

A MEMORIAL

REQUESTING THE NEW MEXICO LEGISLATIVE COUNCIL TO ASSEMBLE A TASK FORCE TO STUDY CHAPTER 48, ARTICLE 2 NMSA 1978 AND THE STOP NOTICE ACT.

WHEREAS, Chapter 48, Article 2 NMSA 1978 was incorporated from laws enacted in 1880 to address the need to protect the payment of persons providing labor and materials to construction projects; and

WHEREAS, Chapter 48, Article 2 NMSA 1978 has not been significantly amended since 1993; and

WHEREAS, Chapter 48, Article 2 NMSA 1978 has raised concerns about the ability of contractors and subcontractors to place liens on homeowners' properties with no restrictions or oversight as to their right to attach a lien to homeowners' properties; and

WHEREAS, Chapter 48, Article 2 NMSA 1978 has raised concerns about the ease of placing liens upon homeowners' properties and how that has led to abuse by some contractors and subcontractors; and

WHEREAS, Chapter 48, Article 2 NMSA 1978 has raised concerns about the limitations placed upon a homeowner's ability to defend against invalid, frivolous or excessive liens; and

WHEREAS, the Stop Notice Act was enacted in 1989 to

ensure the timely payment by the original construction contractor to persons contracted to provide labor and materials to a construction project; and

WHEREAS, the Stop Notice Act falls short of adequately addressing the burdens that invalid, frivolous or excessive liens place upon homeowners who do not engage a lender in the financing of a construction project; and

WHEREAS, further amendment of Chapter 48, Article 2 NMSA 1978 might result in conflicts and inconsistencies in law;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the New Mexico legislative council be requested to assemble a task force to study and examine the issues and concerns raised by Chapter 48, Article 2 NMSA 1978 and the Stop Notice Act in the process of applying a mechanic's lien on a homeowner's property and the homeowner's ability to defend against a wrongful lien and that the task force report to the appropriate interim legislative committee by October 2009; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the co-chairs of the New Mexico legislative council, the superintendent of regulation and licensing, the director of the construction industries division of the regulation and licensing department, the attorney general and the director of the administrative office of the courts.