

2023 SENATE ENERGY AND NATURAL RESOURCES

SB 2311

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

SB 2311
2/2/2023

A bill relating to well or pipeline construction liens and construction liens.

2:58 PM Chairman Patten opened the meeting.

Present are Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum.

Discussion Topics:

- Contractors
- Subcontractors
- Landowners
- Attorney costs

2:58 PM Senator Beard introduced the bill and provided written testimony #18707, 18708, 18709.

3:01 PM Senator Beard proposed an amendment LC 23.0982.01001.

3:05 Chairman Patten closed the public hearing.

3:05 PM Senator Beard made a motion to adopt the amendment LC 23.0982.01001. Motion seconded by Senator Kannianen.

3:06 PM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

3:06 PM Senator Beard moves to Do Pass the bill as amended. Motion seconded by Senator Boehm.

3:06 PM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

Additional written testimony:

Doug Strangeland provided written testimony #18797, 18798, 18799, 18800, 18801.

3:07 PM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

February 1, 2023

Alt
2-2-23
(1-1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 1, line 18, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

Page 1, remove lines 19 through 22

Page 1, line 23, replace "construction on the property" with "Notwithstanding any provision in this section, a lien created under this section does not apply to or constitute a lien against the owner of the surface estate where the oil and gas well or pipeline is located, or against a mineral owner's royalty interest subject to an oil and gas lease"

Page 2, line 21, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

Page 2, remove lines 22 through 25

Page 2, line 26, replace "property" with "Notwithstanding any provision in this section, a lien created under this section does not apply to or constitute a lien against the owner of the surface estate where the oil and gas well or pipeline is located, or against a mineral owner's royalty interest subject to an oil and gas lease"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2311: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2311 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 18, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

Page 1, remove lines 19 through 22

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Page 2, line 21, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

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Page 2, line 26, replace "property" with "Notwithstanding any provision in this section, a lien created under this section does not apply to or constitute a lien against the owner of the surface estate where the oil and gas well or pipeline is located, or against a mineral owner's royalty interest subject to an oil and gas lease"

Renumber accordingly

2023 HOUSE ENERGY AND NATURAL RESOURCES

SB 2311

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2311
3/9/2023

Relating to well or pipeline construction liens and construction liens.

9:54 AM

Vice Chairman D Anderson opened the hearing. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Kasper, Marschall, Novak, Olson, and Roers Jones. Absent: Representative Ruby.

Discussion Topics:

- Unjust lien filing
- Supreme Court case
- Landowner protection
- County Recorder
- Royalty interests
- Well or pipeline construction liens

Sen Todd Beard, District 23, introduced SB 2311, Testimony 23280, 23281
Brady Pelton, legal counsel, ND Petroleum Council, oral testimony
Troy Coons, Chairman, NW Landowners Association, oral testimony

Additional written testimony:

Doug Stangeland, Testimony 23097, 23098, 23099, 23100, 23101

10:16 AM Vice Chairman Anderson closed the hearing.

Kathleen Davis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2311
3/23/2023

Relating to well or pipeline construction liens and construction liens.

9:26 AM Chairman Porter opened the meeting.

Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Olson, Roers Jones, and Ruby.
Absent: Representative Kasper.

Discussion Topics:

- Committee action

Rep Roers Jones moved to adopt amendment 23.0982.02003 (Testimony #26467, #26468), seconded by Rep Olson. Voice vote, motion carried.

Rep Roers Jones moved a Do Pass as Amended, seconded by Rep Ruby.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	AB
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	Y
Representative Zachary Ista	AB
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	AB
Representative Jeremy Olson	Y
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

9-0-5 Motion carried. Rep Roers Jones is carrier.

9:33 AM Meeting adjourned.

Kathleen Davis, Committee Clerk

March 17, 2023

JA
3-13-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2311

Page 1, line 1, after "reenact" insert "subsection 11 of section 35-24-01 and"

Page 1, line 1, replace "35-24-02" with "35-24-03"

Page 1, replace lines 4 through 21 with:

"SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives, liquid or gaseous substances of any kind~~ and the right of way ~~therefor~~ where the pipeline is situated.

SECTION 2. AMENDMENT. Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

35-24-03. Property subject to lien.

1. Liens created under section 35-24-02 extend to:

- 4.a. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
- 2.b. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
- 3.c. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
- 4.d. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of the leasehold for oil and gas purposes or a pipeline for which the labor, materials, or services were supplied."

Page 2, line 19, remove "a lien created under this section does"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "to an oil and gas lease" with "any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter"

YA
3-23-23

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2311, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 5 ABSENT AND NOT VOTING). Engrossed SB 2311 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 11 of section 35-24-01 and"

Page 1, line 1, replace "35-24-02" with "35-24-03"

Page 1, replace lines 4 through 21 with:

"SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives,~~ liquid or gaseous substances of any kind and the right of way ~~therefor~~ where the pipeline is situated.

SECTION 2. AMENDMENT. Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

35-24-03. Property subject to lien.

1. Liens created under section 35-24-02 extend to:
 - 4.a. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
 - 2.b. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
 - 3.c. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
 - 4.d. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.
2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of the leasehold for oil and gas purposes or a pipeline for which the labor, materials, or services were supplied.

Page 2, line 19, remove "a lien created under this section does"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "to an oil and gas lease" with "any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter"

Renumber accordingly

2023 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Coteau AB Room, State Capitol

SB 2311
4/6/2023

Relating to well or pipeline construction liens and construction liens.

10:05 AM Chairman Porter opened the meeting. Members present: Chairman Porter, Vice Chairman D. Anderson, Representatives Bosch, Conmy, Dockter, Hagert, Heinert, Ista, Marschall, Novak, Roers Jones, and Ruby. Absent: Representatives Bosch, Kasper and Olson

Discussion Topics:

- Committee action

Rep Roers Jones, Testimony 27336

Rep Roers Jones moved to Reconsider SB 2311, seconded by Rep Ista. **Voice vote, motion carried.**

Rep Roers Jones moved to further amend SB 2311, Amendment 23.0982.02002, Page 3, end of Subsection 2, "failure to include this statement does not invalidate a lien on the leasehold or pipeline. (Testimony 27336), seconded by Rep Anderson. **Voice vote was undetermined; therefore, a roll call vote was called.**

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	N
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	AB
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

10-1-3 Motion carried.

Rep Roers Jones moved a Do Pass as Amended to Engrossed SB 2311, seconded by Rep Ista.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Glenn Bosch	AB

Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Jared Hagert	Y
Representative Pat D. Heinert	N
Representative Zachary Ista	Y
Representative Jim Kasper	AB
Representative Andrew Marschall	Y
Representative Anna S. Novak	Y
Representative Jeremy Olson	A
Representative Shannon Roers Jones	Y
Representative Matthew Ruby	Y

10-1-3 Motion carried. Rep Roers Jones is carrier.

10:12 AM meeting adjourned.

Kathleen Davis, Committee Clerk

HA
46-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2311

In lieu of the amendments adopted by the House as printed on pages 1357 and 1358 of the House Journal, Engrossed Senate Bill No. 2311 is amended as follows:

Page 1, line 1, after "reenact" insert "subsection 11 of section 35-24-01 and"

Page 1, line 1, replace "35-24-02" with "35-24-03, 35-24-11,"

Page 1, replace lines 4 through 21 with:

"SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives,~~ liquid or gaseous substances of any kind and the right of way therefor.

SECTION 2. AMENDMENT. Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

35-24-03. Property subject to lien.

1. Liens created under section 35-24-02 extend to:
 - 1-a. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
 - 2-b. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
 - 3-c. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
 - 4-d. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.
2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of any leasehold for oil or gas purposes or any pipeline for which the labor, materials, or services were supplied.

