

SENATE BILL No. 405

April 21, 2005, Introduced by Senators GARCIA and BERNERO and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1980 PA 497, entitled "Construction lien act," by amending the title and sections 104, 106, 107, 114, 201, 202, 203, and 204 (MCL 570.1104, 570.1106, 570.1107, 570.1114, 570.1201, 570.1202, 570.1203, and 570.1204), sections 104, 106, 107, 114, and 203 as amended by 1982 PA 17, section 201 as amended by 1984 PA 190, and section 202 as amended by 1981 PA 191, and by adding section 114a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for

1 the improvement of real property; to provide for certain defenses
2 with respect thereto; to establish ~~a~~ **THE** homeowner construction
3 lien recovery fund; ~~within the department of licensing and~~
4 ~~regulation;~~ to provide for the powers and duties of certain state
5 officers **AND AGENCIES**; to provide for the ~~assessments~~ **ASSESSMENT**
6 of certain occupations; to **PROVIDE REMEDIES AND** prescribe
7 penalties; and to repeal ~~certain~~ acts and parts of acts.

8 Sec. 104. (1) "Court" means the circuit court in which an
9 action to enforce a construction lien through foreclosure is
10 pending.

11 (2) "Department" means the department of ~~licensing and~~
12 ~~regulation~~ **LABOR AND ECONOMIC GROWTH**.

13 (3) "Designee" means the person named by an owner or lessee to
14 receive, on behalf of the owner or lessee, all notices or other
15 instruments whose furnishing is required by this act. The owner or
16 lessee may name himself or herself as designee. The owner or lessee
17 may not name the contractor as designee. However, a contractor who
18 is providing only architectural or engineering services may be
19 named as designee.

20 (4) "Fringe benefits and withholdings" means compensation due
21 an employee pursuant to a written contract or written policy for
22 holiday, time off for sickness or injury, time off for personal
23 reasons or vacation, bonuses, authorized expenses incurred during
24 the course of employment, and any other contributions made to or on
25 behalf of an employee.

26 (5) "Fund" means the homeowner construction lien recovery fund
27 created ~~under part 2~~ **IN SECTION 201**.

1 (6) "General contractor" means a contractor who contracts with
2 an owner or lessee to provide, directly or indirectly through
3 contracts with subcontractors, suppliers, or laborers,
4 substantially all of the improvements to the property described in
5 the notice of commencement.

6 (7) "Improvement" means the result of labor or material
7 provided by a contractor, subcontractor, supplier, or laborer,
8 including, but not limited to, surveying, engineering and
9 architectural planning, construction management, clearing,
10 demolishing, excavating, filling, building, erecting, constructing,
11 altering, repairing, ornamenting, landscaping, paving, leasing
12 equipment, or installing or affixing a fixture or material,
13 pursuant to a contract.

14 (8) "Laborer" means an individual who, pursuant to a contract
15 with a contractor or subcontractor, provides an improvement to real
16 property through the individual's personal labor.

17 Sec. 106. (1) "Person" means an individual, corporation,
18 partnership, sole proprietorship, association, other legal entity,
19 or any combination thereof.

20 (2) "Project" means the aggregate of improvements contracted
21 for by the contracting owner.

22 (3) "Residential structure" means an individual residential
23 condominium unit or a residential building containing not more than
24 2 residential units, the land on which it is or will be located,
25 and all appurtenances, ~~thereto,~~ in which the owner or lessee
26 contracting for the improvement is residing or will reside upon
27 completion of the improvement.

1 (4) "Subcontractor" means a person, other than a laborer or
2 supplier, who pursuant to a contract between himself or herself and
3 a person other than the owner or lessee performs any part of a
4 contractor's contract for an improvement.

5 (5) "Supplier" means a person who, pursuant to a contract with
6 a contractor or a subcontractor, leases, rents, or in any other
7 manner provides material or equipment ~~which~~ **THAT** is used in the
8 improvement of real property.

9 (6) "Wages" means all earnings of an employee whether
10 determined on the basis of time, task, piece, commission, or other
11 method of calculation for labor or services except ~~those defined~~
12 ~~as~~ fringe benefits and withholdings.

