

SENATE BILL REPORT

SB 6036

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 27, 2007

Title: An act relating to construction liens.

Brief Description: Addressing construction liens.

Sponsors: Senators Fraser, Franklin, Weinstein, Kohl-Welles and Hargrove.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/26/07, 2/27/07 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6036 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senator Holmquist.

Staff: Jennifer Strus (786-7316)

Background: When equipment providers, material suppliers, subcontractors (potential lien claimants), or workers do not receive payment for the goods and services supplied to a construction project, including a homeowner's single-family residence construction or remodel project, those suppliers of goods and services can file a lien against the homeowner's property. When a potential lien claimant works through the "prime" or "general" contractor, the potential lien claimant must first notify the homeowner, in writing, that the potential lien claimant has the right to claim a lien. This notice establishes the potential lien claimant's rights with respect to goods or services that were supplied to a remodel project up to 60 days prior to the notice or up to 10 days prior to the notice on a project for the construction of a new single-family residence.

Summary of Bill: Any contract entered into between a person furnishing labor, professional services, materials or equipment and the owner to construct, alter, repair, or remodel residential property must contain the following provisions:

- That subcontractors must provide the same notice the owner receives from material suppliers;

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- That each time the owner makes a payment to the prime contractor, the prime contractor must provide to the owner, within five days of payments to subcontractors, suppliers and laborers, notice detailing what each was paid, how much, and for what work. The prime contractor must also include with the notice copies of cancelled checks or other evidence that the subcontractors, suppliers, and laborers were paid; and
- That failure of the prime contractor to follow any provision in the contract waives the lien rights of the prime contractor and constitutes a breach of contract relieving the owner of any further obligations under the contract.

The notice of the right to claim a lien in the case of new construction of a single family residence must be given at the time of service. Notices of rights to claim a lien is not required of laborers, but is required of all other persons proving service on the construction.

The notice of the right to claim a lien must be signed by the owner as proof that he or she received it. Failure of the contractor to obtain the owner's signature waives the right of the contractor to claim a lien against the owner's property and relieves the owner of any further obligations under the contract. The contractor must keep the signed notice for three years.

The principal amount of the lien cannot include any interest, late fees, costs attorneys' fees, or similar charges.

If the owner has paid the prime contractor for certain work to be done by a subcontractor or for other services or materials to be provided and the prime contractor has not paid the subcontractor or other services providers, the lien that the prime contractor, subcontractor, supplier, or laborer may file is limited to the amount the owner still owes under the contract.

When a subcontractor, supplier or laborer does work for a prime contractor who does not pay for their work, and, as a result, the subcontractor, supplier, or laborer files a lien, that subcontractor, supplier, or laborer may not have a lien enforced at a later date for a different project undertaken for the same prime contractor.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): Removes section 1 of the bill that listed requirements that had to be in the contract between the owner and the contractor. Requires all contractors to provide to the owner lien releases signed by the suppliers and subcontractors within seven days of payment to the subcontractors or suppliers. Both the notice of the right to claim a lien and the lien releases must be personally delivered to the owner by the contractor or must be mailed to the owner. If the notices are mailed they must be sent to the address provided by the owner.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This has been a contentious issue over the years and it is good to have a narrow focus in the bill. Section 1 needs to be reworked

because it is confusing to the homeowner. Need to look at the lien and lien release notices as the place to make some changes to protect the homeowner. There are a number of homeowners who have had to pay twice because the prime contractor did not pay the subcontractors as he or she should have. There needs to be more protection for those folks and this bill attempts to do that.

CON: Every project is complex and the way the bill is drafted the suppliers will have to use a cash on delivery method when they deliver supplies even with contractors with whom they have had a long relationship. Under current law, they have ten days to resolve problems and currently don't have that. The provision that prohibits a supplier from filing a lien when working for the same contractor who didn't pay on a previous job is troubling. This provision will prohibit suppliers from working with contractors in the future. Allowing owners to get out of contracts, as Section 1 of the bill would do, would mean homeowners get a windfall.

Persons Testifying: PRO: Senator Fraser, prime sponsor; Brian Minnich, Building Industry Association of Washington.

CON: Debbie DeBoer, Miles Sand and Gravel; Ivan Wright, Keller Supply; Margaret Huneman, Glacier HW; Kerry Lawrence, attorney.