SECTION 3. AMENDMENT. Section 35-24-11 of the North Dakota Century Code is amended and reenacted as follows:

4-6-23

35-24-11. Contents and filing of statement of lien.

1. Every person claiming a lien under this chapter shall file with the recorder of the county in which the leasehold or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished.
2. The statement of the lien must contain the following statement in at least sixteen-point typeface unless the owner of the freehold estate also is the owner of the leasehold for oil or gas purposes or the pipeline for which the labor, materials, or services were supplied:

The lien in this chapter attaches only to the leasehold for oil or gas purposes or any pipeline for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property of a freehold estate.

Failure to include the statement mentioned in this subsection in the statement of the lien does not invalidate a lien on the leasehold or pipeline.
3. The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished under a single contract as provided for in section 35-24-10."

Page 2, line 19, remove "a lien created under this section does"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "to an oil and gas lease" with "any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2311, as engrossed and amended: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). Engrossed SB 2311, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on pages 1357 and 1358 of the House Journal, Engrossed Senate Bill No. 2311 is amended as follows:

Page 1, line 1, after "reenact" insert "subsection 11 of section 35-24-01 and"

Page 1, line 1, replace "35-24-02" with "35-24-03, 35-24-11,"

Page 1, replace lines 4 through 21 with:

"SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives, liquid or gaseous substances of any kind~~ and the right of way therefor.

SECTION 2. AMENDMENT. Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

35-24-03. Property subject to lien.

1. Liens created under section 35-24-02 extend to:
 - 4.a. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
 - 2.b. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
 - 3.c. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
 - 4.d. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.
2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of any leasehold for oil or gas purposes or any pipeline for which the labor, materials, or services were supplied.

SECTION 3. AMENDMENT. Section 35-24-11 of the North Dakota Century Code is amended and reenacted as follows:

35-24-11. Contents and filing of statement of lien.

1. Every person claiming a lien under this chapter shall file with the recorder of the county in which the leasehold or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished.
2. The statement of the lien must contain the following statement in at least sixteen-point typeface unless the owner of the freehold estate also is the owner of the leasehold for oil or gas purposes or the pipeline for which the labor, materials, or services were supplied:

The lien in this chapter attaches only to the leasehold for oil or gas purposes or any pipeline for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property of a freehold estate.

Failure to include the statement mentioned in this subsection in the statement of the lien does not invalidate a lien on the leasehold or pipeline.
3. The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished under a single contract as provided for in section 35-24-10."

Page 2, line 19, remove "a lien created under this section does"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "to an oil and gas lease" with "any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter"

Renumber accordingly

TESTIMONY

SB 2311

23.0982.01001
Title.

Prepared by the Legislative Council staff for
Senator Beard
February 1, 2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2311

Page 1, line 18, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

Page 1, remove lines 19 through 22

Page 1, line 23, replace "construction on the property" with "Notwithstanding any provision in this section, a lien created under this section does not apply to or constitute a lien against the owner of the surface estate where the oil and gas well or pipeline is located, or against a mineral owner's royalty interest subject to an oil and gas lease"

Page 2, line 21, remove "Notwithstanding any provision in this title, pursuant to a contract with the owner of any"

Page 2, remove lines 22 through 25

Page 2, line 26, replace "property" with "Notwithstanding any provision in this section, a lien created under this section does not apply to or constitute a lien against the owner of the surface estate where the oil and gas well or pipeline is located, or against a mineral owner's royalty interest subject to an oil and gas lease"

Re-number accordingly

23.0982.01001

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2311

Introduced by

Senators Beard, Bekkedahl, Kessel, Patten

Representatives Dyk, Rios

1 A BILL for an Act to amend and reenact sections 35-24-02 and 35-27-02 of the North Dakota
2 Century Code, relating to well or pipeline construction liens and construction liens.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 35-24-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **35-24-02. Who entitled to lien - Amount of lien.**

7 1. Any person who shall, under contract with the owner of any leasehold for oil or gas
8 purposes or any pipeline, perform any labor or furnish any material or services used or
9 employed, or furnished to be used or employed in the drilling or operating of any oil or
10 gas well upon such leasehold, or in the construction of any pipeline, or in the
11 constructing, putting together, or repairing of any material so used or employed, or
12 furnished to be used or employed, is entitled to a lien under this chapter, whether or
13 not a producing well is obtained and whether or not such material is incorporated in or
14 becomes a part of the completed oil or gas well, or pipeline, for the amount due that
15 person for the performance of such labor or the furnishing of such material or services,
16 including without limitation transportation and mileage charges connected therewith,
17 and interest from the date the same was due.

18 2. ~~Notwithstanding any provision in this title, pursuant to a contract with the owner of any~~
19 ~~leasehold for oil or gas purposes, a lessee, lessee's agent, or the agent's~~
20 ~~subcontractor performing labor or furnishing materials or services for the construction~~
21 ~~of a pipeline, well, or well pad, is precluded from maintaining a lien under this chapter~~
22 ~~against the lessor unless all lessors possessing a working interest first consent to the~~
23 ~~construction on the property~~ Notwithstanding any provision in this section, a lien
24 created under this section does not apply to or constitute a lien against the owner of

1 the surface estate where the oil and gas well or pipeline is located, or against a
2 mineral owner's royalty interest subject to an oil and gas lease.

3 **SECTION 2. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **35-27-02. Persons entitled to construction lien - Notice.**

6 1. Any person that improves real estate, whether under contract with the owner of such
7 real estate or under contract with any agent, trustee, contractor, or subcontractor of
8 the owner, has a lien upon the improvement and upon the land on which the
9 improvement is situated or to which the improvement may be removed for the price or
10 value of such contribution. Provided, however, that the amount of the lien is only for
11 the difference between the price paid by the owner or agent and the price or value of
12 the contribution. If the owner or agent has paid the full price or value of the
13 contribution, no lien is allowed. Provided further that if the owner or an agent of the
14 owner has received a waiver of lien signed by the person that improves the real
15 estate, a lien is not allowed.

16 2. Any person that extends credit or makes a contract with any agent, trustee, contractor,
17 or subcontractor of the owner for the improvement of real estate, upon demand, has
18 the right to request and secure evidence of the legal description of the real estate
19 upon which the improvement is located, including the name of the title owner of the
20 real estate. Written notice that a lien will be claimed must be given to the owner of the
21 real estate by certified mail at least ten days before the recording of the construction
22 lien.

23 3. ~~Notwithstanding any provision in this title, pursuant to a contract with the owner of any~~
24 ~~leasehold for oil or gas purposes, a lessee, lessee's agent, or the agent's~~
25 ~~subcontractor is precluded from maintaining a lien under this chapter for performing~~
26 ~~labor or furnishing materials or improvements not covered under chapter 35-24,~~
27 ~~against the lessor unless all lessors first consent to the improvements made to the~~
28 ~~property~~Notwithstanding any provision in this section, a lien created under this section
29 does not apply to or constitute a lien against the owner of the surface estate where the
30 oil and gas well or pipeline is located, or against a mineral owner's royalty interest
31 subject to an oil and gas lease.

SB 2311

Members of the committee. My name is Todd Beard, Senator from Williston District 23. I am here to speak on SB 2311.

The purpose of the bill is to protect landowners that lease property for the purpose of oil and gas activity from an unjust lien filing. When an oil company wants to build a pad for oil and gas development or for the purpose of pipeline construction the company will lease the property from the landowner. The landowner does not have control or authority over the project. Sometimes in the construction of these projects a contractor is hired which may then hire a subcontractor which performs the work. Payment would then come from the oil and gas company and transferred down. At the present time, if a contractor or subcontractor feels unjustly compensated, they can file a lien on the landowner's property. This becomes very problematic for the landowner. There are protections from frivolous liens, however, the landowner would have to retain an attorney to fight the lien. One such lien has been filed on a property owner in Williams County to the amount of \$77,000. The landowner was not involved in the project other than to lease the property. I have heard of liens such as these being filed, but not to the level of this. The intent of this bill is to keep such a lien from being filed in the first place.