13 Sec. 107. (1) Each contractor, subcontractor, supplier, or
14 laborer who provides an improvement to real property ~~shall have~~
15 **HAS** a construction lien upon the interest of the owner or lessee
16 who contracted for the improvement to the real property, as
17 described in the notice of commencement ~~provided for by~~ **GIVEN**
18 **UNDER** section 108 or 108a, the interest of an owner who has
19 subordinated his or her interest to the mortgage for the
20 improvement of the real property, and the interest of an owner who
21 has required the improvement. A construction lien acquired pursuant
22 to this act shall not exceed the amount of the lien claimant's
23 contract less payments made on the contract.

24 (2) A construction lien under this act ~~shall attach~~ **ATTACHES**
25 to the entire interest of the owner or lessee who contracted for
26 the improvement, including any subsequently acquired legal or
27 equitable interest.

1 (3) Each contractor, subcontractor, supplier, or laborer who
2 provides an improvement to real property to which the person
3 contracting for the improvement had no legal title ~~shall have~~ **HAS**
4 a construction lien upon the improvement for which the contractor,
5 subcontractor, supplier, or laborer provided labor, material, or
6 equipment. The forfeiture, surrender, or termination of any title
7 or interest held by ~~any~~ **AN** owner or lessee who contracted for an
8 improvement to the property, ~~or by any~~ **AN** owner who subordinated
9 his or her interest to the mortgage for the improvement, or ~~by any~~
10 **AN** owner who has required the improvement ~~shall~~ **DOES** not defeat
11 the lien of the contractor, subcontractor, supplier, or laborer
12 upon the improvement.

13 (4) If the rights of a person contracting for an improvement
14 as a land contract vendee or a lessee are forfeited, surrendered,
15 or otherwise terminated, any lien claimant who has provided a
16 notice of furnishing or is excused from providing a notice of
17 furnishing ~~pursuant to~~ **UNDER** section 108, 108a, or 109 and who
18 performs the covenants contained in the land contract or lease
19 within 30 days after receiving actual notice of the forfeiture,
20 surrender, or termination ~~shall be~~ **IS** subrogated to the rights of
21 the contracting vendee or lessee as those rights existed
22 immediately before the forfeiture, surrender, or termination.

23 (5) For purposes of this act, if the real property is owned or
24 leased by more than 1 person, **THERE IS A REBUTTABLE PRESUMPTION**
25 **THAT** an improvement to real property ~~pursuant to~~ **UNDER** a contract
26 ~~which was entered into by~~ **WITH** an owner or lessee ~~shall be~~
27 ~~presumed to have been~~ **WAS** consented to by any other co-owner or

1 co-lessee. ~~, but the presumption shall in all cases be rebuttable.~~
 2 If enforcement of a construction lien through foreclosure is sought
 3 and the court finds that the improvement ~~has been~~ **WAS** consented
 4 to by a co-owner or co-lessee who did not contract for the
 5 improvement, the court shall order the entire interest of that co-
 6 owner or co-lessee, including any subsequently acquired legal or
 7 equitable interest, to be subject to the construction lien. A
 8 deficiency judgment shall not be entered against a noncontracting
 9 owner, co-owner, lessee, or co-lessee.

10 (6) If the real property of an owner or lessee is subject to
 11 **MULTIPLE** construction liens, the sum of the construction liens
 12 shall not exceed the amount ~~which~~ the owner or lessee agreed to
 13 pay the person with whom he or she contracted for the improvement
 14 as modified by ~~any and~~ all additions, deletions, and ~~any~~ other
 15 amendments, less payments made by or on behalf of the owner or
 16 lessee, pursuant to either a contractor's sworn statement or a
 17 waiver of lien, in accordance with this act.

18 (7) **AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**
 19 **THIS SUBSECTION, A CONSTRUCTION LIEN OF A SUBCONTRACTOR OR SUPPLIER**
 20 **FOR AN IMPROVEMENT TO A RESIDENTIAL STRUCTURE SHALL NOT INCLUDE AN**
 21 **AMOUNT CHARGED OR ASSESSED UNDER THE CONTRACT BETWEEN THE**
 22 **SUBCONTRACTOR OR SUPPLIER AND THE GENERAL CONTRACTOR FOR INTEREST**
 23 **ON THE UNPAID PRINCIPAL AMOUNT DUE, A TIME-PRICE DIFFERENTIAL, A**
 24 **FINANCE CHARGE, OR ANY OTHER ITEM OF INTEREST.**

