

STATE OF ILLINOIS
97th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

165th Legislative Day

1/7/2013

Speaker Lyons: "Good afternoon, Illinois. Your House of Representatives will come to order. Members are asked to please be at your desk. We shall be led in prayer today by Reverend... by Dr. Dan Doriani who is the Senior Pastor at Central Presbyterian Church in Clayton, Missouri. Dr. Doriani is guest of Representative Dwight Kay. Members and guests are asked to please refrain from starting their laptops, turn off all cell phones and pagers and rise for the Pledge of Allegiance and our prayer. Dr. Doriani."

Dr. Doriani: "Let's pray. Heavenly Father, God of Abraham, Isaac and Jacob, God of the Prophets and the Apostles, we ask Your blessing on the Leaders assembled here today. We pray for wisdom, like that of Solomon, on these Your servants. We ask that You would give them a discerning heart to govern Your people, the people of the state, distinguish between right and wrong. We ask that You would give them a strong sense of justice beyond their own wisdom. We ask, Lord, that You would form in these men and women the virtue and strength that will let them lead well. Grant them the desire to fulfill the tasks of just and godly Leaders. We pray that they would defend the defenseless: the widows, the orphans, little children, of the lonely, the bereaved, the poor. We ask that You would teach them to hear the cry of the oppressed, to bring justice to all, impartially and yet mercifully, so that we do not become cruel. We pray that they would favor neither the rich nor the poor, to fear no one but You. Let them rule with love, be governed by wise laws, laws that they have the privilege of passing. Laws that are tempered by

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grace, laws that help people flourish that promote healing and peace. I ask, Lord, You would preserve these Leaders from the temptations of power. Let them learn to put aside the ego's question, what do they think of me, and instead ask, how could I serve my people? I pray, Lord, that we would all have wisdom to see things as they are, not as we imagine them to be or not as any deceiver presents them to be. Pray that You would teach each of us to cut out the blather and the flattery and excuses and hear the truth and tell the truth. I pray that we have patience to listen to people who are just like us and people who are very different from us so we can serve all of their deepest needs. Grant us, Lord, the capacity, the wisdom, and the will to perform the chief duties of government to restrain evil and to remote and to approve what is good. Grant us discipline in the last two days of this Session where a great deal of business is coming up, many decisions need to be made. Lord, I pray that all will be able to stand before You as Lord of all. Give us the desire to fulfill our duty and when we fail, whether from ignorance or lack of courage or any other personal flaw, may we, Lord, quickly turn to You in repentance, confident of the grace we could have through Jesus Christ, Lord and Savior. Lord, I pray that as these men and women prepare to give the last days of this Session to great business, they would approach things like pensions, and safety of the people, and marriage, and debts, and education, and business, and use all their skill and all their knowledge and all their craft, make us men and women of character. Teach us when to make painful

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compromises for the good of all. When to take bold stands as necessary to fulfill Your purpose as Your goals and the good of His people. We pray that we will be the best versions of ourselves. I pray that we would have vision to survey all of our people as You do, not just the loudest ones or the most influential ones, but all of them. And Lord, I pray that You would give us joy and gratitude in our labors. Give us, we pray, once more, wisdom, and courage, and endurance, and hope, and love, and grace because we have partaken of your grace presented through Christ. In His name we pray, Amen."

Speaker Lyons: "I'd like to request our three new Members to lead us in the Pledge. Representative Foster, McSweeney, and Davidsmeyer, please lead us in the Pledge of Allegiance."

Foster, McSweeney, Davidsmeyer - et al: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Speaker Lyons: "Roll Call for Attendance. Leader Barbara Flynn Currie, Democrats."

Currie: "Thank you, Speaker. Please let the record show that Representative Lilly is excused today."

Speaker Lyons: "Thank you, Leader. Leader Mike Bost, GOP."

Bost: "Thank you... thank you, Mr. Speaker. Let the record reflect that Representatives Barickman, Cole, Mulligan and Tryon are excused on the Republican side of the aisle today."

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Speaker Lyons: "Representative Mitchell, would you like to be recorded? Jerry, 'present' button. Mr. Clerk, take the record. 113 Members have responded to the Roll Call, a quorum is present. We are prepared to do the work for the people of the State of Illinois. Representative Chapin Rose, for what purpose do you seek recognition, Senator?"

Senator Rose: "Just a... Thank you, Mr. Speaker. Just a point of personal privilege."

Speaker Lyons: "Please proceed, Chapin."

Senator Rose: "Ladies and Gentlemen, we are indeed honored today to have Bill Black with us, the great patriot and friend to all."

Speaker Lyons: "Welcome home, Bill. Representative Wayne Rosenthal, for what purpose do you seek recognition, Representative?"

Rosenthal: "Thank you, Mr. Speaker. A point of personal privilege."

Speaker Lyons: "Please proceed, Wayne."

Rosenthal: "With us today, up in the Speaker's Gallery, we have some true heroes and veterans of the State of Illinois, Montgomery County. Ray Wiedle, who is the Chairman of The Land of Lincoln Honor Flight, which is responsible for taking a lot of our veterans out to see the memorial in Washington, D.C. Ray Kellenberger, Will Tackaberry, Dave Darte, and in the center is a fellow aviator which is Clyde Brubaker, who is a recipient of the Purple Heart on his first mission over Poland and then after his recovery, came back and flew another 64 missions. So, I'd like to welcome them to the Capitol."

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Speaker Lyons: "God bless you, veterans. Welcome to your Capitol. Mr. Clerk."