Since I filed SB 2311, I have worked with the legislative council and an outside entity to ensure we get this right. Along with my testimony you will find an amendment which strikes out and replaces language in the bill to simplify and clarify the protections desired.

I ask for a Do Pass vote on the amendments and the bill. I will try to answer any questions you may have.

Thank You

Senator Todd Beard

February 1, 2023

Stangeland Farm and Ranch

Doug Stangeland

PO Box 60

Williston, ND 58802

To the committee of SB 2311:

I am writing in regards to this bill and my recent experience with the oil companies on my land. I am a 3rd generation farmer and I still farm the land that my grandfather homesteaded on. Our farm and ranch has been through many trials since its conception. Drought, Snow storms and other things that are out of our control.

Our family has been through many financial up and downs and we have had to adjust to these situations whether good or bad. In dealing with this we have had to make major financial decisions whether to continue the life of farming and ranching.

Now we are faced with a new battle that we seem to have never encountered in the new times of the oil industry that we as land and mineral owners have never faced.

We have had dealt with many oil companies in the past and have always had a good working relationship those involved thus far. Now we have a new obstacle that has seem to fall through the cracks of the Lessor to the leasee. So far we have two judgements filed on us for oil location that the contractors where not paid. So the lawyers for the plaintiffs feel that since we are the landowners, that we are now responsible for the construction build on the location that was leased by the oil company. They have put liens on our home and the property that this location is on. Now with these judgements that are filed against us, we cannot sell cattle or grains without them taking it. now this will affect our credit rating that we have worked hard to make good and our means of income from the farm.

We ask that you please pass this bill so that no other land owner will have to go through this battle to keep what they work so hard for and take pride in owning land. If this continues, it will cause adverse relations between land owner and oil companies.

Sincerely,

Doug Stangeland

6. The amount due Claimant is: \$77,731.44.

Dated: January 4TH, 2023

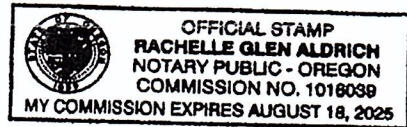
X [Signature]
By: Kevin L. Hillier, Agent for Sherwin Williams

The undersigned, as Agent for Sherwin Williams, a(n) Oregon corporation, has executed this instrument on the 4TH day of January, 2023 on behalf of said corporation as duly authorized by order of its board of directors.

[Signature]
By: Kevin L. Hillier, Agent for Sherwin Williams

STATE OF OREGON)
) ss.
County of CLACKAMAS)

This instrument was acknowledged before me on this 4TH day of January, 2023, by Kevin L. Hillier, Agent for Sherwin Williams.



Rachelle Glen Aldrich
Notary Public for the State of:
OREGON

Residing at: LAKE OSWEGO

My Commission Expires:
August 18, 2025

MISSING OF PROJECT DATA: VISIT EVSUB.COM/TAIR - REFERENCE NUMBER:
WL5W86Y4CD6H

STATE OF North Dakota
COUNTY OF Williams County
Epping job site

WL5W86Y4CD6H

NOTICE OF INTENTION TO CLAIM A LIEN WITH ACCOUNT DEMAND

N.D.C.C. § 35-27-02

Property Owner:

DOUGLAS A STANGELAND LIVING TRUST
STANGELAND DOUGLAS
PO BOX 60
Williston, ND 58802

Claimant:

EquipmentShare
5710 Bull Run Dr.
Columbia, Missouri 65201

Services: Description of services, materials and/ or labor provided by the Notifying Party to the below identified Project:
Equipment

PLEASE TAKE NOTICE that Claimant intends to perfect a lien for the contract price or value of all contributions made by Claimant to the improvements on the property described below:

1. The name of the person in possession of the land is DOUGLAS A STANGELAND LIVING TRUST STANGELAND DOUGLAS
PO BOX 60
Williston, ND 58802

2. A description of the property to be charged with the lien is 48.056504, -103.391292 Epping, North Dakota 58843, in Williams County County; Legally Described As: Property located at the municipal address of ND , ND.In the county of WILLIAMS. APN 33-153-99-00-22-052. Briefly described as LOT: 10.03 AC TRACT IN L1(28.40) BLOCK: SEC 22 ADDITION: ADDITIONAL: T153 R99 97D298 181D465 193D257 #605913 #665642 #665642 #740724. Subdivision: CORINTH. Municipality / Township of TWELVE MILE TWP. Township/Range/Section 153/99/22. Legal Lot 1. Book/Page /.

3. The date of the contract is: September 08, 2022

4. Take note that a mechanic's lien against the building, improvements, or premises will be perfected according to law unless the account of the claimant, which is in the amount of \$13,979.26, shall have been paid within ten (10) days of the date of mailing of this notice.

NOTICE TO OWNER OF INTENTION TO CLAIM A CONSTRUCTION LIEN
(N.D.C.C. § 35-27-02)
(CERTIFIED MAIL)

FROM: CLAIMANT:
Sherwin Williams
8226 Bracken Place SE, Suite 250
Snoqualmie, WA 98065

TO: OWNER:
Douglas A Stangeland Living Trust
Douglas Stangeland
P.O. Box 60
Williams, ND 58802
CERTIFIED MAILING: 7019 0700 0002 1919 4859

PLEASE TAKE NOTICE that Claimant intends to record a construction lien 10 days after the delivery of this notice for the contract price or value of all contributions made by Claimant in improvements on the property described below:

1. The owner of the land is stated above.
2. The legal description of the property to be charged with the lien: **LOT: 10.03 AC TRACT IN L1(28.40) BLOCK: SEC 22 ADDITION: ADDITIONAL: T153 R99 #140732; #140868; #145259; #168576; #213006; #218482; #241490; 286118; #286282; #355494; #374655; #665642; #740724; #797559; #863745; #870413, Also described in the Warranty Deed of record (870413) as Township 153 North, Range 99 West Section 22: Lot 1, describing property within the Parcel Number 33-153-99-00-22-052.**
3. Amount of the Construction lien is: \$77,731.44.
4. Take note that a Construction lien against the property will be recorded according to law after 10 days from the date of mailing of this notice unless the account has been paid.

Dated: January 17, 2023

By: 

Kevin L. Hillier, Agent for Sherwin Williams

After recording return
to:
RoHillCo Business Services LLC
P.O. Box 7107
Bend, Oregon 97708-7107
541-639-8949
File #957263

CONSTRUCTION LIEN
(N.D.C.C. § 35-27-13)

TO: RECORDER OF WILLIAMS COUNTY
FROM: CLAIMANT: Sherwin Williams

PLEASE TAKE NOTE that Claimant claims a construction lien as follows:

1. Claimant has provided the following labor, skill or materials: Building Materials, Labor, and or Building materials and labor.

in connection with the improvement of the following property with a legal description of: LOT: S2S2NW N2SW BLOCK: SEC 12 ADDITION: ADDITIONAL: T153 R100 #747872, describing property within the Parcel Number 39-153-00-00-12-040, Williams County, North Dakota, being commonly referred to as 4678 130th Road NW, Williston North Dakota, for which Claimant has not been paid in full.

2. The property is owned by, or reputed to be owned by Stangeland Living Trust, Douglas A. Stangeland, Trustee – P.O. Box 60, Williston ND 58802.

