

# HOUSE BILL REPORT

## SSB 5497

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

**Title:** An act relating to construction liens.

**Brief Description:** Revising the right to a construction lien.

**Sponsor(s):** Senate Committee on Commerce & Labor (originally sponsored by Senators McMullen, Matson, Rasmussen, Sellar, McCaslin, Murray and Stratton).

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, April 4, 1991, DPA.

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**HOUSE COMMITTEE ON  
COMMERCE & LABOR**

**Majority Report:** *Do pass as amended.* Signed by 10 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

**Staff:** Chris Cordes (786-711).

**Background:** Washington law creates a mechanics' and materialmen's lien to benefit any person who furnishes labor or materials for a construction project. The law includes the following major provisions.

Application of the construction lien

If a contractor, subcontractor, laborer, or material supplier does not receive payment for the services or materials, the lien procedures may be used to recover the payment. Separate lien procedures apply for architects and engineers, and for landscaping services.

A lien may be established if the labor or materials were supplied at the request of the owner's agent. The owner's agent includes registered contractors with whom the lien claimant might deal when furnishing work or materials. However, if the prime contractor is not registered, persons dealing with the prime contractor's registered subcontractors may lose their lien.

### Lien notice requirements

A notice of the right to claim a lien is required to establish a lien for material and equipment supplied for the project (not labor liens):

- (1) General notice. Persons supplying materials or equipment must give the owner written notice that a lien might be claimed. The notice will only cover the materials or equipment supplied during the preceding 60 days and all subsequent materials or equipment.
- (2) Residential notice. In the case of a single-family residence, notice of supplying materials or equipment must be given not later than 10 days after the date of first delivery of the materials or equipment.

A lien may not be enforced unless the applicable notice requirements are met. However, a lien not meeting the notice requirements is enforceable for materials and equipment provided after the date of the notice, but this lien is secondary to any lien for which proper notice was given.

### Enforcement of the lien

The lien must be filed and recorded within 90 days of the cessation of labor or furnishing of materials or equipment. The owner may file a notice stating the date of cessation within 10 days of the cessation. Unless the lien claimant disputes this date by filing the lien claim within 60 days, the owner will be able to start the 90 days running. The action on the lien must be started within eight months after the lien claim has been filed and must be prosecuted to judgment within two years. All parties with legally filed lien claims must be joined as parties in an action.

If the owner or contractor disputes the validity of the lien, the owner or contractor may purchase a surety bond satisfying statutory requirements and, unless the lien claimant rejects the bond, the lien against the property will be released upon recording the bond.

If a lien has been properly created and is not discharged by paying the claim, then the property may be sold to satisfy the lien. The owner's property may be subject to a lien by a subcontractor, material supplier, or laborer even if the owner has paid the prime contractor in full for the construction project. To avoid a sale of the property, an owner may be forced to pay for the work twice.

### Lender stop notice requirements

Unless there is a payment bond of at least 50 percent of the construction financing, the construction lender is subject to a stop notice provision. Under this statute, the potential lien claimant may notify the construction lender of a potential lien claim within 20 days after the date payment is due. If notified, the lender must withhold a percentage of the subsequent construction draws, which may not be disbursed except by agreement or court order. If the lender fails to withhold the funds, the lender's lien will be subordinated to the lien claimant's lien.

#### Job site posting

The job site of a construction project costing more than \$5,000 must be posted with the legal description of the site, the property owner's name and address, the prime contractor's name and address, and registration number, and, if the project is residential, the name and address of the construction lender, if any. Failure to post this information is a gross misdemeanor.

#### ***Summary of Amended Bill:***

#### Application of the construction lien

Construction liens are authorized for any person furnishing labor, professional services, materials, or equipment for the improvement of real property. "Improvement" includes constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in real property, planting plants or lawns, or providing professional services (including testing and inspection services) in conjunction with the improvements. The separate lien procedures for engineering and other professional services and for improving property with nursery stock are repealed and these liens are included under the general provisions for construction liens.

The person dealing with a registered contractor may rely on that contractor's registration for the purposes of establishing his or her lien even if the prime contractor is not registered.

#### Lien notice requirements

New notice requirements for the right to claim a lien are created and the information required in the notice is expanded to include explicit consumer warnings.

- (1) General notice. A notice of the right to claim a lien is not required for a person supplying labor, or for a person providing professional services, materials, or

equipment who contracts directly with the property owner, or for a subcontractor who contracts directly with the prime contractor.

- (2) Residential notice. For new construction of a single-family residence, the notice of the right to claim a lien covers professional services, materials, and equipment supplied during the preceding 10 days and all subsequent services, materials, or equipment. The requirement is deleted that the notice must be given within 10 days of first delivery of materials.

New notice requirements are established for repair or remodeling of an owner-occupied single-family residence. If the person furnishing professional services, materials, or equipment contracts directly with the owner-occupier, then no notice of the right to claim a lien is required and the lien claimant may claim a lien for the full amount due under his or her contract. If the lien claimant did not contract directly with the owner-occupier, then a notice must be given to the owner and the lien claim may be satisfied only from the amounts that are not yet paid to the prime contractor at the time the notice is received.