Clerk Bolin: "Committee Reports. Representative Dan Burke, Chairperson from the Committee on Executive reports the following committee action taken on January 07, 2013: recommends be adopted, Motion to Concur with Senate Amendment #1 to House Bill 3450, and Floor Amendment #1 to Senate Bill 2580. Representative Lou Lang, Chairperson from the Committee on Judiciary II-Criminal Law reports the following committee action taken on January 07, 2013: recommends be adopted, Motion to Concur with Senate Amendment #6 to House Bill 1237, Motion to Concur with Senate Amendment #1 to House Bill 3804 and Senate Amendment #2 to House Bill 3804. Representative Feigenholtz, Chairperson from the Committee on Appropriations-Human Services reports the following committee action taken on January 07, 2013: do pass Short Debate for House Bill 6253. Representative D'Amico, Chairperson from the Committee on Transportation: Vehicles & Safety reports the following committee action taken on January 07, 2013: do pass Short Debate for Senate Bill 957. Representative Nekritz, Chairperson for the Committee on Judiciary I-Civil Law reports the following committee action taken on January 07, 2013: recommends be adopted, Motion to Concur with Senate Amendments 1 and 2 to House Bill 5151. Representative Greg Harris, Chairperson from the Committee on Human Services reports the following committee action taken on January 07, 2013: recommends be adopted, Motion to Concur with Senate Amendment #1 to House Bill 5019. Representative Jack

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Franks, Chairperson from the Committee on State Government Administration reports the following committee action taken on January 07, 2013: recommends be adopted, Motion to Concur with Senate Amendments 1 and 3 to House Bill 3816. Representative Nekritz, Chairperson from the Committee on Personnel & Pensions reports the following committee action taken on January 07, 2013: recommends be adopted Floor Amendment #10 to Senate Bill 1673."

Speaker Lyons: "Ladies and Gentlemen, we're going to attempt to run a couple of Concurrences on page 5 of the Calendar. First one that will be addressed and Representative Jack Franks, you have, on page 5, House Bill 3804. The Gentleman from McHenry, Representative Franks."

Franks: "Thank you, Mr. Speaker. House Bill 3804 is a... simply, it's a cleanup Bill. There are no substantive changes to the Bill. This comes to us from the Legislative Reference Bureau, and this was part of the rewrite of the Criminal Code. And some of the changes, for instance, will be renaming the Criminal Code of 1961 to the Criminal Code of 2012. I'd be happy to answer any questions."

Speaker Lyons: "Mr. Clerk, what's the status on that Bill? We have Amendments."

Clerk Hollman: "Motions to Concur with Amendments 1 and 2 have been approved for consideration."

Speaker Lyons: "So, Representative Franks, you did explain the Amendments that were added in the Senate... in the Senate?"

Franks: "Those were the Amendments."

Speaker Lyons: "Okay."

Franks: "Thank you."

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Speaker Lyons: "Thank you for that clarification. Is there any questions? Seeing none, the question is, 'Shall the House concur with Senate Amendments #1 and 2 to House Bill 3804?' This is final action. All those in favor signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Leader Currie, Rep... Rich Brauer, Jerry Mitchell, back row, GOP. Mr. Clerk, take the record. On this question, there's 113 Members voting 'yes', 0 voting 'no', 0 voting 'present'. And the House does concur with Senate Amendments #1 and 2 to House Bill 3804. This Bill, having received the Constitutional Majority, is hereby declared passed. All right, Jack, you're on... you're on the stage today. Mr. Clerk, on page 5 of the Calendar, Representative Franks has House Bill 3816. Representative Jack Franks."

Franks: "Thank you, Mr. Speaker. This is... this is an initiative of the Attorney General and I ask for Concurrence on Senate Amendments 1 and 3. And what this Bill does, it's a Bill to have more accountability and to save the state around \$250 thousand a year by eliminating some waste and redundancy by consolidating the Illinois Violence Prevention Authority into the Illinois Criminal Justice Information Authority. This will coordinate a state wide... statewide violence prevention efforts and develop a statewide plan that includes public health and public safety approaches to violence prevention. I'd be happy to answer any questions."

Speaker Lyons: "You've heard the Gentleman's explanation to Amendments #1 and 3. Is there any discussion? Seeing none, the questions is, 'Shall the House concur with Senate

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Amendments #1 and 3 to House Bill 3816?' This is final action. All those in favor signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Representative Davidsmeyer, Representative Pihos, Representative Roth, would you like to be recorded? Mr. Clerk, take the record. On this question, there's 109 Members voting 'yes', 2 Members voting 'no', 2 Members voting 'present'. And the House does concur with Senate Amendments #1 and 3 to House Bill 3816. This Bill, having received the Constitutional Majority, is hereby declared passed. Representative Mike Zalewski, on page 5 of the Calendar, Michael, you have House Bill 4148 on the Order of Concurrences. Representative Zalewski."

Zalewski: "Thank you, Mr. Speaker. We did a Bill in the November Session on the ability of a Home Rule unit to adopt specific taxing structures. This is cleanup language requested by the Retail Merchants Association that makes abundantly clear that no open-air parking facilities, like at a Jewel or other shopping center, can be used as a... as a taxing generator. In other words, you can't charge for parking at an open-air free parking... parking lot. I'd ask for an 'aye' vote."

Speaker Lyons: "You've heard the Gentleman's explanation. Is there any discussion? The Chair recognizes Representative Dennis Reboletti."

Reboletti: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

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Reboletti: "Representative, I'm trying to remember this Bill from before. If you could... it's a little bit loud in here also. If you could just tell us what the... initially, what the intention of the legislation was?"