3. The name of the person with whom the Claimant contracted was Williams Insulation Company.

4. The date of the first contribution was August 9, 2022.

5. The date of the last contribution was October 17, 2022.

County of Williams
Stangeland Living Trust, Douglas, A.
Project #2127 4 Runner – Kinder Morgan

**Notice of Intention to Claim A Lien With Account Demand
N.D.C.C. § 35-27-02**

Property Owner

Stangeland Living Trust, Douglas, A.

Address:

PO Box 60
Williston, ND 58802

Claimant

William Insulation Company, Inc

Address:

P.O. Box 2259
Mills, WY 82644

Services Provided by Claimant: William Insulation Company, Inc, Sub Contracted through Mach Energy, has provided paint coatings, scaffolding, building hooch's for sandblast as well as blasting pipe, provided insulation on site, constructed soft pads for the Kinder Morgan location named 4 Runner.

PLEASE TAKE NOTICE that the Claimant intends to perfect a lien for the contract price or value of all contribution made by the Claimant to the improvements on the property described below:

1. Name of the person in possession of the land is Stangeland Living Trust, Douglas, A.
Address: 0 CR 11 A 125th Ave NW, Epping, ND 58843
2. Description of the property to be charged with the lien is: Stangeland Living Trust, Douglas, A. - Kinder Morgan Gas Plant – 4 Runner in Williams County ND. With a Legal Description: 0 CR 11 A 125th Ave NW, Epping, ND 58843
3. Contract signed on: April 27, 2022
4. First Date on site: August 25, 2022
5. Last Date on site: Still on site demobilization process
6. **Take note that a lien against the building, improvements, or premises will be perfected according to law unless the account claimant, which is in the amount of \$611,182.24, shall have been paid within ten (10) days of the date of mailing of this notice.**

This notice is provided to inform you that the Claimant has provided services to the Property, and that payment for these services, is due and owing to the Claimant.

February 1, 2023

Stangeland Farm and Ranch

Doug Stangeland

PO Box 60

Williston, ND 58802

To the committee of SB 2311:

I am writing in regards to this bill and my recent experience with the oil companies on my land. I am a 3rd generation farmer and I still farm the land that my grandfather homesteaded on. Our farm and ranch has been through many trials since its conception. Drought, Snow storms and other things that are out of our control.

Our family has been through many financial up and downs and we have had to adjust to these situations whether good or bad. In dealing with this we have had to make major financial decisions whether to continue the life of farming and ranching.

Now we are faced with a new battle that we seem to have never encountered in the new times of the oil industry that we as land and mineral owners have never faced.

We have had delt with many oil companies in the past and have always had a good working relationship those involved thus far. Now we have a new obstacle that has seem to fall through the cracks of the Lessor to the leasee. So far we have two judgements filed on us for oil location that the contractors where not paid. So the lawyers for the plaintiffs feel that since we are the landowners, that we are now responsible for the construction build on the location that was leased by the oil company. They have put liens on our home and the property that this location is on. Now with these judgements that are filed against us, we cannot sell cattle or grains without them taking it. now this will affect our credit rating that we have worked hard to make good and our means of income from the farm.

We ask that you please pass this bill so that no other land owner will have to go through this battle to keep what they work so hard for and take pride in owning land. If this continues, it will cause adverse relations between land owner and oil companies.

Sincerely,

Doug Stangeland

NOTICE TO OWNER OF INTENTION TO CLAIM A CONSTRUCTION LIEN
(N.D.C.C. § 35-27-02)
(CERTIFIED MAIL)

FROM: CLAIMANT:
Sherwin Williams
8226 Bracken Place SE, Suite 250
Snoqualmie, WA 98065

TO: OWNER:
Douglas A Stangeland Living Trust
Douglas Stangeland
P.O. Box 60
Williams, ND 58802
CERTIFIED MAILING: 7019 0700 0002 1919 4859

PLEASE TAKE NOTICE that Claimant intends to record a construction lien 10 days after the delivery of this notice for the contract price or value of all contributions made by Claimant in improvements on the property described below:

1. The owner of the land is stated above.
2. The legal description of the property to be charged with the lien: **LOT: 10.03 AC TRACT IN L1(28.40) BLOCK: SEC 22 ADDITION: ADDITIONAL: T153 R99 #140732; #140868; #145259; #168576; #213006; #218482; #241490; 286118; #286282; #355494; #374655; #665642; #740724; #797559; #863745; #870413, Also described in the Warranty Deed of record (870413) as Township 153 North, Range 99 West Section 22: Lot 1, describing property within the Parcel Number 33-153-99-00-22-052.**
3. Amount of the Construction lien is: \$77,731.44.
4. Take note that a Construction lien against the property will be recorded according to law after 10 days from the date of mailing of this notice unless the account has been paid.

Dated: January 17, 2023

By: 

Kevin L. Hillier, Agent for Sherwin Williams

County of Williams
 Stangeland Living Trust, Douglas, A.
 Project #2127 4 Runner – Kinder Morgan

Notice of Intention to Claim A Lien With Account Demand
N.D.C.C. § 35-27-02

Property Owner

Stangeland Living Trust, Douglas, A.

Address:

PO Box 60
 Williston, ND 58802

Claimant

William Insulation Company, Inc

Address:

P.O. Box 2259
 Mills, WY 82644

Services Provided by Claimant: William Insulation Company, Inc, Sub Contracted through Mach Energy, has provided paint coatings, scaffolding, building hooch's for sandblast as well as blasting pipe, provided insulation on site, constructed soft pads for the Kinder Morgan location named 4 Runner.

PLEASE TAKE NOTICE that the Claimant intends to perfect a lien for the contract price or value of all contribution made by the Claimant to the improvements on the property described below:

1. Name of the person in possession of the land is Stangeland Living Trust, Douglas, A.
 Address: 0 CR 11 A 125th Ave NW, Epping, ND 58843
2. Description of the property to be charged with the lien is: Stangeland Living Trust, Douglas, A. - Kinder Morgan Gas Plant – 4 Runner in Williams County ND. With a Legal Description: 0 CR 11 A 125th Ave NW, Epping, ND 58843 See “Exhibit A & B”
3. Contract signed on: April 27, 2022
4. First Date on site: August 25, 2022
5. Last Date on site: February 15, 2023
6. **Take note that a lien against the building, improvements, or premises will be perfected according to law unless the account claimant, which is in the amount of \$575,195.25, shall have been paid within ten (10) days of the date of mailing of this notice.**

This notice is provided to inform you that the Claimant has provided services to the Property, and that payment for these services, is due and owing to the Claimant.

MISSING OF PROJECT DATA: VISIT EVSUB.COM/TAIR - REFERENCE NUMBER:
WL5W86Y4CD6H

STATE OF North Dakota
COUNTY OF Williams County
Epping job site

WL5W86Y4CD6H

NOTICE OF INTENTION TO CLAIM A LIEN WITH ACCOUNT DEMAND

N.D.C.C. § 35-27-02

Property Owner:

DOUGLAS A STANGELAND LIVING TRUST
STANGELAND DOUGLAS
PO BOX 60
Williston, ND 58802

Claimant:

EquipmentShare
5710 Bull Run Dr.
Columbia, Missouri 65201

Services: Description of services, materials and/ or labor provided by the Notifying Party to the below identified Project:
Equipment

PLEASE TAKE NOTICE that Claimant intends to perfect a lien for the contract price or value of all contributions made by Claimant to the improvements on the property described below:

1. The name of the person in possession of the land is DOUGLAS A STANGELAND LIVING TRUST STANGELAND DOUGLAS
PO BOX 60
Williston, ND 58802
2. A description of the property to be charged with the lien is 48.056504, -103.391292
Epping, North Dakota 58843, in Williams County County; Legally Described As: Property located at the municipal address of ND , ND.In the county of WILLIAMS. APN 33-153-99-00-22-052. Briefly described as LOT: 10.03 AC TRACT IN L1(28.40) BLOCK: SEC 22 ADDITION: ADDITIONAL: T153 R99 97D298 181D465 193D257 #605913 #665642 #665642 #740724. Subdivision: CORINTH. Municipality / Township of TWELVE MILE TWP. Township/Range/Section 153/99/22. Legal Lot 1. Book/Page /.
3. The date of the contract is: September 08, 2022
4. Take note that a mechanic's lien against the building, improvements, or premises will be perfected according to law unless the account of the claimant, which is in the amount of \$13,979.26, shall have been paid within ten (10) days of the date of mailing of this notice.

