

SENATE BILL REPORT

SSB 6614

As Passed Senate, February 13, 1996

Title: An act relating to the construction trades.

Brief Description: Modifying provisions that concern builders and contractors.

Sponsors: Senate Committee on Labor, Commerce & Trade (originally sponsored by Senators Pelz, Sutherland and Heavey).

Brief History:

Committee Activity: Labor, Commerce & Trade: 1/29/96, 2/1/96 [DPS].
Passed Senate, 2/13/96, 46-2.

SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 6614 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pelz, Chair; Franklin, Fraser, McDonald, Newhouse and Wojahn.

Staff: Erika Lim (786-7488)

Background: Construction Liens. As the result of the work of a task force formed in 1989, the construction lien law was substantially rewritten during the 1991 and 1992 sessions. Parties who provide materials, professional services, equipment, or labor may lien the improvement for moneys owed them. Although a property owner may not directly deal with all project participants, the owner is the one responsible for making sure that everyone is paid because the owner benefits by having her or his property improved.

Most claimants are required to give notice of lien to the owner. Certain parties are not required to give notice: parties who contract directly with the owner, because the owner already knows that money will be owed; subcontractors who contract with the prime, because the prime acts as the owner's agent; and laborers, because they are wage earners and are at the job site and can be asked whether they are being paid. The notice must contain information on how to avoid construction liens, such as making out joint checks and requesting lien releases.

The notice may be given at any time and protects the right to lien for materials, services, or equipment provided in the 60 days immediately preceding the notice. In cases involving the new construction of single family homes, the lien notice protects the right to lien only the materials, services, or equipment provided in the ten days preceding the notice.

The lien itself must be filed within 90 days after a project participant has ceased providing materials, services, equipment, or labor. It is recorded like other instruments affecting title.

After a lien is filed, the claimant must commence an action in superior court within eight months. After a case is started, it must be prosecuted within two years. In case of judgment in favor of the claimant, the lien is foreclosed in the same manner as a mortgage.

After a lien has been filed, an owner may file a bond to release the property and may also ask the court to dismiss frivolous liens or reduce excessive liens. An owner also has the right to withhold or deduct from payments to the prime the lien amount claimed by any subcontractor, supplier, or laborer, and the right to recover proven lien amounts in excess of any money still owed to the prime.

In cases involving the repair, alteration, or remodel of a single-family owner-occupied home or appurtenant garage, the owner's liability to lien claimants is limited to the amount not yet paid to the prime at the time the notice of lien is received.

There have been concerns that people who are building new homes may be liable for liens in excess of the amount of the total contract.

Contractor Registration. All construction contractors are required to register with the Department of Labor and Industries. The contractor registration statute establishes application procedures, bonding and insurance requirements, notice requirements to customers, and penalties for violations.

There have also been concerns that existing contractor registration laws are not sufficient to protect consumers and are not being adequately enforced against unregistered contractors.

Summary of Bill: Construction Liens. The lien liability cap currently available for remodels is extended to cover the new construction of single-family residences if the owner is not the prime contractor and if the owner resides in the residence within 60 days of substantial completion.

Prompt Pay. Owners, developers, prime contractors, subcontractors, and construction managers hold construction money for those who paid the money and those who are owed money. The money must be used to pay those who are owed; failure to do so is civil fraud and a violation of the Consumer Protection Act.

An owner must pay a prime within ten days after receipt of a draw, progress payment, or loan disbursement. In turn, the prime must pay subcontractors within ten days, and subs must pay lower-tiered subs and suppliers within ten days. There are provisions in cases of good-faith disputes.

The prompt pay provisions apply only to new construction of single-family residences that are to be occupied by an owner of the property within 60 days of substantial completion.

Contractor Registration. Several new infractions and misdemeanors are created for unregistered contractors and contractors who hire unregistered contractors. The Department of Labor and Industries is permitted to check an applicant's background for prior infractions and misdemeanors within the construction industry and may deny an application if an applicant has a history of noncompliance or has an outstanding judgment from a previous registration.

The department may issue a subpoena to sellers of advertising in order to obtain the name, address, and telephone number of persons who have advertised themselves as contractors.

Appropriation: None.

Fiscal Note: Requested on January 26, 1996.

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

Testimony For: The prompt pay provisions will ensure that construction moneys go to those who are owed in a timely fashion.

Testimony Against (original bill): The lien law provisions leave loopholes for situations involving "time and materials" contracts or for owners who act as their own prime contractors. The prompt pay provisions interfere with the private right to contract.

Testified: Peter Fluetsch, Sunset Air, Inc.; Kathleen Collins, SMACNA (pro); Dave Morgan, Lien Law Task Force (pro); Dan Sexton, WA State Assn. of Plumbers & Pipefitters (pro); Rick Slunaker, Associated General Contractors of WA; Larry Stevens, U.S.A. (pro); Dick Ducharme, Building Industry Assn. of WA.