

2 SB 6441 - S COMM AMD  
3 By Committee on Commerce & Labor

4  
5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 60.04.011 and 1991 c 281 s 1 are each amended to read  
8 as follows:

9 Unless the context requires otherwise, the definitions in this  
10 section apply throughout this chapter.

11 (1) "Construction agent" means any registered or licensed  
12 contractor, registered or licensed subcontractor, architect, engineer,  
13 or other person having charge of any improvement to real property, who  
14 shall be deemed the agent of the owner for the limited purpose of  
15 establishing the lien created by this chapter.

16 (2) "Contract price" means the amount agreed upon by the  
17 contracting parties, or if no amount is agreed upon, then the customary  
18 and reasonable charge therefor.

19 (3) "Draws" means periodic disbursements of interim or construction  
20 financing by a lender.

21 (4) "Furnishing labor, professional services, materials, or  
22 equipment" means the performance of any labor or professional services,  
23 the contribution owed to any employee benefit plan on account of any  
24 labor, the provision of any supplies or materials, and the renting,  
25 leasing, or otherwise supplying of equipment for the improvement of  
26 real property.

27 (5) "Improvement" means: (a) Constructing, altering, repairing,  
28 remodeling, demolishing, clearing, grading, or filling in, of, to, or

1 upon any real property or street or road in front of or adjoining the  
2 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,  
3 or providing other landscaping materials on any real property; and (c)  
4 providing professional services upon real property or in preparation  
5 for or in conjunction with the intended activities in (a) or (b) of  
6 this subsection.

7 (6) "Interim or construction financing" means that portion of money  
8 secured by a mortgage, deed of trust, or other encumbrance to finance  
9 improvement of, or to real property, but does not include:

10 (a) Funds to acquire real property;

11 (b) Funds to pay interest, insurance premiums, lease deposits,  
12 taxes, assessments, or prior encumbrances;

13 (c) Funds to pay loan, commitment, title, legal, closing,  
14 recording, or appraisal fees;

15 (d) Funds to pay other customary fees, which pursuant to agreement  
16 with the owner or borrower are to be paid by the lender from time to  
17 time;

18 (e) Funds to acquire personal property for which the potential lien  
19 claimant may not claim a lien pursuant to this chapter.

20 (7) "Labor" means exertion of the powers of body or mind performed  
21 at the site for compensation. "Labor" includes amounts due and owed to  
22 any employee benefit plan on account of such labor performed.

23 (8) "Mortgagee" means a person who has a valid mortgage of record  
24 or deed of trust of record securing a loan.

25 (~~(9) ("Owner" means the record holder of any legal or beneficial  
26 title to the real property to be improved or developed.~~

27 ~~(10))~~ "Owner-occupied" means a single-family residence occupied by  
28 the owner as his or her principal residence.

1       (~~(11)~~) (10) "Payment bond" means a surety bond issued by a surety  
2 licensed to issue surety bonds in the state of Washington that confers  
3 upon potential claimants the rights of third party beneficiaries.

4       (~~(12)~~) (11) "Potential lien claimant" means any person or entity  
5 entitled to assert lien rights under this chapter who has otherwise  
6 complied with the provisions of this chapter and is registered or  
7 licensed if required to be licensed or registered by the provisions of  
8 the laws of the state of Washington.

9       (~~(13)~~) (12) "Prime contractor" includes all contractors, general  
10 contractors, and specialty contractors, as defined by chapter 18.27 or  
11 19.28 RCW, or who are otherwise required to be registered or licensed  
12 by law, who contract directly with a property owner or their common law  
13 agent to assume primary responsibility for the creation of an  
14 improvement to real property, and includes property owners or their  
15 common law agents who are contractors, general contractors, or  
16 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who  
17 are otherwise required to be registered or licensed by law, who offer  
18 to sell their property without occupying or using the structures,  
19 projects, developments, or improvements for more than one year.

20       (~~(14)~~) (13) "Professional services" means surveying, establishing  
21 or marking the boundaries of, preparing maps, plans, or specifications  
22 for, or inspecting, testing, or otherwise performing any other  
23 architectural or engineering services for the improvement of real  
24 property.

25       (~~(15)~~) (14) "Real property lender" means a bank, savings bank,  
26 savings and loan association, credit union, mortgage company, or other  
27 corporation, association, partnership, trust, or individual that makes  
28 loans secured by real property located in the state of Washington.

29       (~~(16)~~) (15) "Site" means the real property which is or is to be  
30 improved.

1       (~~(17)~~) (16) "Subcontractor" means a general contractor or  
2 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who  
3 is otherwise required to be registered or licensed by law, who  
4 contracts for the improvement of real property with someone other than  
5 the owner of the property or their common law agent."