IMPORTANT INFORMATION ON THE FOLLOWING PAGE

SB 2311

Members of the committee. My name is Todd Beard, Senator from Williston District 23. I am here to speak on SB 2311.

The purpose of the bill is to protect landowners that lease property for the purpose of oil and gas activity from an unjust lien filing. When an oil company wants to build a pad for oil and gas development or for the purpose of pipeline construction the company will lease the property from the landowner. The landowner does not have control or authority over the project. Sometimes in the construction of these projects a contractor is hired which may then hire a subcontractor which performs the work. Payment would then come from the oil and gas company and transferred down. At the present time, if a contractor or subcontractor feels unjustly compensated, they can file a lien on the landowner's property. This becomes very problematic for the landowner. There are protections from frivolous liens, however, the landowner would have to retain an attorney to fight the lien. Multiple liens have been filed on a property owner in Williams County to the amount of \$1.3 million. The landowner was not involved in the project other than to lease the property. I have heard of liens such as these being filed, but not to the level of this. The intent of this bill is to keep such a lien from being filed in the first place.

I ask for a Do Pass vote on the amendments and the bill. I will try to answer any questions you may have.

Thank You

Senator Todd Beard

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
MARCH 3, 2023
STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2023 ND 41

Henry Hill Oil Services LLC, Plaintiff and Appellee

v.

Abner C. Tufto, Eric Ted Tufto,
Darla Tufto a/k/a Darla O'Donnell,
Kris Bradley Tufto, RWS Holdings, LLC,
and Regional Water Service, LLC, Defendants

and

Lane A. Knudsen, Marcia K. Talley and
David H. Talley, Trustees of the
Marcia K. Talley Living Trust,
and Ann E. Gochnour, Defendants and Appellants

Regional Water Service LLC, Plaintiff

v.

Henry Hill Oil Services LLC, Defendant and Appellee

No. 20220212

Appeal from the District Court of Williams County, Northwest Judicial District, the Honorable Joshua B. Rustad, Judge.

REVERSED AND REMANDED.

Opinion of the Court by Crothers, Justice.

Mark W. Vyvyan (argued), Minneapolis, MN, and Lawrence Bender (appeared), Bismarck, ND, for for plaintiff and appellee.

Erich M. Grant, Minot, ND, for defendant and appellant Lane A. Knudsen.

Nicholas C. Grant (argued), and Marissa R. Cerkoney (on brief), Dickinson, ND, for defendants and appellants Marcia K. Talley and David H. Talley, Trustees of the Marcia K. Talley Living Trust, and Ann E. Gochnour.

Henry Hill Oil Services v. Tufto, et al.
No. 20220212

Crothers, Justice.

[¶1] Lane Knudsen, Ann Gochmour, and Marcia Talley and David Talley, Trustees of the Marcia K. Talley Living Trust (Landowners), appeal from a district court judgment foreclosing Henry Hill Oil Services LLC’s construction liens against the Landowners’ properties and awarding Henry Hill Oil its costs and attorney’s fees. We conclude the court erred in determining the Landowners’ properties were subject to Henry Hill Oil’s construction liens. We reverse the judgment and remand for a determination of the Landowners’ costs and attorney’s fees.

I

[¶2] Landowners own real property in Williams County. In 2017 and 2018, the Landowners executed water pipeline easements with RWS Holdings, LLC. The agreements granted RWS Holdings 75-foot-wide temporary easements for constructing a water pipeline and related facilities across and under the Landowners’ properties. The agreements granted RWS Holdings 30-foot-wide permanent pipeline easements on the properties. The temporary easements expired upon completion of the water pipelines.

[¶3] The Talley-Gochmour Defendants also granted RWS Holdings an easement for constructing a freshwater reservoir on their property. The easement term was 20 years or “until Grantee permanently removes” the reservoir from the property. Lane Knudsen and RWS Holdings executed a 10-year Water Agreement and Memorandum of Understanding. Knudsen granted RWS Holdings the right to access his property to install “equipment deemed necessary for the purposes of capturing, transporting and using water.”

[¶4] RWS Holdings hired Regional Water Service, LLC, which then hired Henry Hill Oil, to construct water reservoirs on the properties. Henry Hill Oil worked on the Landowners’ properties from June 2018 to October 2018. Henry Hill Oil recorded construction liens against the Landowners’ properties after it was not paid for its work. In May 2019, Henry Hill Oil sued Regional Water

Service for breach of contract. In October 2019, Henry Hill Oil sued the Landowners to enforce the construction liens.

[¶5] All parties moved for summary judgment. Henry Hill Oil argued it held valid construction liens against the Landowners' properties. The Landowners claimed they did not contract with Henry Hill Oil to perform work on their properties, and the liens are only effective against RWS Holdings' easement interests.

[¶6] After a hearing, the district court granted Henry Hill Oil's motions for summary judgment. The court concluded that under the construction lien statutes, N.D.C.C. ch. 35-27, the Landowners are "owners" who authorized Henry Hill Oil to work on their properties, and Henry Hill Oil's liens covered all of the Landowners' properties. The court also concluded Henry Hill Oil was entitled to its costs and attorney's fees incurred in enforcing the liens.

[¶7] The district court entered a judgment foreclosing the construction liens and awarding Henry Hill Oil \$89,709.79 in costs and attorney's fees. The court also awarded Henry Hill Oil \$660,228.40 in damages against Regional Water Service. The judgment against Regional Water Service is not subject to this appeal.

II

[¶8] This Court's standard of review for summary judgments is well established:

"Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that can reasonably be drawn from undisputed facts, or if the only issues to be resolved are questions of law. A party moving for summary judgment has the burden of showing there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment was appropriately granted, we must view the evidence in the light most favorable to the party opposing the motion, and that party will be given the benefit of all favorable inferences which can reasonably

be drawn from the record. On appeal, this Court decides whether the information available to the district court precluded the existence of a genuine issue of material fact and entitled the moving party to judgment as a matter of law. Whether the district court properly granted summary judgment is a question of law which we review de novo on the entire record.”

Pennington v. Cont'l Res., Inc., 2019 ND 228, ¶ 6, 932 N.W.2d 897 (quoting *Horob v. Zavanna, LLC*, 2016 ND 168, ¶ 8, 883 N.W.2d 855).

III

[¶9] The Landowners argue the district court erred in granting Henry Hill Oil's motions for summary judgment. They claim the court erred in concluding they were “owners” under N.D.C.C. § 35-27-01(5) who contracted with Henry Hill Oil to improve their property. They argue the court erred in concluding under N.D.C.C. § 35-27-19 that Henry Hill Oil's liens attached to the Landowners' fee simple interests in the properties instead of only RWS Holdings' easement interests.

