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**Labor & Workforce Development  
Committee**

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**HB 1708**

**Brief Description:** Concerning mechanics' and materialmen's claims of liens.

**Sponsors:** Representative Moeller.

**Brief Summary of Bill**

- Changes the requirements for signing a lien claim, and adds a paragraph consistent with the changes to the statutory form.
- Makes certain court rules applicable to civil actions to foreclose lien claims.
- Modifies the purposes for which the lien law is liberally construed.

**Hearing Date:** 2/2/11

**Staff:** Jill Reinmuth (786-7134).

**Background:**

State law authorizes mechanics' and materialmen's liens to benefit any person furnishing labor, professional services, material, or equipment for the improvement of real property. If such a person is not paid for services or materials, the lien procedures may be used to recover the payment.

A person claiming a lien must file a notice of claim of lien. The lien claim must be recorded in the county where the property is located, contain certain information about the claim and the claimant, and be signed by the claimant or someone authorized to act on his or her behalf.

There are several requirements for signing the lien claim. The person who signs the lien claim must affirmatively state that he or she has read it, and believes it to be true and correct under penalty of perjury. The lien claim must be acknowledged pursuant to the law on acknowledgements of documents.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

There is also a statutory form for a lien claim. A lien claim substantially in that form is sufficient, and thus, the form is sometimes referred to as a "safe harbor." A person who signs the lien claim attests that he or she has read or heard the claim, read and knows the contents of the claim, and believes the claim to be true and correct. The person also attests that the claim is not frivolous, is made with reasonable cause, and is not clearly excessive. The attestation clause is signed under penalty of perjury.

In *Williams v. Athletic Field*, the Washington Court of Appeals, Division II (*Williams*), held that a particular lien was invalid. The central issue was whether the lien's attestation clause complied with the corporate acknowledgment requirement in the acknowledgements law. Although the attestation clause in the lien claim was identical to that in the statutory form, the court concluded that the corporate acknowledgment requirement was not satisfied. The court also concluded that, where corporate acknowledgment is required, the statutory form cannot be sufficient because it only satisfies the individual acknowledgment requirement in the acknowledgements law. The Washington Supreme Court has granted a petition for review of the *Williams* decision.

A person claiming a lien may file a civil action to foreclose the lien. A civil action to foreclose a lien proceeds in the same manner as judicial foreclosure of a mortgage.

Case law requires strict construction when determining whether a lien attaches. Liberal construction, however, is required when applying the provisions of the lien law. The purpose of liberal construction is to provide security for parties intended to be protected by the statutory provisions.

#### **Summary of Bill:**

The requirements for signing the lien claim are changed. The lien claim need not be acknowledged pursuant to the acknowledgements law. The lien claim must indicate an individual's capacity to sign on behalf of a claimant if the lien claim is signed by a corporate representative, attorney, lien filing agent, or other individual authorized to act on the claimant's behalf.

The statutory form for the lien claim is also changed. A new paragraph, with language indicating the individual's capacity to sign on behalf of the claimant, is added.

The court rules ordinarily applicable to a civil action also apply to a civil action to foreclose a lien claim.

The purpose of liberal construction is to protect the interests of permit applicants and of persons furnishing labor, professional services, materials, or equipment for the improvement of real property.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.