6       "**Sec. 2.** RCW 60.04.031 and 1991 c 281 s 3 are each amended to read  
7 as follows:

8       (1) Except as otherwise provided in this section, every person  
9 furnishing professional services, materials, or equipment for the  
10 improvement of real property shall give the owner or reputed owner  
11 notice in writing of the right to claim a lien. If the prime  
12 contractor is in compliance with the requirements of RCW 19.27.095,  
13 60.04.230, and 60.04.261, this notice shall also be given to the prime  
14 contractor as described in this subsection unless the potential lien  
15 claimant has contracted directly with the prime contractor. The notice  
16 may be given at any time but only protects the right to claim a lien  
17 for professional services, materials, or equipment supplied after the  
18 date which is sixty days before:

19       (a) Mailing the notice by certified or registered mail to the owner  
20 or reputed owner; or

21       (b) Delivering or serving the notice personally upon the owner or  
22 reputed owner and obtaining evidence of (~~(service)~~) delivery in the  
23 form of a receipt or other acknowledgement signed by the owner or  
24 reputed owner or an affidavit of service.

25       In the case of new construction of a single-family residence, the  
26 notice of a right to claim a lien may be given at any time but only  
27 protects the right to claim a lien for professional services,  
28 materials, or equipment supplied after a date which is ten days before  
29 the notice is mailed or served as described in this subsection.

1 (2) Notices of a right to claim a lien shall not be required of:

2 (a) Persons who contract directly with the owner or the owner's  
3 common law agent;

4 (b) Laborers whose claim of lien is based solely on performing  
5 labor; or

6 (c) Subcontractors who contract for the improvement of real  
7 property directly with the prime contractor, except as provided in  
8 subsection (3)(b) of this section.

9 (3) Persons who furnish professional services, materials, or  
10 equipment in connection with the repair, alteration, or remodel of an  
11 existing owner-occupied single-family residence or appurtenant garage:

12 (a) Who contract directly with the owner-occupier or their common  
13 law agent shall not be required to send a written notice of the right  
14 to claim a lien and shall have a lien for the full amount due under  
15 their contract, as provided in RCW 60.04.021; or

16 (b) Who do not contract directly with the owner-occupier or their  
17 common law agent shall give notice of the right to claim a lien to the  
18 owner-occupier. Liens ((claims by)) of persons furnishing professional  
19 services, materials, or equipment who do not contract directly with the  
20 owner-occupier or their common law agent may only be satisfied from  
21 amounts not yet paid to the prime contractor by the owner at the time  
22 the notice described in this section is received, regardless of whether  
23 amounts not yet paid to the prime contractor are due. For the purposes  
24 of this section "received" means actual notice by personal service, or  
25 registered or certified mail, or three days after mailing by first  
26 class mail, excluding Saturdays, Sundays, or legal holidays.

27 (4) The notice of right to claim a lien described in subsection (1)  
28 of this section, shall include but not be limited to the following  
29 information and shall substantially be in the following form, using  
30 lower-case and upper-case ten-point type where appropriate.

1 NOTICE TO OWNER

2 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

3 PROTECT YOURSELF FROM PAYING TWICE

4 To:.....  
5 Date:.....  
6 Re:.....(description of property: Street address or  
7 general location.)  
8 From:.....

9 AT THE REQUEST OF: ..... (Name of person ((placing the  
10 order)) ordering the professional services, materials, or equipment)

11 THIS IS NOT A LIEN: This notice is sent to you to tell you who is  
12 providing professional services, materials, or equipment for the  
13 improvement of your property and to advise you of the rights of these  
14 persons and your responsibilities. Also take note that laborers on  
15 your project may claim a lien without sending you a notice.

16 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

17 Under Washington law, those who ((work on or provide materials))  
18 furnish labor, professional services, materials, or equipment for the  
19 repair, remodel, or alteration of your owner-occupied principal  
20 residence and who are not paid, have a right to enforce their claim for  
21 payment against your property. This claim is known as a construction  
22 lien.

23 The law limits the amount that a lien claimant can claim against your  
24 property. Claims may only be made against that portion of the contract  
25 price you have not yet paid to your prime contractor as of the time  
26 ((you received)) this notice was personally served on you or five days  
27 after this notice was mailed to you. Review the back of this notice  
28 for more information and ways to avoid lien claims.

29 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

30 We have or will be providing ((labor, materials,)) professional  
31 services, materials, or equipment for the improvement of your  
32 commercial or new residential project. In the event you or your  
33 contractor fail to pay us, we may file a lien against your property.  
34 A lien may be claimed for all ((materials, equipment, and))  
35 professional services, materials, or equipment furnished after a date  
36 that is sixty days before this notice was personally served on you or  
37 mailed to you, unless the improvement to your property is the  
38 construction of a new single-family residence, then ten days before  
39 this notice was personally served on you or mailed to you.