25 Sec. 114. A contractor ~~shall~~ **DOES** not have a right to a
 26 construction lien ~~upon~~ **ON** the interest of ~~any~~ **AN** owner or
 27 lessee in a residential structure unless the contractor has

1 provided an improvement to the residential structure pursuant to a
 2 written contract between the owner or lessee and the contractor and
 3 any amendments or additions to the contract **ARE** also ~~shall be~~ in
 4 writing. The contract required by this section shall contain a
 5 statement, in type no smaller than that of the body of the
 6 contract, ~~setting forth~~ **STATING** all of the following:

7 (a) That a residential builder or a residential maintenance
 8 and alteration contractor is required to be licensed under article
 9 24 of ~~Act 299 of the Public Acts of 1980, as amended, being~~
 10 ~~sections 339.2401 to 339.2412 of the Michigan Compiled Laws~~ **THE**
 11 **OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2401 TO 339.2412.** That an
 12 electrician is required to be licensed under ~~Act No. 217 of the~~
 13 ~~Public Acts of 1956, as amended, being sections 338.881 to 338.892~~
 14 ~~of the Michigan Compiled Laws~~ **THE ELECTRICAL ADMINISTRATIVE ACT,**
 15 **1956 PA 217, MCL 338.881 TO 338.892.** That a ~~plumber~~ **PLUMBING**
 16 **CONTRACTOR** is required to be licensed under ~~Act No. 266 of the~~
 17 ~~Public Acts of 1929, as amended, being sections 338.901 to 338.917~~
 18 ~~of the Michigan Compiled Laws~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
 19 **MCL 338.3511 TO 338.3569. THAT A MECHANICAL CONTRACTOR IS REQUIRED**
 20 **TO BE LICENSED UNDER THE FORBES MECHANICAL CONTRACTORS ACT, 1984 PA**
 21 **192, MCL 338.971 TO 338.988.**

22 (b) If the contractor is required to be licensed to provide
 23 the contracted improvement, that the contractor is ~~so~~ licensed
 24 **AND THE CONTRACTOR'S LICENSE NUMBER.**

25 ~~———— (c) If a license is required, the contractor's license~~
 26 ~~number.~~

27 **SEC. 114A. (1) THE OWNER OF RESIDENTIAL PROPERTY ON WHICH A**

1 CONSTRUCTION LIEN HAS BEEN RECORDED BY A PERSON WHO WAS NOT
 2 LICENSED AS DESCRIBED IN SECTION 114, OR ANY PERSON AFFECTED BY THE
 3 LIEN, MAY BRING AN ACTION TO DISCHARGE THE LIEN.

4 (2) IF THE COURT IN AN ACTION UNDER SUBSECTION (1) DETERMINES
 5 THAT THE PERSON WHO RECORDED THE LIEN WAS NOT LICENSED AS REQUIRED,
 6 THE PERSON IS LIABLE TO THE PERSON WHO BROUGHT THE ACTION FOR ALL
 7 DAMAGES THAT RESULT FROM THE RECORDING AND ANY ATTEMPTS TO ENFORCE
 8 THE LIEN, INCLUDING ACTUAL COSTS AND ATTORNEY FEES.

9 (3) A PERSON WHO BRINGS AN ACTION TO RECOVER FOR THE
 10 PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH A LICENSE IS REQUIRED
 11 AS DESCRIBED IN SECTION 114 SHALL ALLEGE IN THE COMPLAINT AND HAS
 12 THE BURDEN OF PROVING THAT HE OR SHE WAS PROPERLY LICENSED.

13 Sec. 201. (1) ~~A~~ THE homeowner construction lien recovery
 14 fund is created within the department. ~~of licensing and~~
 15 ~~regulation.~~ The fund shall be self-supporting and shall ~~consist~~
 16 ~~of assessments charged in the following manner~~ BE FUNDED AS
 17 FOLLOWS:

18 (a) ~~Except as provided in subsection (4), when applying for~~
 19 ~~renewal licensure for 1982 and when applying for initial licensure,~~
 20 ~~each of the following persons shall be assessed in~~ IN addition to
 21 the license fee, a ~~fee of \$50.00 for deposit in the fund~~ PERSON
 22 WHO APPLIES FOR 1 OF THE FOLLOWING SHALL PAY A FEE OF \$10.00 AND A
 23 PERSON WHO APPLIES TO RENEW 1 OF THE FOLLOWING SHALL PAY A FEE OF
 24 \$10.00 FOR EACH YEAR THAT THE RENEWED LICENSE WILL BE VALID:

