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ENGROSSED SENATE BILL 6441

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State of Washington                      52nd Legislature                      1992 Regular Session

By Senators McMullen and Matson

Read first time 01/30/92. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to construction liens; amending RCW 60.04.011,  
2 60.04.031, 60.04.041, 60.04.051, 60.04.081, 60.04.091, 60.04.141,  
3 60.04.151, 60.04.161, 60.04.171, 60.04.181, and 60.04.221; adding a new  
4 section to chapter 60.04 RCW; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

6 (4) "Furnishing labor, professional services, materials, or  
7 equipment" means the performance of any labor or professional services,  
8 the contribution owed to any employee benefit plan on account of any  
9 labor, the provision of any supplies or materials, and the renting,  
10 leasing, or otherwise supplying of equipment for the improvement of  
11 real property.

12 (5) "Improvement" means: (a) Constructing, altering, repairing,  
13 remodeling, demolishing, clearing, grading, or filling in, of, to, or  
14 upon any real property or street or road in front of or adjoining the  
15 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,  
16 or providing other landscaping materials on any real property; and (c)  
17 providing professional services upon real property or in preparation  
18 for or in conjunction with the intended activities in (a) or (b) of  
19 this subsection.

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

23 (a) Funds to acquire real property;

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

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

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

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

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

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

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

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

12 (~~((11))~~) (10) "Payment bond" means a surety bond issued by a surety  
13 licensed to issue surety bonds in the state of Washington that confers  
14 upon potential claimants the rights of third party beneficiaries.

15 (~~((12))~~) (11) "Potential lien claimant" means any person or entity  
16 entitled to assert lien rights under this chapter who has otherwise  
17 complied with the provisions of this chapter and is registered or  
18 licensed if required to be licensed or registered by the provisions of  
19 the laws of the state of Washington.

20 (~~((13))~~) (12) "Prime contractor" includes all contractors, general  
21 contractors, and specialty contractors, as defined by chapter 18.27 or  
22 19.28 RCW, or who are otherwise required to be registered or licensed  
23 by law, who contract directly with a property owner or their common law  
24 agent to assume primary responsibility for the creation of an  
25 improvement to real property, and includes property owners or their  
26 common law agents who are contractors, general contractors, or  
27 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who  
28 are otherwise required to be registered or licensed by law, who offer  
29 to sell their property without occupying or using the structures,  
30 projects, developments, or improvements for more than one year.

1       (~~(14)~~) (13) "Professional services" means surveying, establishing  
2 or marking the boundaries of, preparing maps, plans, or specifications  
3 for, or inspecting, testing, or otherwise performing any other  
4 architectural or engineering services for the improvement of real  
5 property.

6       (~~(15)~~) (14) "Real property lender" means a bank, savings bank,  
7 savings and loan association, credit union, mortgage company, or other  
8 corporation, association, partnership, trust, or individual that makes  
9 loans secured by real property located in the state of Washington.

10       (~~(16)~~) (15) "Site" means the real property which is or is to be  
11 improved.

12       (~~(17)~~) (16) "Subcontractor" means a general contractor or  
13 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who  
14 is otherwise required to be registered or licensed by law, who  
15 contracts for the improvement of real property with someone other than  
16 the owner of the property or their common law agent.

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

19       (1) Except as otherwise provided in this section, every person  
20 furnishing professional services, materials, or equipment for the  
21 improvement of real property shall give the owner or reputed owner  
22 notice in writing of the right to claim a lien. If the prime  
23 contractor is in compliance with the requirements of RCW 19.27.095,  
24 60.04.230, and 60.04.261, this notice shall also be given to the prime  
25 contractor as described in this subsection unless the potential lien  
26 claimant has contracted directly with the prime contractor. The notice  
27 may be given at any time but only protects the right to claim a lien  
28 for professional services, materials, or equipment supplied after the  
29 date which is sixty days before:

1 (a) Mailing the notice by certified or registered mail to the owner  
2 or reputed owner; or

3 (b) Delivering or serving the notice personally upon the owner or  
4 reputed owner and obtaining evidence of (~~service~~) delivery in the  
5 form of a receipt or other acknowledgement signed by the owner or  
6 reputed owner or an affidavit of service.

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

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

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

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

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

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

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

27 (b) Who do not contract directly with the owner-occupier or their  
28 common law agent shall give notice of the right to claim a lien to the  
29 owner-occupier. Liens (~~claims by~~) of persons furnishing professional  
30 services, materials, or equipment who do not contract directly with the

1 owner-occupier or their common law agent may only be satisfied from  
2 amounts not yet paid to the prime contractor by the owner at the time  
3 the notice described in this section is received, regardless of whether  
4 amounts not yet paid to the prime contractor are due. For the purposes  
5 of this section "received" means actual notice by personal service, or  
6 registered or certified mail, or three days after mailing by first  
7 class mail, excluding Saturdays, Sundays, or legal holidays.

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

12 NOTICE TO OWNER

13 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

14 PROTECT YOURSELF FROM PAYING TWICE

15 To:.....  
16 Date:.....  
17 Re:.....(description of property: Street address or  
18 general location.)  
19 From:.....

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

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

27 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

28 Under Washington law, those who ~~((work on or provide materials))~~  
29 furnish labor, professional services, materials, or equipment for the  
30 repair, remodel, or alteration of your owner-occupied principal  
31 residence and who are not paid, have a right to enforce their claim for  
32 payment against your property. This claim is known as a construction  
33 lien.