40 Sender: .....  
41 Address: .....  
42 Telephone: .....

43 Brief description of professional services, materials, or equipment  
44 provided or to be provided: .....



1 shall be subordinate to the interest of any subsequent mortgagee and  
2 invalid as to the interest of any subsequent purchaser ((who)) if the  
3 mortgagee or purchaser acts in good faith and for a valuable  
4 consideration acquires an interest in the property prior to the  
5 commencement of an improvement as defined in RCW 60.04.011(5) (a) or  
6 (b) without notice of the professional services being provided. The  
7 notice described in this subsection shall be substantially in the  
8 following form:

9                   NOTICE OF FURNISHING PROFESSIONAL SERVICES

10       That on the (day) day of (month and year) , (name of provider)  
11 began providing professional services upon or for the improvement of  
12 real property legally described as follows:

13                               [Legal Description  
14   is mandatory]

15       The general nature of the professional services provided is  
16 .....  
17 .....  
18 The owner or reputed owner of the real property is .....  
19 .....

20   .....  
21   (Signature)

22   .....  
23   (Name of Claimant)

24   .....  
25   (Street Address)

26   .....  
27   (City, State, Zip Code)

28   .....  
29   (Phone Number)

30       (6) A lien authorized by this chapter shall not be enforced unless  
31 the lien claimant has complied with the applicable provisions of this  
32 section."

33       "NEW SECTION. Sec. 3. A new section is added to chapter 60.04 RCW  
34 to read as follows:

1 Any act of coercion or attempted coercion, including a threat to  
2 withhold future contracts, by a contractor or developer to discourage  
3 a contractor, subcontractor, or material or equipment supplier from  
4 giving an owner the notice of right to claim a lien required by RCW  
5 60.04.031, or from filing a lien claim under this chapter shall  
6 constitute an unfair or deceptive act or practice in trade or commerce  
7 and a violation of chapter 19.86 RCW."

8 "Sec. 4. RCW 60.04.041 and 1991 c 281 s 4 are each amended to read  
9 as follows:

10 A contractor or subcontractor required to be registered under  
11 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise  
12 required to be registered or licensed by law, shall be deemed the  
13 construction agent of the owner for the purposes of establishing the  
14 lien created by this chapter only if so registered or licensed.  
15 Persons dealing with contractors or subcontractors may rely, for the  
16 purposes of this section, upon a certificate of registration issued  
17 pursuant to chapter 18.27 RCW or license issued pursuant to chapter  
18 19.28 RCW, or other certificate or license issued pursuant to law,  
19 covering the period when the labor, professional services, material, or  
20 equipment shall be furnished, and the lien rights shall not be lost by  
21 suspension or revocation of registration or license without their  
22 knowledge. No lien rights described in this ((~~section~~)) chapter shall  
23 be lost or denied by virtue of the absence, suspension, or revocation  
24 of such registration or license with respect to any contractor or  
25 subcontractor not in immediate contractual privity with the lien  
26 claimant."

27 "Sec. 5. RCW 60.04.051 and 1991 c 281 s 5 are each amended to read  
28 as follows:

1       The lot, tract, or parcel of land which is improved is subject to  
2 a lien to the extent of the interest of the (~~(person for whom)~~) owner  
3 at whose instance, directly or through a common law or construction  
4 agent the labor, professional services, equipment, or materials were  
5 furnished, as the court deems appropriate for satisfaction of the lien.  
6 If, for any reason, the title or interest in the land upon which the  
7 improvement is situated cannot be subjected to the lien, the court in  
8 order to satisfy the lien may order the sale and removal of the  
9 improvement from the land which is subject to the lien(~~(, from the~~  
10 ~~land)~~))."

11       "**Sec. 6.** RCW 60.04.081 and 1991 c 281 s 8 are each amended to read  
12 as follows:

13       (1) Any owner of real property subject to a recorded (~~(notice of)~~)  
14 claim of lien under this chapter, or (~~(the)~~) contractor (~~(or)~~),  
15 subcontractor, lender, or lien claimant who believes the claim of lien  
16 to be frivolous and made without reasonable cause, or clearly excessive  
17 may apply by motion to the superior court for the county where the  
18 property, or some part thereof is located, for an order directing the  
19 lien claimant to appear before the court at a time no earlier than six  
20 nor later than fifteen days following the date of service of the  
21 application and order on the lien claimant, and show cause, if any he  
22 or she has, why the (~~(lien claim)~~) relief requested should not be  
23 (~~(dismissed, with prejudice)~~) granted. The motion shall state the  
24 grounds upon which relief is asked, and shall be supported by the  
25 affidavit of the applicant or his or her attorney setting forth a  
26 concise statement of the facts upon which the motion is based.

27       (2) The order shall clearly state that if the lien claimant fails  
28 to appear at the time and place noted the lien (~~(claim)~~) shall be  
29 (~~(dismissed)~~) released, with prejudice (~~(+)~~), and that the lien

1 claimant shall be ordered to pay the costs requested by the applicant  
2 including reasonable attorneys' fees.

