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# HOUSE BILL No. 1438

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-28-3-1.

**Synopsis:** Mechanic's liens. Establishes an optional prelien notice process that may be used in commercial construction projects. Provides that, as a prerequisite for acquiring lien rights, a contractor who provides labor or material in a commercial construction project must notify the owner of the property not more than 30 days after the provision of labor or materials. Requires a property owner who intends to use the prelien notice process to provide notice by: (1) posting the prelien notice process on the worksite; (2) including a reference to the prelien notice process on bid documents; and (3) if applicable, describing the prelien notice process on a relevant website maintained by the property owner or principal contractor.

**Effective:** July 1, 2007.

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January 16, 2007, read first time and referred to Committee on Judiciary.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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# HOUSE BILL No. 1438



A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-28-3-1, AS AMENDED BY P.L.1-2006,  
2 SECTION 501, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) A contractor, a subcontractor,  
4 a mechanic, a lessor leasing construction and other equipment and  
5 tools, whether or not an operator is also provided by the lessor, a  
6 journeyman, a laborer, or any other person performing labor or  
7 furnishing materials or machinery, including the leasing of equipment  
8 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;  
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.



1 (b) A person described in subsection (a) may have a lien separately  
2 or jointly: ~~upon the:~~

3 (1) **upon the** house, mill, manufactory, or other building, bridge,  
4 reservoir, system of waterworks, or other structure, sidewalk,  
5 walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

6 (A) that the person erected, altered, repaired, moved, or  
7 removed; or

8 (B) for which the person furnished materials or machinery of  
9 any description; and

10 (2) on the interest of the owner of the lot or parcel of land:

11 (A) on which the structure or improvement stands; or

12 (B) with which the structure or improvement is connected;

13 to the extent of the value of any labor done or the material furnished,  
14 or both, including any use of the leased equipment and tools.

15 (c) All claims for wages of mechanics and laborers employed in or  
16 about a shop, mill, wareroom, storeroom, manufactory or structure,  
17 bridge, reservoir, system of waterworks or other structure, sidewalk,  
18 walk, stile, well, drain, drainage ditch, cistern, or any other earth  
19 moving operation shall be a lien on all the:

20 (1) machinery;

21 (2) tools;

22 (3) stock;

23 (4) material; or

24 (5) finished or unfinished work;

25 located in or about the shop, mill, wareroom, storeroom, manufactory  
26 or other building, bridge, reservoir, system of waterworks, or other  
27 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,  
28 cistern, or earth used in a business.

29 (d) If the person, firm, limited liability company, or corporation  
30 described in subsection (a) or (c) is in failing circumstances, the claims  
31 described in this section shall be preferred debts whether a claim or  
32 notice of lien has been filed.

33 (e) Subject to subsection (f), a contract:

34 (1) for the construction, alteration, or repair of a Class 2 structure  
35 (as defined in IC 22-12-1-5);

36 (2) for the construction, alteration, or repair of an improvement on  
37 the same real estate auxiliary to a Class 2 structure (as defined in  
38 IC 22-12-1-5);

39 (3) for the construction, alteration, or repair of property that is:

40 (A) owned, operated, managed, or controlled by a:

41 (i) public utility (as defined in IC 8-1-2-1);

42 (ii) municipally owned utility (as defined in IC 8-1-2-1);

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1 (iii) joint agency (as defined in IC 8-1-2.2-2);  
 2 (iv) rural electric membership corporation formed under  
 3 IC 8-1-13-4;  
 4 (v) rural telephone cooperative corporation formed under  
 5 IC 8-1-17; or  
 6 (vi) not-for-profit utility (as defined in IC 8-1-2-125);  
 7 regulated under IC 8; and  
 8 (B) intended to be used and useful for the production,  
 9 transmission, delivery, or furnishing of heat, light, water,  
 10 telecommunications services, or power to the public; or  
 11 (4) to prepare property for Class 2 residential construction;  
 12 may include a provision or stipulation in the contract of the owner and  
 13 principal contractor that a lien may not attach to the real estate,  
 14 building, structure or any other improvement of the owner.  
 15 (f) A contract containing a provision or stipulation described in  
 16 subsection (e) must meet the requirements of this subsection to be valid  
 17 against subcontractors, mechanics, journeymen, laborers, or persons  
 18 performing labor upon or furnishing materials or machinery for the  
 19 property or improvement of the owner. The contract must:  
 20 (1) be in writing;  
 21 (2) contain specific reference by legal description of the real  
 22 estate to be improved;  
 23 (3) be acknowledged as provided in the case of deeds; and  
 24 (4) be filed and recorded in the recorder's office of the county in  
 25 which the real estate, building, structure, or other improvement is  
 26 situated not more than five (5) days after the date of execution of  
 27 the contract.  
 28 A contract containing a provision or stipulation described in subsection  
 29 (e) does not affect a lien for labor, material, or machinery supplied  
 30 before the filing of the contract with the recorder.  
 31 (g) Upon the filing of a contract under subsection (f), the recorder  
 32 shall:  
 33 (1) record the contract at length in the order of the time it was  
 34 received in books provided by the recorder for that purpose;  
 35 (2) index the contract in the name of the:  
 36 (A) contractor; and  
 37 (B) owner;  
 38 in books kept for that purpose; and  
 39 (3) collect a fee for recording the contract as is provided for the  
 40 recording of deeds and mortgages.  
 41 (h) A person, firm, partnership, limited liability company, or  
 42 corporation that sells or furnishes on credit any material, labor, or