Speaker Lyons: "Shhhh..."

Zalewski: "Dennis, the original Bill said very, very simply, if a Home Rule unit wishes to adopt a different way to tax parking structures, which is more equitable to both the unit and to the parker, they may do so under state statute. There was a concern out of an abundance of caution by the National Association of Shopping Centers, which IRMA works with, that there had to be some clarification. This... this Bill does that clarification."

Reboletti: "Thank you."

Speaker Lyons: "Seeing no further discussion, the question is, 'Shall the House concur with Senate Amendments #1 and 4 to House Bill 4148?' This is final action. All those in favor signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Hammond, Poe, Roth. Would you like to be recorded, Raymond? Mr. Clerk, take the record. On this issue, there's 102 Members voting 'yes', 9 voting 'no', 2 voting 'present'. And the House does concur with Senate Amendments 1 and 4 to House Bill 4148. This Bill, having received the Constitutional Majority, is hereby declared passed. Leader Currie, on page 4 of the Calendar, Barbara, you have Senate Joint Resolution 81. Senate Joint Resolution 81."

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Currie: "All... all this is, Representative... Speaker, is a clarifying Resolution because the Senate left before we had a chance to do this with them. So, I would appreciate your adoption of Senate Joint Resolution 81."

Speaker Lyons: "You've heard the Lady's explanation on the Senate Joint Resolution 81. All those in favor of its adoption signify by saying 'yes'; those opposed say 'no'. In the opinion of the Chair, the 'ayes' have it. And Senate Joint Resolution #81 is adopted. Ladies and Gentlemen, the Chair is going to recognize Representative La Shawn Ford on a moment of silence for a staff member who passed away. So, I'd ask Members to please give us your attention. Conversations please end. Representative Ford."

Ford: "Thank you, Mr. Speaker and Members of the House. I bring sad news to some and some may already know. Allen J. Oehlert, who was the LRB Reference Bureau Librarian... Law Librarian, passed away on Sunday, December 30. And we know that he made major contributions to the State of Illinois. I also want to thank Representative Flowers for introducing me to Allen because he was a great asset to me here in Springfield. So, Allen passed away December the 30th at his home and he leaves to mourn his death a wife, four children, and seven grandchildren. And he was a Sox fan. And so, I ask that this Body and the people of Illinois have a moment of silence for Al. Thank you."

Speaker Lyons: "May he rest in peace. Thank you, Members. Representative Michael Zalewski, for what purpose do you seek recognition, Sir?"

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Zalewski: "Thank you, Mr. Speaker. While we have a break in the action, I wanted to remind everybody as we get closer to the end, a lot of our social schedules are going to heat up in the next couple of days, but tonight we're... some folks have been generous enough... generous enough to have a party for Representative Lyons in the Chair. So, if you can join us at D H Brown's this evening to say goodbye to Joe, Chairman of the White Sox Caucus, we'd appreciate it. Thank you very much. Thanks, Joe."

Speaker Lyons: "I believe there's a football game on tonight, too, Representative Zalewski? I think somebody in Room 300 has a real concern about that football game tonight. Okay. Leader Barbara Flynn Currie, on page 6 of the Calendar, Barb, on the Order of Concurrences, you have House Bill 5151."

Currie: "Thank you, Speaker. I move to concur with Senate Amendments 1 and 2 to House Bill 5151. There are three portions to the Bill. First, there's a lot of cleanup language resulting from several Supreme Court decisions having to do with medical malpractice. Second, in 1985, we adopted a fee schedule, contingency fee schedule, for medical malpractice cases that said that larger awards would result in lower fees for the attorneys. As it turned out, the effort there was to... was to try to discourage the filing of medical malpractice lawsuits. It didn't happen. There was no decline and in recent years, what we've discovered is that although the schedule is there, lawyers tradi... in many instances, lawyers ignore the schedule that is already set by statute. And there is a provision, a

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loophole, in the current law that allows them to petition the court for additional money from... the defendants in those cases that they get a larger share of the settlement. This is happening a lot. Eight, nine of ten cases results in these petitions being filed. That's very expensive and it's time-consuming for the courts. This would set a straightforward 33 and a third percent contingency cap on medical malpractice lawsuits. Of course, people could still contract with a lawyer to come in for a lower amount, but it would cap at 33 and a third percent the amount that a lawyer could use as a contingency fee and it would close the loophole so nobody could petition the court to get more. And finally, as you remember, a court in Madison County hit the... I think it was Phillip Morris, the tobacco settlement, one of the litigants in that lawsuit, with a \$12 billion bond that probably could have put that company out of business. This would statutorily cap tobacco settlement funds at \$250 million. I'd be happy to answer your questions. And I'd appreciate your support for the Concurrence Motion."

Speaker Lyons: "You've heard the Lady's explanation on Amendments... Senate Amendments 1 and 2. Is there any discussion? The Chair recognizes the Gentleman... Representative Dwight Kay."

Kay: "Thank you, Mr. Speaker. Does the Sponsor yield?"

Speaker Lyons: "The Sponsor yields."

Kay: "Representative Currie, I have a couple of questions. We had a nice conversation this morning in committee. I'm a little bit curious about some of the conversations that

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went on before committee today, though, and some of the underlying agreements that we thought we had prior to the committee hearing today. We thought we had a little bit better deal with respect to this Bill. Were you aware of that?"

Currie: "Certainly not."

Kay: "Okay."

Currie: "This was a Concurrence Motion. There's not opportunity to amend this Bill. What we have is the opportunity to say 'aye' or 'nay' to the Amendments that were adopted by the Senate."