3 (3) If no action to foreclose the lien claim has been filed, the  
4 clerk of the court shall assign a cause number to the application and  
5 obtain from the applicant a filing fee of thirty-five dollars. If an  
6 action has been filed to foreclose the lien claim, the application  
7 shall be made a part of that action.

8 (4) If, following a ~~((full))~~ hearing on the matter, the court  
9 determines that the lien ~~((claim))~~ is frivolous and made without  
10 reasonable cause, or clearly excessive, the court shall issue an order  
11 ~~((dismissing))~~ releasing the lien claim if frivolous and made without  
12 reasonable cause, or reducing the ~~((claim))~~ lien if clearly excessive,  
13 and awarding costs and reasonable attorneys' fees to the applicant to  
14 be paid by the lien claimant. If the court determines that the ~~((claim~~  
15 ~~ef))~~ lien is not frivolous and was made with reasonable cause, and is  
16 not clearly excessive, the court shall issue ~~((and))~~ an order so  
17 stating and awarding costs and reasonable attorneys' fees to the lien  
18 claimant to be paid by the applicant.

19 (5) Proceedings under this section shall not affect other rights  
20 and remedies available to the parties under this chapter or otherwise."

21 "Sec. 7. RCW 60.04.091 and 1991 c 281 s 9 are each amended to read  
22 as follows:

23 Every person claiming a lien under RCW 60.04.021 shall ~~((record))~~  
24 file for recording, in the county where the subject property is  
25 located, a notice of claim of lien not later than ninety days after the  
26 person has ceased to furnish labor, professional services, materials,  
27 or equipment or the last date on which employee benefit contributions  
28 were due. The notice of claim of lien:

29 (1) Shall state in substance and effect:

1 (a) The name, phone number, and address of the claimant;

2 (b) The first and last date on which the labor, professional  
3 services, materials, or equipment was furnished or employee benefit  
4 contributions were due;

5 (c) The name of the person indebted to the claimant;

6 (d) The street address, legal description, or other description  
7 reasonably calculated to identify, for a person familiar with the area,  
8 the location of the real property to be charged with the lien;

9 (e) The name of the owner or reputed owner of the property, if  
10 known, and, if not known, that fact shall be stated; and

11 (f) The principal amount for which the lien is claimed.

12 (2) Shall be signed by the claimant or some person authorized to  
13 act on his or her behalf who shall affirmatively state they have read  
14 the notice of claim of lien and believe the notice of claim of lien to  
15 be true and correct under penalty of perjury, and shall be acknowledged  
16 pursuant to chapter 64.08 RCW. If the ((claim)) lien has been  
17 assigned, the name of the assignee shall be stated. Where an action to  
18 foreclose the lien has been commenced such notice of claim of lien may  
19 be amended as pleadings may be by order of the court insofar as the  
20 interests of third parties are not adversely affected by such  
21 amendment. A claim of lien substantially in the following form shall  
22 be sufficient:

23 CLAIM OF LIEN

24 ....., claimant, vs .., ((owner or reputed owner)) defendant:

25 ((Notice is hereby given that on the ..... day of ..... (date of  
26 commencement of furnishing labor, professional services, materials,  
27 or equipment and the last date contributions to any type of  
28 employee benefit plan became due), ..... at the request of  
29 ....., ..... commenced to (perform labor, furnish  
30 professional services, materials, or equipment) upon .....  
31 (here describe property subject to the lien) of which property the

1 owner, or reputed owner, is ..... (or if the owner or reputed  
2 owner is not known, insert the word "unknown"), the (furnishing of  
3 labor, professional services, materials, or equipment) ceased on  
4 the ..... day of .....; that said (labor, professional  
5 services, material, or equipment) was of the value of .....  
6 dollars, for which the undersigned claims a lien upon the property  
7 herein described for the sum of ..... dollars. (In case the  
8 claim has been assigned, add the words "and ..... is assignee  
9 of said claim", or claims, if several are united.)) Notice is  
10 hereby given that the person named below claims a lien pursuant to  
11 chapter 64.04 RCW. In support of this lien the following  
12 information is submitted:

13           1. NAME OF LIEN CLAIMANT: .....  
14            TELEPHONE NUMBER: .....  
15            ADDRESS: .....

16           2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,  
17 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR  
18 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME  
19 DUE: .....

20           3. NAME OF PERSON INDEBTED TO THE CLAIMANT:  
21 .....  
22 .....

23           4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS  
24 CLAIMED (Street address, legal description or other information  
25 that will reasonably describe the property). .....  
26 .....  
27 .....

28           5. NAME OF THE OWNER OR REPUTED OWNER (If not known state  
29 "unknown"):.....

30           6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;  
31 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN  
32 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS  
33 FURNISHED:.....  
34 .....

35           7. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE  
36 HERE:.....  
37 .....

