapter 572.

16 13 The bill provides that the provisions relating to the

16 14 requirement that a general contractor and a subcontractor file
16 15 notices with the state construction registry do not apply to
16 16 commercial construction.

16 17 The bill provides for the creation of a state construction
16 18 registry for the filing of notices by general contractors,
16 19 owner-builders, and subcontractors previously described in the
16 20 bill which such persons must file in order to protect their
16 21 lien rights. The state construction registry, once created,
16 22 shall be a publicly accessible centralized electronic database
16 23 known as the state construction registry created and
16 24 maintained by the Iowa finance authority. The Iowa finance
16 25 authority shall adopt rules pursuant to Code chapter 17A for
16 26 the creation and administration of the registry which shall
16 27 include a specific index and which shall be funded through the
16 28 collection of fees. The registry provides a centralized
16 29 resource of all persons or companies furnishing labor or
16 30 materials who may file a lien upon the improved property.

16 31 The bill eliminates the requirement that the clerk of court
16 32 make an abstract of a claim for a mechanic's lien but requires
16 33 the clerk instead to index every claim in the office of the
16 34 county where such real estate is located.

16 35 The bill expands the right of who may recover attorney fees
17 1 from any prevailing plaintiff who furnishes materials or labor
17 2 directly to the defendant to any prevailing defendant.

17 3 The bill repeals Code section 572.16 relating to rules of
17 4 construction regarding the owner's obligation to pay certain
17 5 amounts in the owner's contract with the general contractor.

17 6 The bill takes effect July 1, 2010.

17 7 LSB 1167SC 83

17 8 rh/rj/14