Kay: "So, here's... here's where I'm coming from though. I went through the committee and after the committee was over, there was some information brought to my attention that, frankly, I didn't ask and neither did anybody else. But it has to do with some underlying agreements that took place in Leadership. And I'm curious whether or not I got the straight deal this morning. Did I get the straight scoop?"

Currie: "I know nothing about agreements, side deals, nothing about anything. All I know is what we talked about in committee this morning."

Kay: "Okay. Let me... let me go back then and let's just talk about something that happened in committee today. You recall the conversation I had with respect to this Bill and the reason for this Bill. And I'm talking about the... the piece that fits in for the trial lawyers, okay?"

Currie: "If you're talking about the change in the fee schedule, contingent fee schedule..."

Kay: "The cap."

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Currie: "Yes."

Kay: "The cap. My question is, there was a comment made this morning about how many cases we had where extraordinary expenses or fees were being requested. I'm not sure we got an answer to that."

Currie: "We did not get a statistical answer. We got anecdotally the notion that in 8 or 9 out of 10 cases petitions are filed asking for fees that go beyond the amount that is statutorily described and may even go beyond 33 and a third percent."

Kay: "Leader, could you tell me, give me one example, of a case recently where extraordinary expenses have taken court time to settle?"

Currie: "I don't have that specific information, but we did hear from the people who testified in committee that it happens and it happens frequently. We heard from the opponent in committee that it happens a lot in Cook County as well."

Kay: "Well, my problem is this. We have no information that seems to be statistically backing this Bill. And I'm not sure that we are not just chasing a red herring..."

Currie: "Well..."

Kay: "...here because it seems to me like, if this was such a big problem we'd know whether it was Madison, Macoupin whether it was McLean or Cook. And if you could just give us an example of where the egregious behavior is, I might consider this Bill."

Currie: "As I say, I don't have a study, I don't have a statistical analysis. But we did have evidence in committee

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that it is happening in Cook County and in downstate areas as well and that some of those fees that are approved in the petition for additional fees for extraordinary circumstances may go well beyond 33 and a third percent. So, the effort here is to say let's not waste the time of the court and the expense of the lawyers in going to court to petition for extraordinary expenses; let's just make uniform the... the way that we operate with other kinds of tort activities, but in the case of medical malpractice capping... capping the contingency fee at 33 and a third percent."

Kay: "Well, Leader Currie, let me just say this. I'm disturbed by the fact that we don't have facts, but I'm going to share one with you. There was a case up in Macoupin County where, in fact, an attorney received... received in excess of 40 percent. And so, I'm... this is the first time, I think, I'm ever helping you out on a Bill so."

Currie: "I am grateful."

Kay: "I know you are. And I want you to... I want you to mark that down for 2013. But I will say this, one case doesn't necessarily make your case, and I think we need to be real careful here where we are going because I think we're way far away from where this Bill was intended to go. So, thank you. I don't have anything else, Leader."

Speaker Lyons: "No one seeking further discussion, the question is, 'Should the House concur with Amendments 1 and 2... Senate Amendments 1 and 2 to House Bill 5151?' This is final action. All those in favor vote 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish?"

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Have all voted who wish? Have all voted who wish? DeLuca, Mathias, would you like to be recorded? Mr. Clerk, take the record. On this question, there's 67 Members voting 'yes', 46 Members voting 'no'. And the House does concur with Senate Amendments #1 and 2 to House Bill 5151. This Bill, having received the Constitutional Majority, is hereby declared passed. Representative Kelly Burke, on page 5 of the Calendar, under Concurrences, you have House Bill 3636. Representative Kelly Burke."

Burke, K.: "Thank you, Mr. Speaker. House Bill 3636, Senate Amendment 2, seeks to clarify the intent of Section 16 of the Mechanics Lien Act and is in response to the 2011 Supreme Court ruling in LaSalle Bank v. Cypress Creek. The court's ruling diminished Mechanics Lien's right for contractors and subcontractors, laborer and materials suppliers in Illinois in a situation where a construction project goes into foreclosure. Under Cypress Creek, banks have priority, not just to the value of land but also to the value of all improvements to the land made by the unpaid lien claimants. The ruling gives the lender two opportunities to siphon off money from the proceeds of a foreclosure of sale that's not sufficient to pay all claims. This is not the intent of Section 16 and has not been the practice of over the past 140 years in which the Mechanics Lien has been in effect. Many contractors and subcontractors risk not being paid for well-performed work or material supplied even though they have perfected their lien claim. I ask for an 'aye' vote. And ask... answer any questions."

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Speaker Lyons: "The Chair recognizes the Gentleman from Cook,
Leader Jim Durkin."

Durkin: "Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Durkin: "Representative, this is a little bit confusing, but
could you just... kind of like, I know you just read a very
nice statement that was prepared, outstanding, but could
you give us just a practical sense of what the law was
prior to this Cypress Creek opinion, and what would happen
in that situation where there was a construction job that
went on and all of a sudden it went bust?"

Burke, K.: "The..."

Durkin: "What happens with the... to the..."

Speaker Lyons: "Kelly, before you answer, Ladies and Gentlemen,
could we bring the noise level down please. Shhhh... Thank
you very..."

Burke, K.: "Thank you, Mr. Speaker. Prior to the Cypress Creek
decision, the bank would have priority as to their mortgage
interest and the unpaid lien claimants would have priority
to the value of the enhancements made to the land. And
after Cypress could... they would share in that... And after
Cypress Creek, the bank was given two opportunities to
participate in the proceeds, both as the mortgagee and also
as standing in line with the lien claimants, even though
they had not perfected their... any lien claims or subrogated
anything."