38 ..... , Claimant  
39 .....  
40 .....  
41 (Phone number, address, city,  
42 and state of claimant)

43 STATE OF WASHINGTON, COUNTY OF  
44 .....,ss.

45 ....., being sworn, says: I am the claimant (or attorney of the  
46 claimant, or administrator, representative, or agent of the trustees  
47 of an employee benefit plan) above named; I have read or heard the  
48 foregoing claim, read and know the contents thereof, and believe the  
49 same to be true and correct and that the claim of lien is not

1 frivolous, is made with reasonable cause and is not clearly excessive  
2 under penalty of perjury.

3 .....  
4 Subscribed and sworn to before me this ..... day of .....  
5 .....

6 The period provided for recording the ((~~notice~~)) claim of lien is  
7 a period of limitation and no action to foreclose a ((~~claim of~~)) lien  
8 shall be maintained unless the ((~~notice is recorded~~)) claim of lien is  
9 filed for recording within the ninety-day period stated. The lien  
10 claimant shall give ((~~notice of~~)) a copy of the claim of lien to the  
11 owner or reputed owner by mailing it by certified or registered mail or  
12 by personal service within fourteen days of the time the claim of lien  
13 is ((~~recorded~~)) filed for recording. Failure to do so results in a  
14 forfeiture of any right the claimant may have to attorneys' fees and  
15 costs against the owner under RCW 60.04.181."

16 "Sec. 8. RCW 60.04.141 and 1991 c 281 s 14 are each amended to  
17 read as follows:

18 No lien created by this chapter binds the property subject to the  
19 lien for a longer period than eight calendar months after the ((~~notice~~  
20 ~~of~~)) claim of lien has been recorded unless an action is filed by the  
21 lien claimant within that time in the superior court in the county  
22 where the subject property is located to enforce the lien, and service  
23 is made upon the owner of the subject property within ninety days of  
24 the date of filing the action; or, if credit is given and the terms  
25 thereof are stated in the ((~~notice of~~)) claim of lien, then eight  
26 calendar months after the expiration of such credit; and in case the  
27 action is not prosecuted to judgment within two years after the  
28 commencement thereof, the court, in its discretion, may dismiss the  
29 action for want of prosecution, and the dismissal of the action or a

1 judgment rendered thereon that no lien exists shall constitute a  
2 cancellation of the lien. This is a period of limitation, which shall  
3 be tolled by the filing of any petition seeking protection under Title  
4 Eleven, United States Code by an owner of any property subject to the  
5 lien established by this chapter."

6 "Sec. 9. RCW 60.04.151 and 1991 c 281 s 15 are each amended to  
7 read as follows:

8 The lien claimant shall be entitled to recover upon the claim  
9 recorded the contract price after deducting all claims of other lien  
10 claimants to whom the claimant is liable, for furnishing labor,  
11 professional services, materials, or equipment; and in all cases where  
12 a ~~((notice of))~~ claim of lien shall be recorded under this chapter for  
13 labor, professional services, materials, or equipment supplied to any  
14 lien claimant, he or she shall defend any action brought thereupon at  
15 his or her own expense~~((; and))~~. During the pendency of the action,  
16 the owner may withhold from the prime contractor the amount of money  
17 for which a claim is recorded by any subcontractor, supplier, or  
18 laborer~~((; and))~~. In case of judgment against the owner or the owner's  
19 property, upon the lien, the owner shall be entitled to deduct from  
20 sums due to the prime contractor the principal amount of the judgment  
21 from any amount due or to become due from ~~((him or her))~~ the owner to  
22 the ~~((lien claimant))~~ prime contractor plus such costs, including  
23 interest and attorneys' fees, as the court deems just and equitable,  
24 and ~~((he or she))~~ the owner shall be entitled to recover back from the  
25 ~~((lien claimant))~~ prime contractor the amount for which ~~((the))~~ a lien  
26 ~~((is))~~ or liens are established in excess of any sum that may remain  
27 due from ~~((him or her))~~ the owner to the ~~((lien claimant))~~ prime  
28 contractor."

1       **"Sec. 10.** RCW 60.04.161 and 1991 c 281 s 16 are each amended to  
2 read as follows:

