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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH  
SESSION

HOUSE FILE No. **590**

February 17, 2011

Authored by Howes, Lanning, Nelson, Holberg, Buesgens and others

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act  
1.2 relating to commerce; requiring evidence of construction financing and notice  
1.3 of nonpayment or default; amending Minnesota Statutes 2010, section 337.10,  
1.4 subdivision 5, by adding subdivisions.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2010, section 337.10, is amended by adding a  
1.7 subdivision to read:

1.8 Subd. 2a. **Waiver of evidence of financing or notice.** Provisions contained in, or  
1.9 executed in connection with, a building and construction contract requiring the contractor,  
1.10 subcontractor, or material supplier to waive the rights provided in subdivisions 4a, 4b, and  
1.11 4c, are void and unenforceable. This provision does not affect the validity of a waiver as  
1.12 to a third party who detrimentally relies upon the waiver.

1.13 Sec. 2. Minnesota Statutes 2010, section 337.10, is amended by adding a subdivision  
1.14 to read:

1.15 Subd. 4a. **Evidence of project financing.** (a) The owner or other persons making  
1.16 payment under the contract shall provide satisfactory evidence of financing to the contract  
1.17 or for the work to be performed by the contractor with which it has contracted. This  
1.18 evidence must be provided before the commencement of work by the contractor. If at any  
1.19 time during the duration of the project, there is any material change in project financing,  
1.20 the owner or other persons responsible for making payment under the contract shall notify  
1.21 any contractor of the nature of that change. Within ten days after receiving evidence of  
1.22 project financing or notice of material change in project financing from a building or

2.1 construction owner, a contractor shall provide this information to each subcontractor  
2.2 contracted to perform work.

2.3 (b) Every contracting agreement between an owner and contractor must include  
2.4 the name, mailing address, and telephone number of the lender, if any, that is providing  
2.5 construction financing to the owner or other person responsible for making payment. If  
2.6 there is no construction financing, the agreement must so state.

2.7 (c) Every subcontracting agreement between a contractor and subcontractor must  
2.8 include the name, mailing address, and telephone number of the lender, if any, that is  
2.9 providing construction financing to the owner or other person responsible for making  
2.10 payment. If there is no construction financing, the agreement must so state.

2.11 (d) Evidence of project financing is a condition precedent to the contractor or  
2.12 subcontractor commencing or continuing work.

2.13 (e) An owner or other person making payment under the contract that fails to provide  
2.14 evidence of project financing or notice of material change is fully responsible for payment  
2.15 to the contractor. A contractor that fails to provide evidence of project financing or notice  
2.16 of material change is fully responsible for payment to subcontractors.

2.17 Sec. 3. Minnesota Statutes 2010, section 337.10, is amended by adding a subdivision  
2.18 to read:

2.19 Subd. 4b. **Notice to lender of nonpayment.** (a) Notice of nonpayment may be  
2.20 given in writing by a contractor or subcontractor to a lender that is providing construction  
2.21 financing to an owner or other person responsible for making payment as required by this  
2.22 section or by contract, if the construction financing is secured in whole or in part by  
2.23 the real property upon which the contractor or subcontractor performed, provided, or  
2.24 contributed to an improvement.

2.25 (b) The notice must reasonably identify the owner or other person responsible for  
2.26 making payment; the contractor; the subcontractor; the real property; the nature and dates  
2.27 of the work performed, provided, or contributed by the contractor or subcontractor; the  
2.28 amount due to the contractor or subcontractor; and the date upon which payment to  
2.29 the contractor or subcontractor was due. A legal description of the real property is not  
2.30 required.

2.31 (c) The notice to the lender is for the lender's information, and this subdivision does  
2.32 not require the lender to take any action in response to the notice. A lender is not liable  
2.33 under this section for any action taken or not taken as a result of receiving the notice.

2.34 (d) An owner or other person responsible for making payment shall not retaliate  
2.35 against a contractor or subcontractor that provides to a lender a notice permitted by this

3.1 subdivision, and an owner that does so is liable to the contractor or subcontractor for  
3.2 damages incurred as a result of the retaliation. A contractor shall not retaliate against  
3.3 a subcontractor that provides to a lender a notice permitted by this subdivision, and a  
3.4 contractor that does so is liable to the subcontractor for damages incurred as a result of  
3.5 the retaliation.

3.6 Sec. 4. Minnesota Statutes 2010, section 337.10, is amended by adding a subdivision  
3.7 to read:

3.8 Subd. 4c. **Notice of default.** An owner or other person responsible for  
3.9 making payment must provide to the lender a sworn construction statement or other  
3.10 industry-accepted document identifying the names of the contractor and all subcontractors  
3.11 and suppliers for the work. A lender that finances all or part of a building and construction  
3.12 contract must give written notice to all known contractors, subcontractors, and suppliers  
3.13 of a default on the building and construction contract loan or financing agreement between  
3.14 the lender and the owner or person responsible for making payment within ten days of  
3.15 the default.

3.16 Upon receipt of the notice of default, the contractor and subcontractors may suspend  
3.17 work on the building and construction contract until the default is cured or the owner  
3.18 or other person responsible for making payment provides the contractor and all known  
3.19 subcontractors and suppliers adequate assurances of payment.

3.20 If the lender does not give the written notice required in this section, the lender's  
3.21 security interest in the project shall be subordinate to the value provided to the project by  
3.22 the contractors and subcontractors after the date the notice should have been given.

3.23 Sec. 5. Minnesota Statutes 2010, section 337.10, subdivision 5, is amended to read:

3.24 Subd. 5. ~~Definition~~ **Definitions.** (a) For the purpose of this section, "building and  
3.25 construction contract" has the meaning given the term in section 337.01.

3.26 (b) For the purpose of this section, "default" means when the owner or party  
3.27 responsible for making payments fails to make required payments to the lender or in some  
3.28 other way does not comply with the terms of the loan.