Durkin: "So, it's fair to say it that it was an equitable
distribution of the sale of proceeds between the lender and
the contractors who were on the job, correct?"

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Burke, K.: "Yes, that is fair to say."

Durkin: "Now, would you say that this opinion has completely reversed that equitable formula that has been in place for decades?"

Burke, K.: "Yes. Because, in addition, it also only allowed the mechanics lien claimants to participate in the pool of moneys to the... to the extent that their particular improvement enhanced the value of the property rather than sharing in the enhancement to the property as a whole."

Durkin: "In reality, what this opinion does, it virtually throws out the whole Mechanics Lien Act. Or really, really..."

Burke, K.: "Well, Section 16."

Durkin: "...really guts a significant... significant portion of it that's there to protect contractors who do perform the work and then their..."

Burke, K.: "Yes. Because..."

Durkin: "...they at least want some type of reimbursement for the value of the labor that they provided, correct?"

Burke, K.: "...because the purpose of the mechanics lien claim is to protect those who supply materials and labor and they don't have the same protections that a bank would have: the prior knowledge of the developer's credit rating, insurance, continual updates to credit rating. They just go in and supply the work or the materials and they rely on that Mechanics Lien in order to keep them... to keep them protected. And the effect of the ruling is that it's giving less assurances to mechan... to contractors and suppliers that they're going to get paid. And so, there's less

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likelihood that they're going to take on those jobs which means the construction industry will continue to be depressed."

Durkin: "One last question. The Cypress Creek opinion recently was returned back to the Circuit Court of Will County. Of all the claimants, I believe there was approximately one and a half million dollars of money that was in the pool which was for distribution. How much money did the contractors... were they awarded by judge... by the Circuit Court judge of Will County?"

Burke, K.: "Zero."

Durkin: "And the other parties, the lenders and also the..."

Burke, K.: "The lenders were..."

Durkin: "...attorneys..."

Burke, K.: "Lenders received the lion's share of the proceeds, but in addition, the lender was able to recover its attorneys' fees from the proceeds of the foreclosure sale and the end result was there was no money left for the lien claimants."

Durkin: "Thank you. To the Bill. I think that this is a kind of a... it's a little bit of a confusing and it's a, you know, a specialized area of law, but at the end of the day, I believe that the law was... in place before Cypress Creek was fair and it was equitable. I believe that this decision is not... I don't agree with it, but I made the statement in committee that even though the Supreme Court has rendered an opinion, I've had discussion with former Supreme Court justices and they said if you don't like our opinion, pass

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a law that changes it. So, I hope that's what we do today.
And I would encourage my colleagues to vote 'yes'."

Speaker Lyons: "You have eight people looking for recognition,
so if you could bring your remarks to... as close to two or
three minute presentation, we'd appreciate it.
Representative Jil Tracy, you're next. Jil."

Tracy: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Tracy: "And actually, I... I think perhaps to keep remarks brief
on this, I won't ask any questions. I'll just make my
remarks. To the Bill. I applaud the... the Sponsor's efforts
to work and negotiate this Bill. It's been going on quite a
while and it is, indeed, a very complex issue because a lot
of legal scholars do not actually think it rewrites. I
mean, they do not think the Cypress Creek opinion rewrites
the Mechanics Liens, but otherwise, they believe it
actually applied current law of Mechanics Liens to a very
difficult set of facts and that if we enact this
legislation, it will have the opposite affect of changing
established Mechanics Lien law. I think that the crux of
this is, if we look at, is it's the chicken or the egg
argument. If you don't have funding for a project, you
won't have a project. And if this law is put into effect,
it will stymie all efforts by lenders to invest in
projects, and it will have an economic down... impact that
will force bankers to look more closely. And... and of course
they should look very closely, but I think this will impact
it even further that they will pass on projects that have
good merit because they fear that they would have to be

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filing mechanics liens or second and third and fourth mortgages over and over again. And it will have an effect to create less projects which is, in effect, not what we want in Illinois with the type of economy we want. We want lenders to freely invest in projects. We want workers to be employed by these projects. And again, I think it is a very complex issue. I think you've probably heard from both sides of the proponents and the opponents, but again, I urge a 'no' vote because, as I say, I think it's a... keeping the Mechanics Lien Law in place as it currently is, not making this legislative change. And it will allow lenders to continue to invest in projects and not stymie them by making them have to go through many hoops to keep a project going, but by the same token, give the protection under the Mechanics... current Mechanics Lien Law and the Cypress Creek case will give them protections to get their investment back under the current Mechanics Lien Law. So, for these reasons, I urge a 'no' vote."

Speaker Lyons: "Representative Jim Sacia."

Sacia: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Sacia: "Representative, this Bill, like the previous two speakers, and I think it's quite important, Ladies and Gentlemen, that on my side of the aisle one speaker has spoken very strongly in favor of this Bill, one speaker has spoken in opposition of this Bill. And that's so interesting because all of us have been lobbied heavily both ways regarding this legislation. Representative, I appreciate you bringing this Bill to us because I... I have

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the privilege of being a director on a bank, and I know that if they're watching this today, they're not going to be happy with me. But the bottom line of this is Johnny Lunchpail, who is out there trying to make an honest living, who is contracting his meager service, whatever it happens to be, living paycheck to paycheck, or payday for his lien or whatever it is that's coming to him, and I really think this is an opportunity, as articulated so well by Representative Durkin, that even though this is a very complex Bill it argues very strongly in favor of the little guy. The guy that... I've known so many subcontractors in my adult life that simply got the shaft. There's no other way to say it. And it's time for your legislation and I applaud you."