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1 machinery for the alteration or repair of an owner occupied single or  
2 double family dwelling or the appurtenances or additions to the  
3 dwelling to:

- 4 (1) a contractor, subcontractor, mechanic; or
- 5 (2) anyone other than the occupying owner or the owner's legal  
6 representative;

7 must furnish to the occupying owner of the parcel of land where the  
8 material, labor, or machinery is delivered a written notice of the  
9 delivery or work and of the existence of lien rights not later than thirty  
10 (30) days after the date of first delivery or labor performed. The  
11 furnishing of the notice is a condition precedent to the right of  
12 acquiring a lien upon the lot or parcel of land or the improvement on  
13 the lot or parcel of land.

14 (i) A person, firm, partnership, limited liability company, or  
15 corporation that sells or furnishes on credit material, labor, or  
16 machinery for the original construction of a single or double family  
17 dwelling for the intended occupancy of the owner upon whose real  
18 estate the construction takes place to a contractor, subcontractor,  
19 mechanic, or anyone other than the owner or the owner's legal  
20 representatives must:

- 21 (1) furnish the owner of the real estate:
  - 22 (A) as named in the latest entry in the transfer books described
  - 23 in IC 6-1.1-5-4 of the county auditor; or
  - 24 (B) if IC 6-1.1-5-9 applies, as named in the transfer books of
  - 25 the township assessor;
- 26 with a written notice of the delivery or labor and the existence of
- 27 lien rights not later than sixty (60) days after the date of the first
- 28 delivery or labor performed; and
- 29 (2) file a copy of the written notice in the recorder's office of the
- 30 county not later than sixty (60) days after the date of the first
- 31 delivery or labor performed.

32 The furnishing and filing of the notice is a condition precedent to the  
33 right of acquiring a lien upon the real estate or upon the improvement  
34 constructed on the real estate.

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

41 **(k) This subsection does not apply to an owner occupied single**  
42 **or double family dwelling. This subsection applies only at the**

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1 election of the property owner and if the property owner complies  
2 with subsection (l). A person, firm, partnership, limited liability  
3 company, or corporation that sells or furnishes on credit any  
4 material, labor, or machinery for the alteration or repair of  
5 property described in subsection (b) or the appurtenances or  
6 additions to property described in subsection (b) to:

- 7 (1) a contractor, subcontractor, mechanic; or
- 8 (2) anyone other than the property owner or the owner's legal  
9 representative;

10 must furnish to the owner of the property where the material,  
11 labor, or machinery is delivered a written prelien notice of the  
12 delivery or work and of the existence of lien rights not later than  
13 thirty (30) days after the date of the first delivery or labor  
14 performed. The furnishing of the prelien notice is a condition  
15 precedent to the right of acquiring a lien upon the lot or parcel of  
16 land or the improvement on the lot or parcel of land.

17 (l) An owner who elects to use the prelien notice process  
18 described in subsection (k) shall do the following:

- 19 (1) Post the requirements of the prelien notice process as  
20 described in subsection (k) in a conspicuous location at the  
21 worksite.
- 22 (2) Include a reference to the prelien notice process in all bid  
23 documents.

24 If an owner does not comply with this subsection, a person  
25 described in subsection (k) may acquire a lien even if the person  
26 fails to comply with the prelien notice process described in  
27 subsection (k).

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