- (3) Professional services not visible after inspection. A lien claimant who provides professional services before the improvement work has commenced and the services are not visible from an inspection of the property (such as soil testing or preliminary engineering services) must record a notice of the services in the real property records of the county.

#### Enforcement of the lien

The lien claimant is required to give notice of the recording of a lien to the property owner within 14 days of the recording. Failure to give this notice results in forfeiture of the lien claimant's right to attorneys' fees and costs.

In any lien foreclosure action, the owner must be a party to the action. Other persons with legally recorded claims may not have those claims foreclosed unless they are joined as parties. Provisions are added to clarify the procedures for consolidation of several foreclosure actions. If a second lien foreclosure action is filed, the court may consolidate the actions unless it would cause undue delay or hardship. If consolidation is not permissible, the second action will not be dismissed if the filing resulted from mistake, inadvertence, surprise, excusable neglect, or irregularity.

The provision allowing an owner to file a notice of cessation is deleted.

Liens against property recorded in the Torrens register are not required to be recorded in the register.

#### Release of lien

The bond purchased by the owner to release a lien does not have to be acceptable to lien claimant if it satisfies the statutory requirements. The formula for determining the amount of the bond is revised to reduce the bonding requirements.

Once a lien has been paid, the lien claimant must immediately execute a release of lien rights for which payment has been made. If the release of the lien rights is unjustifiably delayed, a court may order the payment of damages and the costs and attorneys' fees involved in the action.

An expedited procedure is established for determination of frivolous lien claims. Costs and attorney's fees are available to the prevailing party.

#### Lender stop notice requirements

The lien claimant has 35 days, instead of 20 days, after the date payment is due to notify the lender of the potential lien claim. Once notified, the lender must withhold the full amount indicated as due in the lien notice. The lender is obligated to withhold amounts only to the extent that funds remain undisbursed as of the date of the notice. Expedited procedures are established for determining frivolous lien notices.

#### Job site posting

For projects costing more than \$5,000, the information required to be posted under current law, and lender or bond company information if available, must be included in the building permit application and on the inspection record card which is posted at the job site. The information is also to be available to any person on request. Failure to post as required subjects the prime contractor to a maximum civil penalty of \$5,000, payable to the county in which the project is located.

***Amended Bill Compared to Substitute Bill:*** The amended bill includes the provisions of the substitute bill, with technical changes to make language consistent throughout the bill and with the following changes: (1) language is added

to the "Notice to Owner" to notify the owner that labor liens may be claimed without sending a notice of the right to claim a lien; (2) provisions are added to clarify the procedure when several parties have filed foreclosure actions. If a second lien foreclosure action is filed, the court may consolidate the actions unless it would cause undue delay or hardship. If consolidation is not permissible, the second action will not be dismissed if the filing resulted from mistake, inadvertence, surprise, excusable neglect, or irregularity; (3) the building permit application requirements are changed to require either the legal description or the tax parcel number, and other specified information. The document to be posted at the construction site is the inspection record card, which must include either the legal description or the tax parcel number, and other specified information; (4) language is added to clarify that the information that may be submitted after the initial building permit application is submitted is only the information concerning the lender or bond company, and that for the purposes of the vesting doctrine, the lack of lender/bond company information does not cause the application to be incomplete; and (5) a section of the lien law dealing with timber liens is not repealed and is recodified in the chapter providing for timber liens.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect April 1, 1992, and applies to improvements commenced by potential lien claimants on or after April 1, 1992.

**Testimony For:** Many interest groups have worked together for two years in the Senate Lien Law Task Force to develop this bill. The parties recognized that current law is confusing and difficult for lien claimants and for owners. The bill consolidates several different lien law chapters, increases consumer protection by providing clearer notice to owners about lien laws and by limiting liens on certain homeowner projects, and streamlines some of the procedures. All the parties had to compromise on some issue to get a bill that everyone could support.

**Testimony Against:** The provisions of the bill that deal with information on the building permit documents may cause problems for the local jurisdictions and may have consequences with respect to applying the vesting doctrine. (Note: The amended bill addresses these concerns.)

**Witnesses:** (in favor) Gene Krauss, Independent Business Association; Dave Morgan and Bill Charbonneau; Senate Lien Law Task Force; Sheri Grapp, Lumberman's; Phillip Schmuck, Painting Contractors Association; Robert Bush, Bayview

Building Materials; Irv Dellinger, Western Building Materials Association; Mark Triplett, Building Industry Association of Washington; Duke Schaub, Associated General Contractors of Washington; Cliff Webster and Robert Grossman, Architects and Engineers Legislative Council; and Doug Bohlke, Sheet Metal & Air Conditioning Contractors. (opposed) Blair Patrick, Washington Association of Building Officials.