3       Any owner of real property subject to a recorded (~~notice of~~)  
4 claim of lien under this chapter, or (~~the~~) contractor (~~or~~),  
5 subcontractor, lender, or lien claimant who disputes the correctness or  
6 validity of the (~~notice of~~) claim of lien may record, either before  
7 or after the commencement of an action to enforce the lien, in the  
8 office of the county recorder or auditor in the county where the  
9 (~~notice of~~) claim of lien was recorded, a bond issued by a surety  
10 company authorized to issue surety bonds in the state. The surety  
11 shall be listed in the latest federal department of the treasury list  
12 of surety companies acceptable on federal bonds, published in the  
13 Federal Register, as authorized to issue bonds on United States  
14 government projects with an underwriting limitation, including  
15 applicable reinsurance, equal to or greater than the amount of the bond  
16 to be recorded. The bond shall contain a description of the (~~notice~~  
17 ~~of~~) claim of lien and real property involved, and be in an amount  
18 equal to the greater of five thousand dollars or two times the amount  
19 of the lien claimed if it is ten thousand dollars or less, and in an  
20 amount equal to or greater than one and one-half times the amount of  
21 the lien if it is in excess of ten thousand dollars. If the (~~notice~~  
22 ~~of~~) claim of lien affects more than one parcel of real property and is  
23 segregated to each parcel, the bond may be segregated the same as in  
24 the (~~notice of~~) claim of lien. A separate bond shall be required for  
25 each (~~notice of~~) claim of lien made by separate claimants. However,  
26 a single bond may be used to guarantee payment of amounts claimed by  
27 more than one (~~lien~~) claim of lien by a single claimant so long as  
28 the amount of the bond meets the requirements of this section as  
29 applied to the aggregate sum of all claims by such claimant. The  
30 condition of the bond shall be to guarantee payment of any judgment

1 upon the lien in favor of the lien claimant entered in any action to  
2 recover the amount claimed in a (~~notice of~~) claim of lien, or on the  
3 claim asserted in the (~~notice of~~) claim of lien. The effect of  
4 recording a bond shall be to release the real property described in the  
5 notice of claim of lien from the lien and any action brought to recover  
6 the amount claimed. Unless otherwise prohibited by law, if no action  
7 is commenced to recover on a lien within the time specified in RCW  
8 60.04.141, the surety shall be discharged from liability under the  
9 bond. If an action is timely commenced, then on payment of any  
10 judgment entered in the action or on payment of the full amount of the  
11 bond to the holder of the judgment, whichever is less, the surety shall  
12 be discharged from liability under the bond.

13 Nothing in this section shall in any way prohibit or limit the use  
14 of other methods, devised by the affected parties to secure the  
15 obligation underlying a claim of lien and to obtain a release of real  
16 property from a claim of lien."

17 **"Sec. 11.** RCW 60.04.171 and 1991 c 281 s 17 are each amended to  
18 read as follows:

19 The lien provided by this chapter, for which claims of lien have  
20 been recorded, may be foreclosed and enforced by a civil action in the  
21 court having jurisdiction in the manner prescribed for the judicial  
22 foreclosure of a mortgage. The court shall have the power to order the  
23 sale of the property. In any action brought to foreclose a lien, the  
24 owner shall be joined as a party. The (~~lien claims of all~~) interest  
25 in the real property of any person(~~(s)~~) who, prior to the commencement  
26 of the action, (~~have legally~~) has a recorded (~~claims of lien~~  
27 ~~against~~) interest in the (~~same~~) property, or any part thereof, shall  
28 not be foreclosed or affected unless they are joined as a party.

1       A person shall not begin an action to foreclose a lien upon any  
2 property while a prior action begun to foreclose another lien on the  
3 same property is pending, but if not made a party plaintiff or  
4 defendant to the prior action, he or she may apply to the court to be  
5 joined as a party thereto, and his or her lien may be foreclosed in the  
6 same action. The filing of such application shall toll the running of  
7 the period of limitation established by RCW 60.04.141 until disposition  
8 of the application or other time set by the court. The court shall  
9 grant the application for joinder unless to do so would create an undue  
10 delay or cause hardship which cannot be cured by the imposition of  
11 costs or other conditions as the court deems just. If a lien  
12 foreclosure action is filed during the pendency of another such action,  
13 the court may, on its own motion or the motion of any party,  
14 consolidate actions upon such terms and conditions as the court deems  
15 just, unless to do so would create an undue delay or cause hardship  
16 which cannot be cured by the imposition of costs or other conditions.  
17 If consolidation of actions is not permissible under this section, the  
18 lien foreclosure action filed during the pendency of another such  
19 action shall not be dismissed if the filing was the result of mistake,  
20 inadvertence, surprise, excusable neglect, or irregularity. An action  
21 to foreclose a lien shall not be dismissed at the instance of a  
22 plaintiff therein to the prejudice of another party to the suit who  
23 claims a lien."

24       "**Sec. 12.** RCW 60.04.181 and 1991 c 281 s 18 are each amended to  
25 read as follows:

26       (1) In every case in which different construction liens are claimed  
27 against the same property, the court shall declare the rank of such  
28 lien or class of liens, which liens shall be in the following order:

29       (a) Liens for the performance of labor;

1 (b) Liens for contributions owed to employee benefit plans;

2 (c) Liens for furnishing material, supplies, or equipment;

3 (d) Liens for subcontractors, including but not limited to their  
4 labor and materials; and

5 (e) Liens for prime contractors, or for professional services.

