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HOUSE MEMORIAL 64

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William "Bill" R. Rehm

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

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

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

9 WHEREAS, the Stop Notice Act was enacted in 1989 to ensure
10 the timely payment by the original construction contractor to
11 persons contracted to provide labor and materials to a
12 construction project; and

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

17 WHEREAS, further amendment of Chapter 48, Article 2 NMSA
18 1978 might result in conflicts and inconsistencies in law;

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

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1 the task force report to the appropriate interim legislative
2 committee by October 2009; and

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