25 (i) A ~~person applying for a~~ residential builders license or a
 26 residential maintenance and alteration contractor's license under
 27 article 24 of the occupational code, ~~Act No. 299 of the Public~~

1 ~~Acts of 1980, as amended, being sections 339.2401 to 339.2412 of~~
2 ~~the Michigan Compiled Laws 1980 PA 299, MCL 339.2401 TO 339.2412.~~

3 (ii) ~~A person applying for an~~ **AN** electrical contractor's
4 license under the electrical administrative act, ~~Act No. 217 of~~
5 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~
6 ~~338.892 of the Michigan Compiled Laws 1956 PA 217, MCL 338.881 TO~~
7 ~~338.892.~~

8 (iii) A ~~person applying for an authorized master plumber's~~
9 **PLUMBING CONTRACTOR'S** license under ~~Act No. 266 of the Public Acts~~
10 ~~of 1929, as amended, being sections 338.901 to 338.917 of the~~
11 ~~Michigan Compiled Laws, which license authorizes the securing of~~
12 ~~plumbing installation permits~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
13 **MCL 338.3511 TO 338.3569.**

14 (iv) A ~~person applying for a~~ **MECHANICAL CONTRACTOR'S** license
15 under the **FORBES** mechanical contractors act, **1984 PA 192, MCL**
16 **338.971 TO 338.988.**

17 (b) A laborer who seeks to recover from the fund **FOR THE FIRST**
18 **TIME** shall not be required to pay a fee until he or she obtains a
19 recovery from the fund, at which time a fee of \$15.00 shall be
20 withheld by the fund from the laborer's final recovery. ~~However,~~
21 ~~in no event shall the total amount withheld by the fund from a~~
22 ~~laborer in a 1 year period exceed \$50.00.~~

23 (c) Except for persons described in subdivisions (a) and (b),
24 all other lien claimants may become members of the fund by paying a
25 fee of \$50.00 prior to the date of the lien claimant's contract for
26 the improvement to ~~the~~ **A** residential structure. ~~A lien claimant~~
27 ~~under this subdivision shall not pay a fee of more than \$50.00 in a~~

1 ~~calendar year.~~ IF THE LIEN CLAIMANT IS A SUPPLIER THAT CONDUCTS
2 BUSINESS FROM MORE THAN 1 RETAIL LOCATION, EACH RETAIL LOCATION
3 SHALL BE TREATED AS A SEPARATE PERSON FOR PURPOSES OF PAYING FEES
4 AND RENEWAL FEES FOR FUND MEMBERSHIP.

5 (D) A PERSON WHO HAS PAID A FEE UNDER SUBDIVISION (B) OR (C)
6 SHALL PAY A RENEWAL FEE AS FOLLOWS:

7 (i) IF THE PERSON PAID THE INITIAL FEE ON OR BEFORE JUNE 1,
8 2005, A RENEWAL FEE OF \$50.00 ON OR BEFORE JUNE 1, 2008, AND A
9 RENEWAL FEE OF \$50.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER
10 THE FIRST RENEWAL PAYMENT.

11 (ii) IF THE PERSON PAID THE INITIAL FEE AFTER JUNE 1, 2005, A
12 RENEWAL FEE OF \$50.00 ON OR BEFORE THE FIRST JUNE 1 FOLLOWING THE
13 THIRD ANNIVERSARY DATE OF THE INITIAL PAYMENT AND A RENEWAL FEE OF
14 \$50.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER THE FIRST
15 RENEWAL PAYMENT.

