

FINAL BILL REPORT

ESB 6441

C 126 L 92

SYNOPSIS AS ENACTED

Brief Description: Establishing construction lien rights.

SPONSORS: Senators McMullen and Matson

SENATE COMMITTEE ON COMMERCE & LABOR

HOUSE COMMITTEE ON COMMERCE & LABOR

BACKGROUND:

A comprehensive overhaul of the construction lien law was enacted in 1991 with an effective date of April 1, 1992. The purpose of the delayed effective date was to allow those involved with the application of the act an additional period of time to become familiar with its provisions and identify technical problems that could be corrected prior to its effective date.

SUMMARY:

Terms with legal significance are made more accurate and consistent throughout the act. Certain key time periods are described with more precision. Additional instruction is provided regarding the content of certain forms, the method for providing certain notices, and the minimum requirements of some legal procedures.

Section 1. The definition of "owner" is removed.

Section 2 (1). The word "also" is added in line 13, page 4, making it clear that notice must be given to both the owner and the prime contractor, as designated. The phrase "as described in this subsection" is added, providing guidance as to how the notice is to be given to the prime contractor. Additions to subsection (b) of subsection (1) make it clear that notice may be delivered informally or served by a process server in the usual manner.

Section 2 (2). Those persons who need not provide a notice of a right to claim a lien are listed. Subsection (c) is changed, clarifying that subcontractors who contract directly with a prime contractor still need to give notice to the owner as provided in subsection (3)(b) if they are working on an owner-occupied residential repair or remodel.

Where the term "owner" is used in subsections (a) and (b) of subsection (3), the phrase "or their common law agent" is added to make the phrases consistent throughout the section.

The changes on page 6, lines 7 and 8, make the language consistent throughout the chapter. The chapter interchanges the terms of "liens," "claim of lien," "lien claims," and "notice of lien claims." Many of the changes attempt to use the most accurate term and to use terms as consistently as possible. The same is true of the phrase "furnishing professional services, materials, or equipment." The act attempts to always list these in the same order, so that no significance could be attached to listing them differently.

Changes are made in subsection (3)(b) of section 2 to provide more precision as to when notice to the owner of an existing residence occurs.

Several changes for the purpose of clarity and consistency are made to the suggested notice form following subsection (4) of section 2.

Section 2 (5). The phrase "if the mortgagee or purchaser" is added, making it clear that both must act in good faith, not just the subsequent purchaser.

A suggested notice form for providers of professional services is added.

Section 3. A substantive change is made, protecting subcontractors from intimidation and coercion.

Section 4. "Chapter" is substituted for the word "section," as a more accurate designation.

Section 5. It is clarified that the interest in land referred to is that of the owner who orders the work done, as opposed to some other owner.

Section 6. The phrase "notice of claim of lien" appears frequently throughout the chapter. Because a "claim" includes a notice, the words "notice of" are removed throughout the act. The words "notice of" are superfluous and possibly misleading.

The phrase "lender or lien claimant" is added in the first sentence, recognizing that lenders and other lien claimants may have a legitimate need to challenge frivolous or clearly excessive lien claims.

Language is added in lines 22 through 26 of page 11 to make it clear that a motion to obtain the prompt release of a frivolous lien claim must include a statement as to why the lien is believed to be frivolous or clearly excessive. This language is taken from Rule 60 of the Rules of Civil Procedure which describes how to file a motion to vacate a default judgment. Without this language, a motion could be vague or conclusory, and the lien claimant would be put in the position of proving a negative, or disproving all possible reasons why the lien claim is not frivolous.

The term "release" is substituted for "dismiss" in subsections (2) and (4) because that is the traditional word used to describe the elimination of a lien. Subsections (2) and (4) are clarified and made consistent.

Section 7. The phrase "file for recording" is substituted for the word "record." This designates the day the lien claimant files for recording, not the actual day of recording, which maybe later in some counties. A new lien claim form is supplied.

The remaining changes to section 6 on page 14 have been described earlier.

Section 8. The words "notice of" are removed from the phrase "notice of claim of lien."

Section 9. This section addresses offsets which an owner is entitled to take against amounts to be paid in the future on a construction contract when a lien claim on that project leads to a judgment against the owner. Current language indicating that the offset is against amounts due to the "lien claimant" is incorrect because payment flows from the owner to the prime contractor; the term "lien claimant" is therefore changed to "prime contractor."

Section 10. "Lenders and other lien claimants" is added on page 17 to the list of those who are entitled to post a bond in the event of a lien claim, thus obtaining a prompt release of the property from the lien.

Section 11. The section providing that lien claimants whose lien is recorded at the time of the commencement of the foreclosure action must be joined as a party is broadened to include those people who have a recorded interest in the same property. Anyone with an interest such as a long-term lease, an option, or a lien claim would have to be joined as a party or their interest in the property could not be affected by the lien claim.

Section 12. The words "notice of" are removed from the phrase "notice of claim of lien." (See comments to Section 5.)

Section 13. The phrase "who shall affirmatively state under penalty of perjury,..." in subsection (2) is eliminated, making this subsection consistent with current law. This requirement and sanction is not appropriate because other penalties are in place for specious stop notices. Changes are made in subsection (3) to reflect the fact that notices are not "filed" with a lender but are simply "given" to the lender. The instructions on how to give notice in subsections (a) and (b) of subsection (3) parallel the methods of giving notice in other portions of the act.

In subsection (9), lenders and lien claimants are given the right to challenge stop notices to lenders as frivolous.

Other minor grammatical and technical changes are made.

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

VOTES ON FINAL PASSAGE:

Senate	44	0	
House	97	0	(House amended)
Senate	48	0	(Senate concurred)

EFFECTIVE: June 1, 1992