Burke, K.: "Thank you, Representative. And I'd just like to point out that we did have extensive committee testimony and some of the folks we heard from were regular contractors and the dire effects that this legis... that this Supreme Court decision has had on their mechanics lien claim was... was really illustrated. And in one particular case, there were a group of claimants and they ended up with about 30 cents on the dollar. And as a result, two of them went bankrupt and one was purchased by an out-of-state company. And these were three Illinois companies that employed scores of people and those companies are no longer because of the effects of the Cypress Creek legislation. And that's been played out all over the state in all different sizes of companies, and it's really affecting our working men and women."

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Speaker Lyons: "Leader Mike Bost."

Bost: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Bost: "Okay. Those... there are several people, I believe, on both sides of the aisle that are... are confused to make... so that we can exactly... as far as new construction, this won't hardly affect anyone. Is that correct? Because... because the bank actually gets the value. You... you file... the mechanics lien is being held. And then, normally the contractor's paid before they ever walk away from the home, correct?"

Burke, K.: "So, you were right. Representative, this Section of the Mechanics Lien only comes into effect when there's a foreclosure and the proceeds are insufficient to make everybody whole."

Bost: "Okay. But... but the foreclosure would probably be on maybe a... a second mortgage that was taken out for an expansion on the home or... or a home improvement. Am I right in things?"

Burke, K.: "Right. Or a commercial property, things like that."

Bost: "Or something to that level?"

Burke, K.: "Yes."

Bost: "And... a and the way that we, the General Assembly, had thought it should be interpreted is... is that that lien then, if the value was \$100 thousand and it was \$150 thousand owed against it, that the bank would receive a portion and the contractor that had the lien, the mechanics lien, would receive a portion. Is that correct?"

Burke, K.: "That's correct."

Bost: "Okay. So... but the court ruling basically said that bank has first lien option, which means that if... if they have

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125 thousand against the home, the 100 thousand they can... they can all of a sudden take all of the 100 thousand that the home is worth, correct."

Burke, K.: "Because..."

Bost: "And not giving anything to the contractor?"

Burke, K.: "Because the bank can now participate in the value of the improvements and not just on the..."

Bost: "On the... just..."

Burke, K.: "...actual land."

Bost: "...the original mortgage..."

Burke, K.: "Yeah."

Bost: "...of the land, right."

Burke, K.: "Right."

Bost: "So, what you're trying to do in this is then return this to the original... what we thought was the original intent of the law?"

Burke, K.: "Exactly."

Bost: "Okay. Thank you."

Speaker Lyons: "Representative Nybo."

Nybo: "Thank you, Mr. Speaker. To the Bill. This is a very complicated issue, and I'm sure a lot of my colleagues share my confusion on trying to exactly understand what's going on here. But it's... it's very clear to me one thing, and that is if this Bill passes, construction loans will become much more risky for financial institutions. They've told us that. They've also told us that if this Bill passes it will be much more difficult for them to allow these types of loans to go forward. They will make fewer construction loans. One thing is very clear to me that if

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this Bill passes, the banks are going to respond by making it much harder for people to obtain financing to pursue construction projects. And if there's fewer construction projects then, at the end of the day, what that means is fewer jobs. So, while it's a complicated Bill, it's very clear that it's creating a much more risky situation for banks and that there will be fewer loans as a result of that. I will not support this Bill. I think it's a well-intentioned effort, but I think the impacts of it could be very devastating."

Speaker Lyons: "Representative Elaine Nekritz."

Nekritz: "Thank you, Mr. Speaker. To the Bill. This Bill came before the Judiciary Committee and we spent more than one meeting and those meetings were... and the second meeting we had was lengthy, trying to understand what was going on in this piece of legislation. And I some... I know some of the speakers have indicated that this is... this... and that the Sponsor's maybe trying to reinstate the prior law. There's... there are people on the other side of the story just as adamant that the ruling in the Supreme Court's... Supreme Court case that we're trying to change here was, in fact, the law. And I have to say that as... in my tenure here in the General Assembly, this has been the single most perplexing issue that has come before us. And I just... I... I caution the Body because I'm not sure any of us frankly understand really what's going on here and how... you know, what the his... what the history of... in various regions. I think... I think this is very regionally based as to what the practice was. And I just... I have a lot of concerns that we

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are making a decision here that, with the complexities of the Mechanics Lien laws, we'll... we'll come back to... to be here again... again before this Body in the not too distant future."

Speaker Lyons: "Leader Lou Lang."

Lang: "Thank you, Mr. Speaker. Ladies and Gentlemen, I rise in support of the Bill. In my 25-plus years in the Illinois House, I've been on the Judiciary Committee the entire time and at no time have we seen a Bill that's been more complex or more difficult than this one in this committee. It is a very difficult issue. Most of the Members of the committee, as you know, are attorneys. We don't all deal with Mechanics Liens problems but most are attorneys. And I would tell you that most of the Members of the committee didn't understand this Bill at the beginning and maybe we don't understand it fully now either. But it seems to me that in the end, while I understand the position of the banks and while they've stated it forcefully and... and with great advocacy, the fact remains that in these foreclosure situations there are contractors who have laid out great sums of money to buy materials, have laid out great sums of money to pay employees, have laid out great sums of money for planning, for architecture and for all of the rest and oftentimes the bank has stopped funding the project weeks and months before the contractors even determine that they aren't going to be paid. And so, without this Bill, you have a situation where many of these contractors will never see that money. The banks do the vetting on those who are doing the contract to determine if they're credit worthy

