

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

751C0746

HOUSE ENGROSSED NO. **HB1279** - 2/10/99

Introduced by: Representatives Brown (Richard), Brooks, Chicoine, Crisp, Davis, Fiegen, Fischer-Clemens, Jaspers, Lucas, and Weber and Senators Rounds, Dunn (Jim), Dunn (Rebecca), Hainje, Hutmacher, Lange, Munson (David), and Staggers

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding mechanics' liens.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 44-9 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any owner or any person entering into a direct agreement with the owner, or the duly
6 authorized agent or representative of the owner, may file with the register of deeds of the county
7 in which the improved premises are situated a notice of project commencement. The notice of
8 project commencement shall contain the following information:

9 (1) The name and address of the person filing the notice of project commencement;

10 (2) The name and address of the owner or developer;

11 (3) A general description of the improvement; and

12 (4) The location of the project, including the legal description of the property.

13 The notice shall be filed within thirty days of the commencement of work and shall be
14 accompanied by a filing fee of ten dollars to be deposited in the county's general fund. The
15 register of deeds in each county shall maintain an index of all notices of project commencements.

1 Section 2. That chapter 44-9 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Any person filing a notice of project commencement shall post the name and address of the
4 contractor and location notice at the job site. The location notice shall contain the following
5 statement: The contractor on this project has filed a notice of project commencement at the
6 county courthouse. Any sub-subcontractor and any supplier to a subcontractor shall comply with
7 the notice provisions of section 4 of this Act before filing liens in connection with this project.

8 Section 3. That chapter 44-9 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The filing of a notice of project commencement does not constitute a cloud, lien, or
11 encumbrance upon, or defect to, the title of the real property described in the notice, nor does
12 it alter the aggregate amounts of liens allowable by applicable statute, nor does it affect the
13 priority of any mortgage or future advances under any mortgage.

14 Section 4. That chapter 44-9 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If the provisions of sections 1 and 2 of this Act are first invoked, no sub-subcontractor or
17 supplier to subcontractors is entitled to extend, pursuant to § 44-9-15, a lien created pursuant
18 to subdivision 44-9-1(1), unless the sub-subcontractor or supplier has first provided notice of
19 furnishing labor or materials by certified or registered mail to the contractor identified in the
20 notice of project commencement and has provided a copy of the notice to the owner of record.
21 Notice pursuant to this section shall be made not later than sixty days after doing the last of such
22 work, or furnishing the last item of such skill, services, material, or machinery, and the post
23 office receipt for mailing such notice shall be attached to the lien and filed in the office of register
24 of deeds. Such notice of furnishing labor or materials shall include:

25 (1) The name of the sub-subcontractor or supplier who claims payment;

- 1 (2) The name of the person with whom the claimant contracted or by whom the claimant
2 was employed;
- 3 (3) A description of the labor, services, or materials furnished and the contract price or
4 value thereof. Materials specifically fabricated by a person other than the one giving
5 notice and contract price or value thereof shall be separately stated in the notice;
- 6 (4) A description of the project, sufficient for identification;
- 7 (5) The date when the first and last item of labor or materials was actually furnished or
8 scheduled to be furnished; and
- 9 (6) The amount claimed to be due, if any.

10 Any person who gives notice in accordance with this section may extend a lien as provided
11 in § 44-9-15.

12 This section does not apply to claims of individual laborers when the amount of their lien is
13 less than two thousand dollars.

14 Section 5. The effective date of this Act is July 1, 2000.

1 **BILL HISTORY**

2 2/1/99 First read in House and referred to committee assignment waived. H.J. 284

3 2/2/99 Referred to Judiciary. H.J. 318

4 2/5/99 Scheduled for Committee hearing on this date.

5 2/5/99 Judiciary Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 391

6 2/9/99 Motion to Amend, Passed. H.J. 447

7 2/9/99 House of Representatives Do Pass Amended, Passed, AYES 64, NAYS 3. H.J. 448