

# SENATE BILL REPORT

## SB 6329

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As of January 25, 1996

**Title:** An act relating to notices of mechanics and materialmen's liens.

**Brief Description:** Including new construction in a notice provision for mechanics and materialmen's liens.

**Sponsors:** Senators Deccio and Pelz.

**Brief History:**

**Committee Activity:** Labor, Commerce & Trade: 1/29/96.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

**Staff:** Erika Lim (786-7488)

**Background:** 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 10 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 recent concerns that people who are building new homes may be liable for liens in excess of the amount of the total contract.

**Summary of Bill:** In cases involving new construction of owner-occupied residences of three or fewer units, a perfected contractor's lien has priority over a mortgage or a deed of trust if the lien claimant served the lender with a copy of the notice of lien. The notice must be delivered within 10 days of cessation of the furnishing of materials, services, equipment, or labor. The lender may request an itemized accounting, which must be provided by the claimant within 10 days. Failure to timely provide this itemization results in a waiver of preference of that claimant's lien.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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