6 (2) The proceeds of the sale of property must be applied to each  
7 lien or class of liens in order of its rank and, in an action brought  
8 to foreclose a lien, pro rata among each claimant in each separate  
9 priority class. A personal judgment may be rendered against any party  
10 personally liable for any debt for which the lien is claimed. If the  
11 lien is established, the judgment shall provide for the enforcement  
12 thereof upon the property liable as in the case of foreclosure of  
13 judgment liens. The amount realized by such enforcement of the lien  
14 shall be credited upon the proper personal judgment. The deficiency,  
15 if any, remaining unsatisfied, shall stand as a personal judgment, and  
16 may be collected by execution against any party liable therefor.

17 (3) The court may allow the prevailing party in the action, whether  
18 plaintiff or defendant, as part of the costs of the action, the moneys  
19 paid for recording the (~~notice of~~) claim of lien, costs of title  
20 report, bond costs, and attorneys' fees and necessary expenses incurred  
21 by the attorney in the superior court, court of appeals, supreme court,  
22 or arbitration, as the court or arbitrator deems reasonable. Such  
23 costs shall have the priority of the class of lien to which they are  
24 related, as established by subsection (1) of this section.

25 (4) Real property against which a lien under this chapter is  
26 enforced may be ordered sold by the court and the proceeds deposited  
27 into the registry of the clerk of the court, pending further  
28 determination respecting distribution of the proceeds of the sale."

1       **"Sec. 13.** RCW 60.04.221 and 1991 c 281 s 22 are each amended to  
2 read as follows:

3       Any lender providing interim or construction financing where there  
4 is not a payment bond of at least fifty percent of the amount of  
5 construction financing shall observe the following procedures and the  
6 rights and liabilities of the lender and potential lien claimant shall  
7 be affected as follows:

8       (1) Any potential lien claimant who has not received a payment  
9 within five days after the date required by their contract, invoice,  
10 employee benefit plan agreement, or purchase order may within thirty-  
11 five days of the date required for payment of the contract, invoice,  
12 employee benefit plan agreement, or purchase order, ~~((file))~~ give a  
13 notice as provided in subsections (2) and (3) of this section of the  
14 sums due and to become due, for which a potential lien claimant may  
15 claim a lien under this chapter.

16       (2) The notice shall be signed by the potential lien claimant or  
17 some person authorized to act on his or her behalf ~~((who shall~~  
18 ~~affirmatively state under penalty of perjury, they have read the notice~~  
19 ~~and believe it to be true and correct))~~.

20       (3) The notice shall be ~~((filed))~~ given in writing ~~((with))~~ to the  
21 lender at the office administering the interim or construction  
22 financing, with a copy ~~((furnished))~~ given to the owner and appropriate  
23 prime contractor. The notice shall be given by:

24       (a) Mailing the notice by certified or registered mail to the  
25 lender, owner, and appropriate prime contractor;

26       (b) Delivering or serving the notice personally and obtaining  
27 evidence of delivery in the form of a receipt or other acknowledgment  
28 signed by the lender, owner, and appropriate prime contractor, or an  
29 affidavit of service;

30       (c) Any combination of (a) and (b) of this subsection.

1 (4) The notice shall state in substance and effect as follows:

2 (a) The person, firm, trustee, or corporation filing the notice is  
3 entitled to receive contributions to any type of employee benefit plan  
4 or has furnished labor, professional services, materials, or equipment  
5 for which a ((right-of)) lien is given by this chapter.

6 (b) The name of the prime contractor, common law agent, or  
7 construction agent ordering the same.

8 (c) A common or street address of the real property being improved  
9 or the legal description of the real property.

10 (d) The name, business address, and telephone number of the lien  
11 claimant.

12 The notice to the lender may contain additional information but  
13 shall be in substantially the following form:

14 NOTICE TO REAL PROPERTY LENDER  
15 (Authorized by RCW .....

16 TO: .....  
17 (Name of Lender)  
18 .....  
19 (Administrative Office-Street Address)  
20 .....  
21 (City) (State) (Zip)  
22 AND TO: .....  
23 (Owner)  
24 AND TO: .....  
25 (Prime Contractor-If Different Than Owner)  
26 .....  
27 (Name of Laborer, Professional, Materials, or Equipment Supplier)  
28 whose business address is ....., did at the  
29 property located at .....  
30 (Check appropriate box) ( ) perform labor ( ) furnish professional  
31 services ( ) provide materials ( ) supply equipment as follows:  
32 .....  
33 .....  
34 .....  
35 which was ordered by .....,  
36 (Name of Person)  
37 whose address was stated to be.....  
38 .....

39 The amount owing to the undersigned according to contract or  
40 purchase order for labor, supplies, or equipment (as above  
41 mentioned) is the sum of ..... Dollars  
42 (\$ ..... ). Said sums became due and owing as of

1 .....  
2 (State Date)  
3 ....., .....