[¶10] Our primary goal in statutory interpretation is to determine the intent of the legislature, and we first look to the plain language of the statute and give each word of the statute its ordinary meaning. *Laufer v. Doe*, 2020 ND 159, ¶ 11, 946 N.W.2d 707; N.D.C.C. § 1-02-02. “When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” N.D.C.C. § 1-02-05. We presume the legislature did not intend an absurd result or unjust consequences, and we construe statutes in a practical manner, giving consideration to the context of the statutes and the purpose for which they were enacted. *Laufer*, at ¶ 11. Statutes relating to the same subject matter shall be construed together and should be harmonized, if possible, to give meaningful effect to each, without rendering either one useless. *Id.* Statutory interpretation is a question of law, fully reviewable on appeal. *Id.*

[¶11] Construction liens are authorized by N.D.C.C. ch. 35-27. This case involves three statutes, N.D.C.C. §§ 35-27-02, 35-27-01(5) and 35-27-19. Under N.D.C.C. § 35-27-02, the following persons are entitled to a construction lien:

“Any person that improves real estate, whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which the improvement is situated or to which the improvement may be removed for the price or value of such contribution.”

An “[o]wner” means the legal or equitable owner and also every person for whose immediate use and benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, and including any agent, trustee, contractor, or subcontractor of such owner.” N.D.C.C. § 35-27-01(5). A construction lien covers “[t]he entire land upon which any building, structure, or other improvement is situated . . . to the extent of all the right, title, and interest of the owner for whose immediate use or benefit the labor was done or materials furnished.” N.D.C.C. § 35-27-19. Reading the statutes together, a person is entitled to a construction lien if they contract with an owner to improve real property. The lien covers the contracting owner’s interest in the property.

[¶12] The district court concluded Henry Hill Oil’s construction of water reservoirs improved the Landowners’ properties. *See* N.D.C.C. §§ 35-27-01(2) and (3) (defining “improve” and “improvement”). The Landowners dispute the court’s conclusion; however, determining whether Henry Hill Oil improved the Landowners’ properties is not dispositive. Therefore, we assume without deciding Henry Hill Oil improved the Landowners’ properties.

[¶13] The district court concluded the Landowners were “owners” as defined in N.D.C.C. § 35-27-01(5) because they were the legal owners of the properties improved by Henry Hill Oil. The court determined the easements to RWS Holdings did not transfer ownership of the properties, they only granted RWS Holdings a right to use a portion of the properties for a specific purpose. The court said the easements did not change the fact that the Landowners remained the legal owners of the fee simple interests in the properties, and concluded that the liens therefore attached to the Landowners’ full property interests.

[¶14] The district court also concluded that through the agreements with RWS Holdings, the Landowners authorized Henry Hill Oil to work on the properties.

“[The Landowners] do not dispute that RWS Holdings hired Regional Water Service to commence the construction of certain water pipelines and reservoirs on [their properties], nor do they dispute that Regional Water Service in turn made Henry Hill its subcontractor. *See* N.D.C.C. § 35-27-01(7) (defining subcontractor as ‘all persons contributing any skill, labor, or materials to the improvement except such as have contracts therefor directly with the owner’). Accordingly, [the Landowners] authorized Henry Hill to work on [their properties].”

[¶15] Under N.D.C.C. § 35-27-01(5), an “owner” is the “legal or equitable owner and also every person for whose immediate use and benefit any . . . improvement is made, having the capacity to contract, . . . and including any agent, trustee, contractor, or subcontractor of such owner.” The easements granted RWS Holdings limited possessory rights within defined areas of the Landowners’ properties. The easements did not grant RWS Holdings authority to contract on behalf of the Landowners. Although the Landowners hold fee title to the properties, Henry Hill Oil has cited no easement language or legal authority supporting its claim RWS Holdings became the Landowners’ agent or trustee through the easement agreements.

[¶16] Henry Hill Oil made the improvements for the immediate use and benefit of RWS Holdings but not to the Landowners’ properties generally. As the easement owner, RWS Holdings had the capacity to contract for the improvements relating to the easements. RWS Holdings contracted with Regional Water Service, and Regional Water Service contracted with Henry Hill Oil. Under N.D.C.C. § 35-27-01(7), Henry Hill Oil was a subcontractor of RWS Holdings, not the Landowners.

[¶17] Here, the district court erred in concluding the Landowners are “owners” under N.D.C.C. § 35-27-01(5) by interpreting the definition of “owner” too broadly. The easements did not grant RWS Holdings the authority to act as the Landowners’ agent. The Landowners did not become guarantors of RWS Holdings by executing the easements. To conclude otherwise would expose

easement-granting landowners to untold liability for utility, roadway or other projects knowingly constructed on or across their property.

[¶18] A construction lien covers “[t]he entire land upon which any . . . improvement is situated . . . to the extent of all the right, title, and interest of the owner for whose immediate use or benefit the labor was done or materials furnished.” N.D.C.C. § 35-27-19. Henry Hill Oil improved the properties for the immediate use and benefit of RWS Holdings, the owner of the easements. Thus, assuming Henry Hill Oil otherwise was entitled to construction liens for its work, the liens would only cover RWS Holdings’ easement interests. The district court erred in concluding Henry Hill Oil’s liens covered all of the Landowners’ properties.

[¶19] Henry Hill Oil does not have valid construction liens against the Landowners’ properties. We reverse the portion of the district court’s judgment foreclosing Henry Hill Oil’s construction liens against the Landowners’ properties, and remand for entry of judgment in favor of the Landowners.

IV

[¶20] The Landowners claim the district court erred by awarding Henry Hill Oil its attorney’s fees. They contend the court misapplied N.D.C.C. § 35-27-24.1, dealing with costs and attorney’s fees. We agree.

[¶21] Under N.D.C.C. § 35-27-24.1, “Any owner that successfully contests the validity or accuracy of a construction lien by any action in district court must be awarded the full amount of all costs and reasonable attorney’s fees incurred by the owner.”

[¶22] The district court concluded N.D.C.C. § 35-27-24.1 was ambiguous.

“First, in reviewing the plain language used in N.D.C.C. § 35-27-24.1, the Court finds that this statute is broad by nature, including phrases such as ‘any owner,’ and ‘any action.’ Second, the Court finds that in an action to foreclose on a construction lien, as in this present matter, the contractor must defend the validity or

accuracy of its construction lien, and N.D.C.C. § 35-27-24.1 is meant to apply in ‘any actions’ to do the same.”

The court also acknowledged the remedial nature of N.D.C.C. ch. 35-27 and its purpose to protect those who improve real estate. *See Nesdahl Surveying & Eng’g, P.C. v. Ackerland Corp.*, 507 N.W.2d 686, 689 (N.D. 1993) (stating the construction lien laws “should be liberally construed to effectuate its purpose,” which is “to protect those persons who improve real estate by the contribution of labor, skill, or materials”).

[¶23] The district court misconstrued N.D.C.C. § 35-27-24.1 in awarding Henry Hill Oil its costs and attorney’s fees. The statute is not ambiguous about which party can recover costs and attorney’s fees. The plain language provides that only an owner (or in this case, one claimed to be an owner) may be awarded attorney’s fees for successfully contesting a construction lien. The statute does not allow a contractor to recover its costs and attorney’s fees for successfully enforcing a construction lien. Henry Hill Oil is not an “owner” under N.D.C.C. § 35-27-01(5). Henry Hill Oil sued the Landowners to enforce its liens, and did not contest the validity or accuracy of its own liens.

[¶24] The Landowners successfully contested the validity of Henry Hill Oil’s construction liens. The district court erred in awarding Henry Hill Oil its costs and attorney’s fees. We reverse that part of the judgment awarding Henry Hill Oil its costs and attorney’s fees, and remand for a determination of the Landowners’ costs and attorney’s fees for successfully contesting the validity of Henry Hill Oil’s construction liens. *See Northern Excavating Co. v. Sisters of Mary of the Presentation Long Term Care*, 2012 ND 78, ¶ 11, 815 N.W.2d 280 (holding that under N.D.C.C. § 35-27-24.1, “a party who successfully contests the accuracy or validity of a construction lien is limited to recovering only those costs and fees reasonably expended contesting the lien”).