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and the banks take that risk of course, but the contractors should at least... at least be in a position where they can recoup some of their losses should they.. a foreclosure occur. Without this Bill, many of those contractors and those subcontractors, many of whom are your constituents and many of whose employees are your constituents, will not be paid. And there will be lost jobs, lost labor, lost materials, half-built buildings, et cetera. And so, while I understand the concerns of the banks not to lend money to people and have the projects go belly-up and have them not get their money back so, too, do we have to pay some attention to the contractors and subcontractors who lay out very large sums of money. This Bill, as it's written today, there's not even a notice provision in the current law to tell these contractors when the bank is going to stop funding. And so, this Bill is designed to make sure that those contractors get paid or at least get some kind of notice that they're not going to get paid so they don't continue to spend these large sums of money and have that money go down the drain while, in the end, the bank recoups most of their money and the contractors do not. I think this Bill is about fairness. I think this Bill requires an 'aye' vote."

Speaker Lyons: "Representative Kay."

Kay: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Kay: "Representative Burke, I have some pretty fundamental but I think kind of simple questions. Everybody that's questioned you today has made some excellent points whether

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it's in favor of the Bill, against the Bill, but I'd like to back up a minute and just ask a couple of, again, very simple questions. Supposing that we accept Judge Garman's read on this circumstance and we accept her opinion and we go on down the road and we change what's gone on as being the prevailing law with respect to the workers' con... or with respect to the Mechanics Lien. We just changed that path. Where does the middleman, so to speak, I think as Representative Lang was... was heading, where does the middleman go to stay in business?"

Burke, K.: "I... I don't understand your question, Representative."

Kay: "Well, if... if in fact there is no protection for the guy who is the second string or the third string on the team, what happens to him?"

Burke, K.: "The same thing, I believe, that would happen to the materials people and the people who provide the labor and the expertise, the architects and whatnot. If they don't have those protections, they're going to be hesitant to take on those projects. If you're a material man or let's say... a fire... you know, something where you're not on the site, like a fire safety sprinkler-type company, you're going to require more cash upfront because you're not going to have the protection of the Mechanics Lien. More cash upfront, that's harder for people to come up with. That's going to dampen the whole building environment."

Kay: "I'm not sure you answered my question, but I... I guess I'm curious about how the system functions in a different way when we cut out the middleman. When we say no, no,

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everything goes back to the bank and by the way, he's the most important person in this entire construction scenario. What do we... what do we look for down the future with respect to building and trades?"

Burke, K.: "I think I did answer that. That they..."

Kay: "Okay."

Burke, K.: "...could... that the industry will be dampened due to the fact that people will not be able to take on these projects."

Kay: "Well, okay. Let me... let me take a different... a turn here. As I read that decision, the Cypress Creek decision, it seemed to me like this was something that Justice Garman took on because it was a purely economic issue based on the times we're in. Would you agree or disagree with that?"

Burke, K.: "Are you speaking of the majority opinion or the dissent? I... I..."

Kay: "I'm... I'm speaking about the opinion that says we'd like to change the state of the Mechanics Lien. And my question is, do you think... do you think that based on that decision it was only rendered because of the times we're in and the fact that no longer do we want somebody at the top here, the banks, to lose money?"

Burke, K.: "Yeah. The de..."

Kay: "In other words..."

Burke, K.: "The decision favors..."

Kay: "...it's all about economics."

Burke, K.: "...the banks..."

Kay: "Right."

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Burke, K.: "...as it... it justs... and it turns on its head 146 years of the protections offered through the Mechanics Lien."

Kay: "Exactly."

Burke, K.: "So, if we allow the decision to stand... Is that what you're asking..."

Kay: "Well..."

Burke, K.: "...if the decision is allowed to stand, the benefit goes to the banks instead of to..."

Kay: "Right."

Burke, K.: "...the supplier."

Kay: "That's my... that was my first question, but really my second question was sort of a hypothetical. And I'm really saying to you, let's take 10 years ago or 20 years ago, we wouldn't even be talking about this today had it not been for a case where someone was going to lose money in bad times and thought, you know what, I need to reach out and I need to be the primary guy. I need to be the only guy who can stay in business because I'm the big guy on the block. Is that not right?"

Burke, K.: "I would agree with you that it seems that there are more of these types of situations due to the... the crash of the construction industry and the economic collapse. So, there are more of these cases which is probably why it reached the Supreme Court, but they've happened in the past."

Kay: "Did you see anything... and I... I didn't when I read the opinion... any rationale in there as to how... how Justice Garman, other than money, could render a decision against a lienholder or the continuance of the Mechanics Lien other

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than the fact that there was somebody, a bank, that was going to be out of money?"

Burke, K.: "You know what, I don't know what their rationale was. I do know that the Appellate Court decided in favor of the contractors and that it was taken up on appeal to the Supreme Court and it was a 5 to 2 decision. So, two justices issued a dissenting opinion, strongly disagreeing with Justice Garman's majority opinion. What her rationale was, I can't speak to that."

Kay: "So, supposing we just change things today. We change 139 years worth of law. Tell me, one more time, where we go and how we move forward in the construction trades?"

Burke, K.: "If... if this Bill is approved, we will actually be staying on the same path of the law that we've had for 140-some years. It will clarify the intent of the currently existing law. It's our... my position that the Cypress Creek decision changed the law, so to... to vote 'yes' to this Bill would be to put the law back in the way that it was... or to clarify its intent so that we're clear about the way that these mechanics liens should be handled in foreclosure situations."

