

HOUSE BILL REPORT

HB 2388

As Reported By House Committee On: Energy & Utilities

Title: An act relating to the satisfaction of unrecorded utility liens at the time of sale of real property.

Brief Description: Providing for satisfaction of unrecorded utility liens at the time of sale of real property.

Sponsors: Representatives Crouse, Casada, Kessler, Mastin, Hankins, Poulsen, Patterson, Mitchell and Chandler.

Brief History:

Committee Activity:

Energy & Utilities: 1/17/96, 1/24/96 [DPS].

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Patterson, Ranking Minority Member; Poulsen, Assistant Ranking Minority Member; Chandler; Kessler; Mastin and Mitchell.

Staff: Margaret Allen (786-7110).

Background: Utilities operated by municipalities and other political subdivisions of the state are authorized to place liens for charges due but not paid against the premises to which utility services are provided. Different utilities have different lien provisions. The differences involve the method of enforcing the lien, the length of time for which unpaid charges may be subject to a lien, the priority status of the lien, and how the lien is perfected. Examples of these liens are those for county sewer, water, and storm water services, and municipal garbage, water, sewer, and electric light or power services.

There currently is no routine mechanism by which purchasers of property are alerted to the existence of these unrecorded liens.

Summary of Substitute Bill: The bill creates a mechanism by which unrecorded utility liens are identified and satisfied at the time real property is sold.

Seller. Unless the purchaser and seller otherwise agree in writing, the seller is responsible at closing for satisfying unrecorded utility liens. Unless a purchaser and seller waive the services of a closing agent, the seller must notify the closing agent, in writing, of the names and addresses of utilities operated by political subdivisions of the state providing service to the property.

Closing agent. Unless the seller and purchaser have waived the services of a closing agent, a closing agent must submit a written request for a final billing to each utility so identified by the seller. Otherwise, a seller or purchaser may request the information. No closing agent may refuse a written request from a seller or purchaser to disburse closing funds necessary to satisfy unpaid charges, unless the refusal is based on (1) the seller's inaccurate or incomplete identification of utilities providing service to the property; (2) a utility's failure to provide an estimated or actual final billing (or written extension of the per diem rate); or (3) insufficient closing funds. A closing agent, or a real estate agent who is not the seller, is not liable for inaccurate or incomplete information provided by the seller.

A closing agent must inform the seller and purchaser of all applicable estimated and actual final billings furnished by utilities, and is not liable for inaccurate or incomplete information provided by utilities.

A closing agent may charge a fee for performing the services required by the bill.

Utilities. After receiving a written request for a final billing on property to be sold, a utility must provide a written estimated or actual final billing, unless the information provided by the requesting party is insufficient to identify the account. In that case, the utility must notify the requesting party the information is insufficient.

The final billing must include all outstanding charges and, in addition to the estimated or actual final amount owing as of the closing date, must state the average per diem rate, including taxes and other charges, that shall apply for up to 30 days beyond the stated closing date if closing is delayed. "Charges" are defined as all lawful charges assessed by utilities operated by political subdivisions of the state, that are not evidenced by a recorded document or special assessment roll filed with the city or county treasurer or assessor, and are not billed and collected with the property taxes. "Charges" also includes penalties and interest, and reasonable attorneys' fees and other costs of foreclosure, if the utility has commenced foreclosure proceedings.

Delayed closings. If closing is delayed beyond 30 days, a new estimated or actual final billing must be requested in writing. Instead of furnishing a revised final billing, a utility may extend the number of days for which the per diem charge applies.

Time frame. A utility must provide a written estimated, actual, or revised final billing, or extension of the per diem rate, or a statement that the information in the request is insufficient to identify the account, to the requesting party within seven business days of receipt of the request, if the request was mailed to the utility, or within three business days if the request was sent to the utility by facsimile or delivered to the utility by messenger.

A utility may respond to the requesting party by facsimile.

Failure to respond. If a utility fails to provide the required information within the required time frame, the utility will lose its unrecorded lien, and the utility may not recover the charges from the purchaser of the property. If a utility provides the information as required, or if a utility does not receive a written request for a final billing, the utility will not lose its unrecorded lien and may collect, from the purchaser, unpaid utility charges incurred prior to closing to the extent those charges do not exceed an estimated final billing.

Discrepancies between estimated and actual final billings. A utility may not collect, from a purchaser, unpaid utility charges in excess of an estimated final billing. However, a utility can collect charges in excess of a estimated final billing from the seller or other person who incurred the charges.

If an estimated final billing exceeds the actual final billing, unless otherwise directed in writing by the seller and purchaser, a utility must refund any overcharge to the seller within 14 business days of the date the utility received payment for the final billing. However, a utility that uses a county treasurer as the treasurer of the utility has 30 business days in which to refund the overcharge.

Substitute Bill Compared to Original Bill: The substitute expressly exempts charges billed and collected with property taxes. The substitute expressly authorizes closing agents to charge a fee for services the bill requires closing agents to provide. The substitute gives utilities that use a county treasurer as the utility treasurer 30, rather than 14, days in which to refund overcharges, and redefines business day to mean a day when county offices are open. Finally, the substitute clarifies that a closing agent would only be liable to the purchaser for refusing to provide the mandated services, and that the closing agent would not be liable for inaccurate or incomplete information provided by utilities. The substitute also makes technical changes, such as clarifying that a seller or purchaser may request the final billing from a utility.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect January 1, 1997.

Testimony For: This is a fair, workable bill with a narrow focus. All interested groups had input. It would be preferable to see the problem of unrecorded utility liens resolved in the judicial arena; but if there must be legislation, this is a step in the right direction.

Testimony Against: None.

Testified: (Pro) George Walk, Pierce County; Tammie Warnke, Escrow Association of Washington; William Schatz, Tacoma Public Utilities; Myron Tollefson, City of Everett Utilities; Steve Lindstrom, SnoKing Water District Coalition; Dwight Bickel, Washington State Bar Association; Lyle Jacobsen, Washington Savings League and Washington Mortgage Lenders; Terri Hotvedt, Washington Association of Realtors; and Joe Daniels, Washington Association of Water and Sewer Districts.