V

[¶25] The parties’ remaining arguments have been considered and are either without merit or not necessary to our decision. The judgment is reversed and the case is remanded.

[¶26] Jon J. Jensen, C.J.
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte
Douglas A. Bahr

23.0982.02003
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
March 23, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2311

Page 1, line 1, after "reenact" insert "subsection 11 of section 35-24-01 and"

Page 1, line 1, replace "35-24-02" with "35-24-03, 35-24-11,"

Page 1, replace lines 4 through 21 with:

"SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Pipeline" means any pipeline and related facilities laid and designed as a means of transporting ~~natural gas, oil, or gasoline, or their components or derivatives, liquid or gaseous substances of any kind~~ and the right of way therefor.

SECTION 2. AMENDMENT. Section 35-24-03 of the North Dakota Century Code is amended and reenacted as follows:

35-24-03. Property subject to lien.

1. Liens created under section 35-24-02 extend to:

- ~~1-a.~~ The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
- ~~2-b.~~ All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
- ~~3-c.~~ All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
- ~~4-d.~~ The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

2. Notwithstanding any provision in this chapter, liens created under section 35-24-02 may not extend to a freehold estate unless that freehold estate is owned by the owner of any leasehold for oil or gas purposes or any pipeline for which the labor, materials, or services were supplied.

SECTION 3. AMENDMENT. Section 35-24-11 of the North Dakota Century Code is amended and reenacted as follows:

35-24-11. Contents and filing of statement of lien.

1. Every person claiming a lien under this chapter shall file with the recorder of the county in which the leasehold or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished.
2. The statement of the lien must contain the following statement in at least sixteen-point typeface unless the owner of the freehold estate also is the owner of the leasehold for oil or gas purposes or the pipeline for which the labor, materials, or services were supplied:

The lien in this chapter attaches only to the leasehold for oil or gas purposes or any pipeline for which labor, materials, or services were supplied. This lien does not attach to or encumber the real property of a freehold estate.
3. The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished under a single contract as provided for in section 35-24-10."

Page 2, line 19, remove "a lien created under this section does"

Page 2, remove lines 20 and 21

Page 2, line 22, replace "to an oil and gas lease" with "any person that performs labor or furnishes materials or services under chapter 35-24 is prohibited from claiming or maintaining a lien under this chapter"

Renumber accordingly

23.0982.02003

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2311

Introduced by

Senators Beard, Bekkedahl, Kessel, Patten

Representatives Dyk, Rios

1 A BILL for an Act to amend and reenact subsection 11 of section 35-24-01 and sections
2 ~~35-24-02~~35-24-03, 35-24-11, and 35-27-02 of the North Dakota Century Code, relating to well
3 or pipeline construction liens and construction liens.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 ~~SECTION 1. AMENDMENT. Section 35-24-02 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~35-24-02. Who entitled to lien - Amount of lien.~~

8 ~~1. Any person who shall, under contract with the owner of any leasehold for oil or gas~~
9 ~~purposes or any pipeline, perform any labor or furnish any material or services used or~~
10 ~~employed, or furnished to be used or employed in the drilling or operating of any oil or~~
11 ~~gas well upon such leasehold, or in the construction of any pipeline, or in the~~
12 ~~constructing, putting together, or repairing of any material so used or employed, or~~
13 ~~furnished to be used or employed, is entitled to a lien under this chapter, whether or~~
14 ~~not a producing well is obtained and whether or not such material is incorporated in or~~
15 ~~becomes a part of the completed oil or gas well, or pipeline, for the amount due that~~
16 ~~person for the performance of such labor or the furnishing of such material or services,~~
17 ~~including without limitation transportation and mileage charges connected therewith,~~
18 ~~and interest from the date the same was due.~~

19 ~~2. Notwithstanding any provision in this section, a lien created under this section~~
20 ~~does not apply to or constitute a lien against the owner of the surface estate where the~~
21 ~~oil and gas well or pipeline is located, or against a mineral owner's royalty interest~~
22 ~~subject to an oil and gas lease.~~

23 SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century
24 Code is amended and reenacted as follows:

1 11. "Pipeline" means any pipeline and related facilities laid and designed as a means of
2 transporting ~~natural gas, oil, or gasoline, or their components or derivatives,~~ liquid or
3 gaseous substances of any kind and the right of way therefor.

4 **SECTION 2. AMENDMENT.** Section 35-24-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **35-24-03. Property subject to lien.**

7 1. Liens created under section 35-24-02 extend to:

8 4-a. The whole of the leasehold for oil or gas purposes to which the materials or
9 services were furnished, or for which the labor was performed, and the
10 appurtenances thereunto belonging; and

11 2-b. All materials and fixtures owned by the owner or owners of such leasehold and
12 used or employed, or furnished to be used or employed in the drilling or operating
13 of any oil or gas well located thereon; and

14 3-c. All oil or gas wells located on such leasehold, and the oil or gas produced
15 therefrom, and the proceeds thereof inuring to the working interest therein as
16 such working interest existed on the date such labor was first performed or such
17 material or services were first furnished; or

18 4-d. The whole of the pipeline to which the materials or services were furnished, or for
19 which labor was performed, and all buildings and appurtenances thereunto
20 belonging, including, without limiting the generality of the foregoing, gates,
21 valves, pumps, pump stations, and booster stations, and upon all materials and
22 fixtures owned by the owner of such pipeline and used or employed or furnished
23 to be used or employed in the construction thereof.

24 2. Notwithstanding any provision in this chapter, liens created under section 35-24-02
25 may not extend to a freehold estate unless that freehold estate is owned by the owner
26 of any leasehold for oil or gas purposes or any pipeline for which the labor, materials,
27 or services were supplied.

28 **SECTION 3. AMENDMENT.** Section 35-24-11 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **35-24-11. Contents and filing of statement of lien.**

2 1. Every person claiming a lien under this chapter shall file with the recorder of the
3 county in which the leasehold or pipeline, or some part thereof, is situated, a
4 statement verified by affidavit setting forth the amount claimed and the items thereof,
5 the dates on which labor was performed or material or services furnished, the name of
6 the owner of the leasehold or pipeline, if known, the name of the claimant and the
7 claimant's mailing address, a description of the leasehold or pipeline, and if the
8 claimant is a claimant under section 35-24-04, the name of the person for whom the
9 labor was immediately performed or the material or services were immediately
10 furnished.

11 2. The statement of the lien must contain the following statement in at least sixteen-point
12 typeface unless the owner of the freehold estate also is the owner of the leasehold for
13 oil or gas purposes or the pipeline for which the labor, materials, or services were
14 supplied:

15 The lien in this chapter attaches only to the leasehold for oil or gas purposes or
16 any pipeline for which labor, materials, or services were supplied. This lien does
17 not attach to or encumber the real property of a freehold estate.

18 3. The statement of lien must be filed within six months after the date on which the
19 claimant's labor was last performed or material or services were last furnished under a
20 single contract as provided for in section 35-24-10.

21 **SECTION 4. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **35-27-02. Persons entitled to construction lien - Notice.**

24 1. Any person that improves real estate, whether under contract with the owner of such
25 real estate or under contract with any agent, trustee, contractor, or subcontractor of
26 the owner, has a lien upon the improvement and upon the land on which the
27 improvement is situated or to which the improvement may be removed for the price or
28 value of such contribution. Provided, however, that the amount of the lien is only for
29 the difference between the price paid by the owner or agent and the price or value of
30 the contribution. If the owner or agent has paid the full price or value of the
31 contribution, no lien is allowed. Provided further that if the owner or an agent of the

1 owner has received a waiver of lien signed by the person that improves the real
2 estate, a lien is not allowed.

