

## HOUSE BILL NO. 657

INTRODUCED BY B. EBINGER, MALCOLM, MCALPIN, PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSTRUCTION LIEN LAW TO ALLOW THE CONTRACTING OWNER TO FILE A BOND WITHIN 30 DAYS OF AN ACTION BROUGHT TO FORECLOSE UPON A CONSTRUCTION LIEN; AND AMENDING SECTIONS 71-3-551 AND 71-3-553, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 71-3-551, MCA, is amended to read:

**"71-3-551. Substitution of bond allowed -- filing -- amount -- condition.** (1) Whenever a construction lien has been filed upon real property or any improvements ~~thereon~~ on the real property, the contracting owner of any interest in ~~such the~~ the property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose ~~such the construction~~ the construction lien; ~~or within 30 days of the commencement~~ SERVICE OF A COMPLAINT IN an action to foreclose the construction lien, file a bond with the clerk of the district court in the county in which ~~such the~~ the property is ~~situated~~ located or, if ~~such the~~ the property is ~~situated~~ located in more than one county, with the clerk of the district court of any county in which a part of ~~such the~~ the property is ~~situated~~ located.

(2) ~~Such The~~ The bond ~~shall~~ must be in an amount 1 1/2 times the amount of the construction lien and ~~shall~~ must be either in cash or written by a corporate surety company. If written by a corporate surety, ~~such the~~ the bond ~~shall~~ must be approved by a judge of the district court with which ~~such the~~ the bond is filed.

(3) The bond ~~shall~~ must be conditioned that if the construction lien claimant ~~shall be~~ is finally adjudged to be entitled to recover upon the claim upon which ~~his the~~ the construction lien is based, the principal or ~~his the~~ the principal's sureties shall pay to ~~such the~~ the claimant the amount of ~~his the~~ the claimant's judgment, together with any interest, costs, ~~attorneys'~~ attorney fees, and other sums ~~which such that the~~ that the claimant would be entitled to recover upon the foreclosure of a construction lien against the principal."

**Section 2.** Section 71-3-553, MCA, is amended to read:

**"71-3-553. Action upon bond -- period of limitation same.** (1) When a bond is filed prior to the commencement ~~commencement~~ SERVICE OF A COMPLAINT IN an action to foreclose upon a construction lien as ~~provided~~ allowed in 71-3-551, the person filing ~~such the~~ the construction lien may bring an action upon the bond.

1           (2) ~~Such~~ The action ~~shall~~ must be commenced within the time allowed for the commencement of an  
2     action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure ~~shall apply~~ applies  
3     to an action upon ~~such the~~ bond as it would had ~~no~~ a bond not been filed."

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