Kay: "Thank you, Representative."

Speaker Lyons: "I have two final speakers: Representative Sente and Representative Zalewski. Two final speakers. Representative Carol Sente."

Sente: "Thank you, Speaker. I'd like to also speak in support of the Bill. I spent 25 years in the architecture, construction, and engineering industry, and a mechanics lien for a construction project is something that you don't

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want to use because it really is the last resort for being compensated by a... for work that you and your employees performed in good faith. The Cypress Creek ruling would hurt design and construction companies, labor suppliers and even... so they wouldn't even have that backstop anymore. Their... we're talking about an industry that had.. has had 40 percent unemployment. We're trying to decide if this Bill is going to do more damage to hurting and jumpstarting the construction industry. And I would say for 150 years or over we've had the opportunity to give parity, to give both groups some money back when a project is foreclosed and it doesn't move forward. And to have the contractor, suppliers receive some portion for work they have put in place would be the most fair solution, and then the banks get their portion. And so, I'm speaking in support of this Bill."

Speaker Lyons: "Representative Mike Zalewski."

Zalewski: "Thank you, Mr. Speaker. I'll be very brief; I know we've been on this Bill for awhile. First, I want to compliment Representative Burke. She's done yeomen's work here to get all the parties on the same page. And in my view, we were, what I would consider to be vicariously close, despite the complexities of the issue, we were vicariously close to an agreement here. And it's because of the fact of what we're really talking about is the ability of the financial institution, the bank, to give notice to the contractors. So, to put some of the context to what we heard about here today, there's a path forward here. That being said, there's... there's important progress going on and contractors need available access to capital and they

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need to know they're getting paid. So, I wanted to compliment the Sponsor and say that it's important to acknowledge both sides of the issue here. And hopefully, down the road, we can come to an agreement even if this Bill were to pass or to fail here today."

Speaker Lyons: "Representative Burke to close."

Burke, K.: "I urge an 'aye' vote."

Speaker Lyons: "The question is, 'Shall the House concur with Senate Amendment #2 to House Bill 3636?' This is final action. All those in favor signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Mary Flowers. Jack Franks. Mr. Clerk, take the record. On this Bill, there are 60 Members voting 'yes', 44 Members voting 'no', 9 Members voting 'present'. And the House does concur with Senate Amendment #2 to House Bill 3636. This Bill, having received the Constitutional Majority, is hereby declared passed. Representative Acevedo, you have, on the Order of Second Reading, Senate Bill 957. What's the status on that Bill, Mr. Clerk? Supp... Supplemental Calendar #1."

Clerk Hollman: "Senate Bill 957 is on the Order of Second Reading, a Bill for an Act concerning transportation. Second Reading of this Senate Bill. No Committee Amendments. No Floor Amendments. No Motions are filed."

Speaker Lyons: "Third Reading. Mr. Clerk."

Clerk Hollman: "Committee Reports. Representative Barbara Flynn Currie, Chairperson from the Committee on Rules reports the following committee action taken on January 07, 2013:

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recommends be adopted, referred to the Order of Resolutions is House Resolution 1360."

Speaker Lyons: "Representative Chapin Rose, for what purpose do you seek recognition, Sir?"

Rose: "Thank you, Mr. Speaker. What... I've been here for awhile and I've never seen Rules RBA before. What does that mean?"

Speaker Lyons: "Recommend Be Adopted."

Rose: "...Be Adopted. Thank you, Mr. Speaker."

Speaker Lyons: "Take that... take that information to the Senate with you there, Senator. You'll be the backup parliamentarian to President Cullerton. Mr. Clerk, what's the status on Senate Bill 957?"

Clerk Hollman: "Senate Bill 957 is currently on the Order of Third Reading."

Speaker Lyons: "Return that Bill to the Order of Second Reading. Representative Dwight Kay. Representative Kay, you have, on the Order of Resolutions, House Resolution 1360, along with Leader Cross. Do you want to call that Resolution?"

Kay: "Yes, Speaker, I do."

Speaker Lyons: "Yeah. Mr. Clerk, post House Resolution 1360. Representative Dwight Kay. One minute, Representative. Representative, I think for... we have to wait 'til tomorrow to run that Resolution. Thanks for your patience. Mr. Clerk, Agreed Resolutions."

Clerk Hollman: "Agreed Resolutions. House Resolution 1369, offered by Representative Brady. House Resolution 1370, offered by Representative Paul Evans. And House Resolution 1371, offered by Representative Walsh."

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Speaker Lyons: "Majority Leader Barbara Flynn Currie moves for the adoption of the Agreed Resolutions. All those in favor signify by saying 'yes'; those opposed say 'no'. In the opinion of the Chair, the 'ayes' have it. And the Agreed Resolutions are adopted. And now, seeing no further business to come before the Illinois House of Representatives, Leader Barbara Flynn Currie moves that the House stand adjourned to the hour of 11:00 a.m. tomorrow, Tuesday, January 8. All those in favor signify by saying 'aye'; those opposed say 'no'. In the opinion of the Chair, the 'ayes' have it. Allowing perfunctory time for the Clerk, the House stands adjourned 'til the hour of 11:00 a.m. on Tuesday, January 8. Cheer, cheer for ol' Notre Dame. Have a great evening, everyone."

Clerk Hollman: "House Perfunctory Session will come to order. Second Reading of House Bills. House Bill 6253, a Bill for an Act concerning public aid. Second Reading of this House Bill. This Bill will be held on the Order of Second Reading. There being no further business, the House Perfunctory Session will stand adjourned."