3 2. Any person that extends credit or makes a contract with any agent, trustee, contractor,
4 or subcontractor of the owner for the improvement of real estate, upon demand, has
5 the right to request and secure evidence of the legal description of the real estate
6 upon which the improvement is located, including the name of the title owner of the
7 real estate. Written notice that a lien will be claimed must be given to the owner of the
8 real estate by certified mail at least ten days before the recording of the construction
9 lien.

10 3. ~~Notwithstanding any provision in this section, a lien created under this section does~~
11 ~~not apply to or constitute a lien against the owner of the surface estate where the oil~~
12 ~~and gas well or pipeline is located, or against a mineral owner's royalty interest subject~~
13 ~~to an oil and gas lease~~ any person that performs labor or furnishes materials or
14 ~~services under chapter 35-24 is prohibited from claiming or maintaining a lien under~~
15 ~~this chapter.~~

23.0982.02002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2311

Introduced by

Senators Beard, Bekkedahl, Kessel, Patten

Representatives Dyk, Rios

1 A BILL for an Act to amend and reenact subsection 11 of section 35-24-01 and
2 ~~35-24-02~~35-24-03, 35-24-11, and 35-27-02 of the North Dakota Century Code, relating to well
3 or pipeline construction liens and construction liens.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 ~~SECTION 1. AMENDMENT. Section 35-24-02 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~35-24-02. Who entitled to lien - Amount of lien.~~

8 ~~1. Any person who shall, under contract with the owner of any leasehold for oil or gas~~
9 ~~purposes or any pipeline, perform any labor or furnish any material or services used or~~
10 ~~employed, or furnished to be used or employed in the drilling or operating of any oil or~~
11 ~~gas well upon such leasehold, or in the construction of any pipeline, or in the~~
12 ~~constructing, putting together, or repairing of any material so used or employed, or~~
13 ~~furnished to be used or employed, is entitled to a lien under this chapter, whether or~~
14 ~~not a producing well is obtained and whether or not such material is incorporated in or~~
15 ~~becomes a part of the completed oil or gas well, or pipeline, for the amount due that~~
16 ~~person for the performance of such labor or the furnishing of such material or services,~~
17 ~~including without limitation transportation and mileage charges connected therewith,~~
18 ~~and interest from the date the same was due.~~

19 ~~2. Notwithstanding any provision in this section, a lien created under this section~~
20 ~~does not apply to or constitute a lien against the owner of the surface estate where the~~
21 ~~oil and gas well or pipeline is located, or against a mineral owner's royalty interest~~
22 ~~subject to an oil and gas lease.~~

23 SECTION 1. AMENDMENT. Subsection 11 of section 35-24-01 of the North Dakota Century
24 Code is amended and reenacted as follows:

1 11. "Pipeline" means any pipeline and related facilities laid and designed as a means of
2 transporting ~~natural gas, oil, or gasoline, or their components or derivatives, liquid or~~
3 gaseous substances of any kind and the right of way ~~therefor~~where the pipeline is
4 situated.

5 **SECTION 2. AMENDMENT.** Section 35-24-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **35-24-03. Property subject to lien.**

8 1. Liens created under section 35-24-02 extend to:

9 ~~4-a.~~ The whole of the leasehold for oil or gas purposes to which the materials or
10 services were furnished, or for which the labor was performed, and the
11 appurtenances thereunto belonging; and

12 ~~2-b.~~ All materials and fixtures owned by the owner or owners of such leasehold and
13 used or employed, or furnished to be used or employed in the drilling or operating
14 of any oil or gas well located thereon; and

15 ~~3-c.~~ All oil or gas wells located on such leasehold, and the oil or gas produced
16 therefrom, and the proceeds thereof inuring to the working interest therein as
17 such working interest existed on the date such labor was first performed or such
18 material or services were first furnished; or

19 ~~4-d.~~ The whole of the pipeline to which the materials or services were furnished, or for
20 which labor was performed, and all buildings and appurtenances thereunto
21 belonging, including, without limiting the generality of the foregoing, gates,
22 valves, pumps, pump stations, and booster stations, and upon all materials and
23 fixtures owned by the owner of such pipeline and used or employed or furnished
24 to be used or employed in the construction thereof.

25 2. Notwithstanding any provision in this chapter, liens created under section 35-24-02
26 may not extend to a freehold estate unless that freehold estate is owned by the owner
27 of any leasehold for oil or gas purposes or any pipeline for which the labor, materials,
28 or services were supplied.

29 **SECTION 3. AMENDMENT.** Section 35-24-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

35-24-11. Contents and filing of statement of lien.

1
2 1. Every person claiming a lien under this chapter shall file with the recorder of the
3 county in which the leasehold or pipeline, or some part thereof, is situated, a
4 statement verified by affidavit setting forth the amount claimed and the items thereof,
5 the dates on which labor was performed or material or services furnished, the name of
6 the owner of the leasehold or pipeline, if known, the name of the claimant and the
7 claimant's mailing address, a description of the leasehold or pipeline, and if the
8 claimant is a claimant under section 35-24-04, the name of the person for whom the
9 labor was immediately performed or the material or services were immediately
10 furnished.

11 2. The statement of the lien must contain the following statement in at least sixteen-point
12 typeface unless the owner of the freehold estate also is the owner of the leasehold for
13 oil or gas purposes or the pipeline for which the labor, materials, or services were
14 supplied:

15 The lien in this chapter attaches only to the leasehold for oil or gas purposes or
16 any pipeline for which labor, materials, or services were supplied. This lien does
17 not attach to or encumber the real property of a freehold estate.

18 *Failure to include this statement does not invalidate a lien on the leasehold or pipeline.

19 3. The statement of lien must be filed within six months after the date on which the
20 claimant's labor was last performed or material or services were last furnished under a
21 single contract as provided for in section 35-24-10.

22 **SECTION 4. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

35-27-02. Persons entitled to construction lien - Notice.

24 1. Any person that improves real estate, whether under contract with the owner of such
25 real estate or under contract with any agent, trustee, contractor, or subcontractor of
26 the owner, has a lien upon the improvement and upon the land on which the
27 improvement is situated or to which the improvement may be removed for the price or
28 value of such contribution. Provided, however, that the amount of the lien is only for
29 the difference between the price paid by the owner or agent and the price or value of
30 the contribution. If the owner or agent has paid the full price or value of the
31 contribution, no lien is allowed. Provided further that if the owner or an agent of the

1 owner has received a waiver of lien signed by the person that improves the real
2 estate, a lien is not allowed.

3 2. Any person that extends credit or makes a contract with any agent, trustee, contractor,
4 or subcontractor of the owner for the improvement of real estate, upon demand, has
5 the right to request and secure evidence of the legal description of the real estate
6 upon which the improvement is located, including the name of the title owner of the
7 real estate. Written notice that a lien will be claimed must be given to the owner of the
8 real estate by certified mail at least ten days before the recording of the construction
9 lien.

10 3. ~~Notwithstanding any provision in this section, a lien created under this section does~~
11 ~~not apply to or constitute a lien against the owner of the surface estate where the oil~~
12 ~~and gas well or pipeline is located, or against a mineral owner's royalty interest subject~~
13 ~~to an oil and gas lease~~ any person that performs labor or furnishes materials or
14 services under chapter 35-24 is prohibited from claiming or maintaining a lien under
15 this chapter.