4 You are hereby required to withhold from any future draws on  
5 existing construction financing which has been made on the subject  
6 property (to the extent there remain undisbursed funds) the sum of  
7 ..... Dollars  
8 (\$ ..... ).

9 IMPORTANT

10 Failure to comply with the requirements of this notice may subject the  
11 lender to a whole or partial compromise of any priority lien interest  
12 it may have pursuant to RCW 60.04.226.

13 DATE: .....

14 By: .....  
15 Its: .....

16 ~~((4))~~ (5) After the receipt of the notice, the lender shall  
17 withhold from the next and subsequent draws the amount claimed to be  
18 due as stated in the notice. Alternatively, the lender may obtain from  
19 the prime contractor or borrower a payment bond for the benefit of the  
20 potential lien claimant in an amount sufficient to cover the amount  
21 stated in the potential lien claimant's notice. The lender shall be  
22 obligated to withhold amounts only to the extent that sufficient  
23 interim or construction financing funds remain undisbursed as of the  
24 date the lender receives the notice.

25 ~~((5))~~ (6) Sums so withheld shall not be disbursed by the lender,  
26 except by the written agreement of the potential lien claimant, owner,  
27 and prime contractor in such form as may be prescribed by the lender,  
28 or the order of a court of competent jurisdiction.

29 ~~((6))~~ (7) In the event a lender fails to abide by the provisions  
30 of subsections (4) and (5) of this section, then the mortgage, deed of  
31 trust, or other encumbrance securing the lender ~~((will))~~ shall be  
32 subordinated to the lien of the potential lien claimant to the extent  
33 of the interim or construction financing wrongfully disbursed, but in

1 no event more than the amount stated in the notice plus costs as fixed  
2 by the court, including reasonable attorneys' fees.

3 ~~((+7+))~~ (8) Any potential lien claimant shall be liable for any  
4 loss, cost, or expense, including reasonable attorneys' fees and  
5 statutory costs, to a party injured thereby arising out of any unjust,  
6 excessive, or premature notice filed under purported authority of this  
7 section. "Notice" as used in this subsection does not include notice  
8 given by a potential lien claimant of the right to claim liens under  
9 this chapter where no actual claim is made.

10 ~~((+8+))~~ (9)(a) Any owner of real property subject to a notice to  
11 real property lender under this section, or the contractor or  
12 subcontractor, or lien claimants who believe ~~((s))~~ the claim that  
13 underlies the notice is frivolous and made without reasonable cause, or  
14 is clearly excessive may apply by motion to the superior court for the  
15 county where the property, or some part thereof is located, for an  
16 order commanding the potential lien claimant who issued the notice to  
17 the real property lender to appear before the court at a time no  
18 earlier than six nor later than fifteen days from the date of service  
19 of the application and order on the potential lien claimant, and show  
20 cause, if any he or she has, why the notice to real property lender  
21 should not be declared void. The motion shall state the grounds upon  
22 which relief is asked and shall be supported by the affidavit of the  
23 applicant or his or her attorney setting forth a concise statement of  
24 the facts upon which the motion is based.

25 (b) The order shall clearly state that if the potential lien  
26 claimant fails to appear at the time and place noted, the notice to  
27 lender shall be declared void and that the potential lien claimant  
28 issuing the notice shall be ordered to pay the costs requested by the  
29 applicant including reasonable attorneys' fees.

1 (c) The clerk of the court shall assign a cause number to the  
2 application and obtain from the applicant a filing fee of thirty-five  
3 dollars.

4 (d) If, following a (~~full~~) hearing on the matter, the court  
5 determines that the claim upon which the notice to real property lender  
6 is based is frivolous and made without reasonable cause, or clearly  
7 excessive, the court shall issue an order declaring the notice to real  
8 property lender void if frivolous, made without reasonable cause, or  
9 reducing the amount stated in the notice if clearly excessive, and  
10 awarding costs and reasonable attorneys' fees to the applicant to be  
11 paid by the person who issued the notice. If the court determines that  
12 the claim underlying the notice to real property lender is not  
13 frivolous and was made with reasonable cause, and is not clearly  
14 excessive, the court shall issue an order so stating and awarding costs  
15 and reasonable attorneys' fees to the issuer of the notice to be paid  
16 by the applicant.

17 (e) Proceedings under this subsection shall not affect other rights  
18 and remedies available to the parties under this chapter or otherwise."

19 "NEW SECTION. Sec. 14. This act shall take effect April 1,  
20 1992."

21 **SB 6441** - S COMM AMD  
22 By Committee on Commerce & Labor

23  
24 On page 1, line 1 of the title, after "liens;" strike the remainder  
25 of the title and insert "amending RCW 60.04.011, 60.04.031, 60.04.041,  
26 60.04.051, 60.04.081, 60.04.091, 60.04.141, 60.04.151, 60.04.161,  
27 60.04.171, 60.04.181, and 60.04.221; adding a new section to chapter  
28 60.04 RCW; and providing an effective date."