16 ~~(2) If, on December 1 of any year, the balance in the fund is~~
17 ~~less than \$1,000,000.00, the director of licensing and regulation~~
18 ~~may require an additional assessment or payment, not to exceed~~
19 ~~\$50.00, from each of the persons described in subsection (1)(a) and~~
20 ~~(c), unless, within 30 legislative days after the director requires~~
21 ~~an additional assessment, the legislature, by majority vote of the~~
22 ~~members elected and serving in both houses by record roll call~~
23 ~~vote, adopts a concurrent resolution to prohibit the additional~~
24 ~~assessment. As used in this subsection "legislative day" means a~~
25 ~~day on which the senate and house is called to order and a quorum~~
26 ~~of the senate and house is present.~~ A PERSON MAY PAY A RENEWAL FEE
27 UNDER SUBSECTION (1) (D) AFTER THE DATE ON WHICH IT IS DUE, BUT IS

1 NOT ENTITLED TO RECOVER FROM THE FUND FOR AN IMPROVEMENT MADE AFTER
2 THE DUE DATE AND BEFORE THE RENEWAL FEE IS PAID.

3 (3) A PERSON WHO BECOMES A MEMBER OF THE FUND BY PAYING A FEE
4 UNDER SUBSECTION (1) SHALL NOTIFY THE DEPARTMENT DIVISION THAT
5 ADMINISTERS THE FUND, IN WRITING, OF A CHANGE IN THE PERSON'S NAME,
6 ADDRESS, OR FORM OF BUSINESS ORGANIZATION WITHIN 30 DAYS OF THE
7 CHANGE. PROOF THAT A NOTICE OR OTHER DOCUMENT WAS MAILED OR, IF
8 ANOTHER METHOD OF DELIVERY IS REQUIRED BY LAW OR RULE, DELIVERED BY
9 THAT OTHER METHOD TO A MEMBER AT THE LAST ADDRESS THAT THE MEMBER
10 PROVIDED TO THE FUND ADMINISTRATOR IS CONCLUSIVE PROOF THAT THE
11 NOTICE OR DOCUMENT WAS RECEIVED BY THE MEMBER.

12 (4) AT LEAST 30 DAYS BEFORE THE DATE THAT A RENEWAL PAYMENT
13 UNDER SUBSECTION (1) (D) IS DUE, THE DEPARTMENT SHALL SEND A NOTICE
14 OF THE AMOUNT THAT WILL BE DUE AND THE PAYMENT DUE DATE TO THE
15 PERSON WHO PAID THE FEE UNDER SUBSECTION (1) (B) OR (C). THE NOTICE
16 SHALL BE SENT BY ORDINARY MAIL TO THE LAST ADDRESS THAT THE PERSON
17 PROVIDED TO THE FUND ADMINISTRATOR.

18 (5) ~~(3)~~ A person ~~shall~~ IS not ~~be~~ entitled to recover
19 from the fund unless ~~he or she~~ THE PERSON has paid into the fund
20 as required by this ~~section~~ ACT.

21 ~~(4) Notwithstanding subsection (1) (a), a person shall not be~~
22 ~~assessed more than \$50.00 in an assessment period regardless of the~~
23 ~~number of licenses applied for or held.~~

24 Sec. 202. (1) The director of ~~licensing and regulation~~ THE
25 DEPARTMENT shall manage the ~~affairs of the fund pursuant~~ FUND
26 ACCORDING to this act. A detailed financial statement of the
27 condition of the fund shall be published by the director annually.

1 ~~This~~ **THE** fund shall be subject to an audit by the auditor general.
2 The state treasurer shall deposit or invest money from the fund, in
3 the same manner **AS** and subject to all provisions of law ~~with~~
4 ~~respect~~ **THAT APPLY** to the deposit or investment of state funds by
5 the state treasurer, and interest earned shall be credited to the
6 fund. The unexpended fund balance shall carry forward to the new
7 fiscal year at the end of each fiscal year.

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

23 ~~———— (3) If the \$50.00 fee is not assessed against license~~
24 ~~applications and renewals during a year under section 201, the~~
25 ~~limitation on fund expenditures provided in subsection (2) shall be~~
26 ~~calculated on the basis of the closest previous year in which the~~
27 ~~\$50.00 fee was assessed and collected for license application and~~

1 ~~renewals under section 201.~~

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

6 (a) Paid the contractor for the improvement to the residential
7 structure, ~~and~~ **INDICATING IN THE AFFIDAVIT** the amount of the
8 payment. **THE OWNER OR LESSEE SHALL ATTACH A COPY OF ANY EVIDENCE OF**
9 **THE PAYMENT THAT THE OWNER OR LESSEE HAS, INCLUDING, BUT NOT**
10 **LIMITED TO, A CANCELED CHECK OR A CREDIT CARD OR OTHER RECEIPT, TO**
11 **THE AFFIDAVIT.**

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

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

16 (2) ~~In the absence of a~~ **IF THERE IS NO** written contract
17 ~~pursuant to~~ **AS REQUIRED BY** section 114, the filing of an affidavit
18 under this section ~~shall create~~ **CREATES** a rebuttable presumption
19 that the owner or lessee has paid the contractor for the
20 improvement. The presumption may be overcome only by a showing of
21 clear and convincing evidence to the contrary.

