

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 451 be amended to read as follows:

- 1 Page 8, after line 34 , begin a new paragraph and insert:
2 "SECTION 2. IC 32-28-3-1, AS AMENDED BY P.L.101-2002,
3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2003]: Sec. 1. (a) A contractor, a subcontractor, a mechanic,
5 a lessor leasing construction and other equipment and tools, whether or
6 not an operator is also provided by the lessor, a journeyman, a laborer,
7 or any other person performing labor or furnishing materials or
8 machinery, including the leasing of equipment or tools, for:
9 (1) the erection, alteration, repair, or removal of:
10 (A) a house, mill, manufactory, or other building; or
11 (B) a bridge, reservoir, system of waterworks, or other
12 structure; ~~or~~
13 (2) the construction, alteration, repair, or removal of a walk or
14 sidewalk located on the land or bordering the land, a stile, a well,
15 a drain, a drainage ditch, a sewer, or a cistern; or
16 (3) any other earth moving operation;
17 may have a lien as set forth in this section.
18 (b) A person described in subsection (a) may have a lien
19 separately or jointly upon the:
20 (1) house, mill, manufactory, or other building, bridge, reservoir,
21 system of waterworks, or other structure, sidewalk, walk, stile,
22 well, drain, drainage ditch, sewer, cistern, or earth:
23 (A) that the person erected, altered, repaired, moved, or
24 removed; or
25 (B) for which the person furnished materials or machinery

1 of any description; and
2 (2) on the interest of the owner of the lot or parcel of land:
3 (A) on which the structure or improvement stands; or
4 (B) with which the structure or improvement is connected;
5 to the extent of the value of any labor done or the material furnished,
6 or both, including any use of the leased equipment and tools.
7 (c) All claims for wages of mechanics and laborers employed in
8 or about a shop, mill, wareroom, storeroom, manufactory or structure,
9 bridge, reservoir, system of waterworks or other structure, sidewalk,
10 walk, stile, well, drain, drainage ditch, cistern, or any other earth
11 moving operation shall be a lien on all the:
12 (1) machinery;
13 (2) tools;
14 (3) stock;
15 (4) material; or
16 (5) finished or unfinished work;
17 located in or about the shop, mill, wareroom, storeroom, manufactory
18 or other building, bridge, reservoir, system of waterworks, or other
19 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,
20 cistern, or earth used in a business.
21 (d) If the person, firm, limited liability company, or corporation
22 described in subsection (a) is in failing circumstances, the claims
23 described in this section shall be preferred debts whether a claim or
24 notice of lien has been filed.
25 (e) Subject to subsection (f), a contract: ~~for the construction,~~
26 ~~alteration, or repair of:~~
27 (1) **for the construction, alteration, or repair of** a Class 2
28 structure (as defined in IC 22-12-1-5);
29 (2) **for the construction, alteration, or repair of** an
30 improvement on the same real estate auxiliary to a Class 2
31 structure (as defined in IC 22-12-1-5); ~~or~~
32 (3) **for the construction, alteration, or repair of** property that
33 is:
34 (A) owned, operated, managed, or controlled by a:
35 (i) public utility (as defined in IC 8-1-2-1);
36 (ii) municipally owned utility (as defined in
37 IC 8-1-2-1);
38 (iii) joint agency (as defined in IC 8-1-2.2-2);
39 (iv) rural electric membership corporation formed
40 under IC 8-1-13-4;
41 (v) rural telephone cooperative corporation formed
42 under IC 8-1-17; or
43 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
44 regulated under IC 8; and
45 (B) intended to be used and useful for the production,
46 transmission, delivery, or furnishing of heat, light, water,
47 telecommunications services, or power to the public; **or**
48 **(4) to prepare property for Class 2 residential construction;**
49 may include a provision or stipulation in the contract of the owner and
50 principal contractor that a lien may not attach to the real estate,
51 building, structure or any other improvement of the owner.

1 (f) A contract containing a provision or stipulation described in
 2 subsection (e) must meet the requirements of this subsection to be valid
 3 against subcontractors, mechanics, journeymen, laborers, or persons
 4 performing labor upon or furnishing materials or machinery for the
 5 property or improvement of the owner. The contract must:

- 6 (1) be in writing;
 7 (2) contain specific reference by legal description of the real
 8 estate to be improved;
 9 (3) be acknowledged as provided in the case of deeds; and
 10 (4) be filed and recorded in the recorder's office of the county in
 11 which the real estate, building, structure, or other improvement
 12 is situated not more than five (5) days after the date of execution
 13 of the contract.

14 A contract containing a provision or stipulation described in subsection
 15 (e) does not affect a lien for labor, material, or machinery supplied
 16 before the filing of the contract with the recorder.

17 (g) Upon the filing of a contract under subsection (f), the recorder
 18 shall:

- 19 (1) record the contract at length in the order of the time it was
 20 received in books provided by the recorder for that purpose;
 21 (2) index the contract in the name of the:
 22 (A) contractor; and
 23 (B) owner;
 24 in books kept for that purpose; and
 25 (3) collect a fee for recording the contract as is provided for the
 26 recording of deeds and mortgages.

27 (h) A person, firm, partnership, limited liability company, or
 28 corporation that sells or furnishes on credit any material, labor, or
 29 machinery for the alteration or repair of an owner occupied single or
 30 double family dwelling or the appurtenances or additions to the
 31 dwelling to:

- 32 (1) a contractor, subcontractor, mechanic; or
 33 (2) anyone other than the occupying owner or the owner's legal
 34 representative;

35 must furnish to the occupying owner of the parcel of land where the
 36 material, labor, or machinery is delivered a written notice of the
 37 delivery or work and of the existence of lien rights not later than thirty
 38 (30) days after the date of first delivery or labor performed. The
 39 furnishing of the notice is a condition precedent to the right of
 40 acquiring a lien upon the lot or parcel of land or the improvement on
 41 the lot or parcel of land.

42 (i) A person, firm, partnership, limited liability company, or
 43 corporation that sells or furnishes on credit material, labor, or
 44 machinery for the original construction of a single or double family
 45 dwelling for the intended occupancy of the owner upon whose real
 46 estate the construction takes place to a contractor, subcontractor,
 47 mechanic, or anyone other than the owner or the owner's legal
 48 representatives must:

- 49 (1) furnish the owner of the real estate:
 50 (A) as named in the latest entry in the transfer books

1 described in IC 6-1.1-5-4 of the county auditor; or
 2 (B) if IC 6-1.1-5-9 applies, as named in the transfer books
 3 of the township assessor;
 4 with a written notice of the delivery or labor and the existence of
 5 lien rights not later than sixty (60) days after the date of the first
 6 delivery or labor performed; and
 7 (2) file a copy of the written notice in the recorder's office of the
 8 county not later than sixty (60) days after the date of the first
 9 delivery or labor performed.

10 The furnishing and filing of the notice is a condition precedent to the
 11 right of acquiring a lien upon the real estate or upon the improvement
 12 constructed on the real estate.

13 (j) A lien for material or labor in original construction does not
 14 attach to real estate purchased by an innocent purchaser for value
 15 without notice of a single or double family dwelling for occupancy by
 16 the purchaser unless notice of intention to hold the lien is recorded
 17 under section 3 of this chapter before recording the deed by which the
 18 purchaser takes title.

19 **SECTION 2. An emergency is declared for this act.**
 (Reference is to ESB 451 as printed March 28, 2003.)

Representative BURTON