

SENATE BILL REPORT

SB 5630

As Passed Senate, March 3, 1995

Title: An act relating to nonconsensual common law liens.

Brief Description: Limiting nonconsensual common law liens.

Sponsors: Senators Cantu and Haugen; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 2/9/95, 2/14/95 [DP].
Passed Senate, 3/3/95, 47-1.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Smith, Chair; C. Anderson, Vice Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

Staff: Dick Armstrong (786-7460)

Background: Existing law provides that liens against real and personal property that are not provided by statute, imposed by a court, or agreed to by the parties generally are not recognized or enforceable. Such liens are often referred to as nonconsensual common law liens. Recording officers are not required to accept or disclose such liens.

Nonconsensual common law liens are often filed against the property of elected officials and public employees by persons who do not agree with the manner in which the officials or employees are performing their duties. For example, liens have been filed against judges because of adverse court rulings, and against legislators for "failing to uphold their oath of office."

The Attorney General's office, in consultation with other governmental entities, is proposing that the statute be modified to provide an easier method of removing the liens and allowing government entities to recover the cost of dealing with these types of liens.

Summary of Bill: The nonconsensual common law lien statute is revised to clarify the invalidity of such liens, and to make it easier for public officials and employees to have nonenforceable liens removed from their property.

A person subject to a common law lien may petition a superior court to direct the person filing such a lien to appear in court to determine the validity of such a lien. If the person fails to appear, the court may release the lien and require the payment of costs and attorneys' fees. If a hearing is held on the validity of the lien, the prevailing party is entitled to costs and attorneys' fees.

The attorney for a person subject to a lien is authorized to file with the recording officer a notice of invalid lien.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Elected officials should not have liens placed on their property because someone believes that the official has not properly performed his or her duties. The liens cause considerable anxiety and cost a lot of money to remove. Legitimate business transactions should not be disrupted because of illegal liens. The bill does not affect legitimate liens authorized by statute.

Testimony Against: None.

Testified: PRO: Senator Cantu, prime sponsor; Narda Pierce, Solicitor General, AG Office; K. A. Rosenburg.