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

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

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

6 (c) That the contractor or subcontractor has retained or used
7 the proceeds or any part of the proceeds paid to the contractor or
8 subcontractor without having paid the person claiming the
9 construction lien.

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

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

13 (f) That he or she has complied with any applicable licensing
14 acts.

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

17 (h) That the contractor or ~~the~~ subcontractor ~~with~~ whom
18 the person claiming the construction lien contracted ~~with~~ is
19 licensed if required by law to be licensed.

20 (I) THAT THE CONTRACTOR OR SUBCONTRACTOR WITH WHOM THE PERSON
21 CLAIMING THE CONSTRUCTION LIEN CONTRACTED IS THE SAME INDIVIDUAL OR
22 LEGAL ENTITY WITH WHOM THE OWNER OR LESSEE CONTRACTED.

23 (J) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A
24 SUPPLIER, THAT HE OR SHE HAS DOCUMENTARY PROOF THAT, BEFORE HE OR
25 SHE PROVIDED THE MATERIAL OR EQUIPMENT THAT IS THE SUBJECT OF THE
26 LIEN WITHOUT OBTAINING ADVANCE PAYMENT IN FULL, HE OR SHE EXERCISED
27 DUE DILIGENCE TO DETERMINE THAT THE CONTRACTOR OR SUBCONTRACTOR TO

1 WHOM HE OR SHE PROVIDED THE MATERIAL OR EQUIPMENT WAS CREDITWORTHY.

2 (4) A subcontractor, supplier, or laborer who seeks
 3 enforcement of a construction lien on a residential structure
 4 through foreclosure shall join the fund as a defendant in the
 5 foreclosure action ~~—~~ and **SERVE** a summons and complaint ~~shall be~~
 6 ~~served~~ on the ~~director~~ **OFFICE OF THE FUND ADMINISTRATOR WITHIN**
 7 **THE DEPARTMENT** by certified or registered mail ~~—~~ or by leaving a
 8 copy ~~thereof~~ at the office. ~~of the director.~~ The failure to
 9 serve a summons and complaint ~~upon the fund shall constitute a bar~~
 10 ~~to~~ **UNDER THIS SUBSECTION BARS** recovery from the fund. After
 11 ~~service upon the defendant of~~ **A DEFENDANT IS SERVED WITH** a summons
 12 and complaint in an action ~~in which enforcement of~~ **TO FORECLOSE** a
 13 construction lien, ~~through foreclosure is sought,~~ the department
 14 may intervene in the action as a party defendant with respect to
 15 other construction liens.

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

19 (6) Payment from the fund shall be made only if the court
 20 finds that a subcontractor, supplier, or laborer is entitled to
 21 payment from the fund. Subject to section 204, after the judgment
 22 has become final the department shall pay the amount of the
 23 judgment out of the fund.

24 Sec. 204. (1) **A PAYMENT FROM THE FUND SHALL NOT INCLUDE AN**
 25 **AMOUNT FOR INTEREST ON THE UNPAID PRINCIPAL AMOUNT DUE, A TIME-**
 26 **PRICE DIFFERENTIAL, A FINANCE CHARGE, OR ANY OTHER FORM OF**
 27 **INTEREST.**

1 (2) The department shall not pay out of the fund to
2 subcontractors, suppliers, and laborers more than ~~-\$75,000.00~~
3 **\$100,000.00** per residential structure. When it appears that the
4 amount claimed from the fund ~~—~~ with respect to a residential
5 structure ~~—~~ will exceed ~~-\$75,000.00~~ **\$100,000.00**, the department
6 may delay payment until the total amount to be paid can be
7 ascertained. If the total amount payable to subcontractors,
8 suppliers, and laborers exceeds ~~-\$75,000.00~~ **\$100,000.00**, they
9 shall be paid their proportional shares of that amount.