

HOUSE BILL REPORT

ESB 6441

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to construction liens.

Brief Description: Establishing construction lien rights.

Sponsor(s): Senators McMullen and Matson.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 27, 1992, DPA.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 11 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: In 1991, the Legislature enacted a comprehensive revision of the construction lien laws. The new law takes effect April 1, 1992.

Summary of Amended Bill: Technical and clarifying changes are made throughout the construction lien statutes. A consumer protection violation is added to make acts of coercion against contractors and material suppliers unfair practices when the coercion is to discourage the filing of liens.

Changes in terms used in the statute

In several places in the statute, it is clarified that "contracting directly with the owner" also includes contracting with the owner's common law agent. The definition of "owner" is deleted.

The term "notice of claim of lien" is changed to "claim of lien" in several places throughout the statute.

Requirements for notice of a claim of lien

The requirement for giving lien claim notice to the prime contractor is clarified by requiring that the notice must conform with the statutory requirements for a lien claim notice.

In addition to mailing or making personal service of the lien claim notice to an owner, the notice may be personally delivered. Evidence of the delivery is required or, if served, an affidavit of service is required.

The exceptions from the requirement for providing lien claim notice are changed by adding that there is no exemption for subcontractors who contract with a prime contractor and who repair or remodel an existing owner-occupied single-family residence or garage if the subcontractor did not contract directly with the owner or the owner's common law agent.

Contents of lien notices

The contents of the notice for filing a claim of lien are revised to an outline form. The form must include a sworn statement that the claim is not frivolous and not clearly excessive.

The contents are specified for the notice made by lien claimants who provide professional services before an improvement has commenced. If the notice is not recorded, the lien is subordinate to the interest of subsequent mortgagee and invalid as to a subsequent purchaser, if both the mortgagee and purchaser acted in good faith.

Determining the amount of a lien against a single-family residence

A definition of "received" is added for determining when an owner of a single-family residence received the lien claim notice for the purpose of determining the amount of the potential lien. "Received" means actual receipt of notice by personal service or by registered or certified mail, or three days after mailing, excluding Saturdays, Sundays, and holidays.

Frivolous lien claims

The persons who may bring a court motion to challenge a frivolous or clearly excessive lien claim is expanded to include, in addition to the owner or contractor, the lender or another lien claimant. The motion must state the grounds upon which relief is asked and must be supported by an affidavit.

Procedures for foreclosure of the lien and recovery on the judgment

The proceedings for foreclosure of a lien claim are modified to provide that any interest in the property, not just a lien claim, held by other persons is not foreclosed unless the person is a party to the action.

The section providing for recovery when judgment is given against an owner's property on a lien claim is changed to correct references to "lien claimant" that, in the previous statute, referred to "contractor." With this change, the owner is authorized to deduct from amounts due to the prime contractor the amount of the lien judgment, and the owner is also entitled to recover back from the prime contractor an amount equal to the lien amount that is in excess of the amount due to the prime contractor.

"Stop" notices to real property lenders

Under the procedures for a lender providing construction financing, the requirement is deleted that the notice sent to the lender by the lien claimant include a statement that, under penalty of perjury, the claimant believes the notice to be true. The process for giving notice is modified to require mailing by certified or registered mail, or delivering personally or serving the notice.

Requirements similar to those for frivolous lien claims are added to the procedures for "stop" notices sent to real property lenders.

Consumer protection violation for coercion of a contractor

Any act of coercion or attempted coercion by a contractor or developer to discourage a contractor or material supplier from giving a notice of a right to claim a lien or from filing a lien claim constitutes a violation of the consumer protection act.

Effective date changes

The effective date of the 1991 amendments to the lien law is changed from April 1, 1992, to June 1, 1992.

Amended Bill Compared to Engrossed Bill: The striking amendment incorporates the provisions of the original bill and makes further technical changes, including the following: (1) makes the requirements for giving lien notice consistent and corrects references to giving notice, so that the references are consistent; (2) corrects the "Notice to Owner" to conform with changes made in the notice

requirements; (3) makes technical corrections to the consumer protection act section; (4) corrects references to "lien" and "lien claim" where erroneously used; (5) changes the statutory form to include a line for indicating the amount of the lien; (6) allows lenders, as well as contractors and lien claimants, to challenge a stop notice as frivolous; (7) corrects the effective date clause to declare an emergency, and changes the effective date of this bill and the 1991 lien law amendments from April 1, 1992, to June 1, 1992.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect on June 1, 1992.

Testimony For: The lien law revisions from last year took more than two years to develop. All the parties needed time to review those amendments and determine whether further technical changes were needed. This bill makes the technical changes that have been identified during the review period. It may be helpful to change the effective date to June 1 to give everyone more time to print new lien forms.

Testimony Against: None.

Witnesses: Duke Schaub, Associated General Contractors; and Gary Smith, Independent Business Association.