34 The law limits the amount that a lien claimant can claim against your  
35 property. Claims may only be made against that portion of the contract  
36 price you have not yet paid to your prime contractor as of the time  
37 ~~((you received))~~ this notice was personally served on you or five days

1 after this notice was mailed to you. Review the back of this notice  
2 for more information and ways to avoid lien claims.

3 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

4 We have or will be providing (~~labor, materials,~~) professional  
5 services, materials, or equipment for the improvement of your  
6 commercial or new residential project. In the event you or your  
7 contractor fail to pay us, we may file a lien against your property.  
8 A lien may be claimed for all (~~materials, equipment, and~~)  
9 professional services, materials, or equipment furnished after a date  
10 that is sixty days before this notice was personally served on you or  
11 mailed to you, unless the improvement to your property is the  
12 construction of a new single-family residence, then ten days before  
13 this notice was personally served on you or mailed to you.

14 Sender: .....

15 Address: .....

16 Telephone: .....

17 Brief description of professional services, materials, or equipment  
18 provided or to be provided: .....

19 IMPORTANT INFORMATION ON REVERSE SIDE

20 IMPORTANT INFORMATION FOR YOUR PROTECTION

21 This notice is sent to inform you that we have or will provide  
22 (~~materials,~~) professional services, materials, or equipment for the  
23 repair, remodel, or alteration of your property. We expect to be paid  
24 by the person who ordered our services, but if we are not paid, we have  
25 the right to enforce our claim by filing a construction lien against  
26 your property.

27 LEARN more about the lien laws and the meaning of this notice by  
28 discussing them with your contractor, suppliers, Department of Labor  
29 and Industries, the firm sending you this notice, your lender, or your  
30 attorney.

31 COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods  
32 available to protect your property from construction liens. The  
33 following are two of the more commonly used methods.

34 DUAL PAYCHECKS (Joint Checks): When paying your contractor for  
35 services or materials, you may make checks payable jointly to  
36 the contractor and the firms furnishing you this notice.

37 LIEN RELEASES: You may require your contractor to provide lien  
38 releases signed by all the suppliers and subcontractors from  
39 whom you have received this notice. If they cannot obtain lien  
40 releases because you have not paid them, you may use the dual  
41 payee check method to protect yourself.

42 YOU SHOULD TAKE (~~WHATEVER~~) APPROPRIATE STEPS (~~YOU BELIEVE~~  
43 ~~NECESSARY~~) TO PROTECT YOUR PROPERTY FROM LIENS.

1 YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW  
2 TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT  
3 RECEIVED IT, ASK THEM FOR IT.

4 \* \* \* \* \*

5 ~~(5) Every potential lien claimant providing professional services~~  
6 ~~where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been~~  
7 ~~commenced, and the professional services provided are not visible from~~  
8 ~~an inspection of the real property ((shall))~~ may record in the real  
9 property records of the county where the property is located a notice  
10 which shall contain the professional service provider's name, address,  
11 telephone number, legal description of the property, the owner or  
12 reputed owner's name, and the general nature of the professional  
13 services provided. If such notice is not recorded, the lien claimed  
14 shall be subordinate to the interest of any subsequent mortgagee and  
15 invalid as to the interest of any subsequent purchaser ((who)) if the  
16 mortgagee or purchaser acts in good faith and for a valuable  
17 consideration acquires an interest in the property prior to the  
18 commencement of an improvement as defined in RCW 60.04.011(5) (a) or  
19 (b) without notice of the professional services being provided. The  
20 notice described in this subsection shall be substantially in the  
21 following form:

22 NOTICE OF FURNISHING PROFESSIONAL SERVICES

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

26 [Legal Description  
27 is mandatory]

28 The general nature of the professional services provided is  
29 .....  
30 .....  
31 The owner or reputed owner of the real property is .....  
32 .....

33 .....  
34 (Signature)

1 .....  
2 (Name of Claimant)  
3 .....  
4 (Street Address)  
5 .....  
6 (City, State, Zip Code)  
7 .....  
8 (Phone Number)

9 (6) A lien authorized by this chapter shall not be enforced unless  
10 the lien claimant has complied with the applicable provisions of this  
11 section.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 60.04 RCW  
13 to read as follows:

14 Any act of coercion or attempted coercion, including a threat to  
15 withhold future contracts, by a contractor or developer to discourage  
16 a contractor, subcontractor, or material or equipment supplier from  
17 giving an owner the notice of right to claim a lien required by RCW  
18 60.04.031, or from filing a lien claim under this chapter shall  
19 constitute an unfair or deceptive act or practice in trade or commerce  
20 and a violation of chapter 19.86 RCW.

21 **Sec. 4.** RCW 60.04.041 and 1991 c 281 s 4 are each amended to read  
22 as follows:

23 A contractor or subcontractor required to be registered under  
24 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise  
25 required to be registered or licensed by law, shall be deemed the  
26 construction agent of the owner for the purposes of establishing the  
27 lien created by this chapter only if so registered or licensed.  
28 Persons dealing with contractors or subcontractors may rely, for the  
29 purposes of this section, upon a certificate of registration issued  
30 pursuant to chapter 18.27 RCW or license issued pursuant to chapter

1 19.28 RCW, or other certificate or license issued pursuant to law,  
2 covering the period when the labor, professional services, material, or  
3 equipment shall be furnished, and the lien rights shall not be lost by  
4 suspension or revocation of registration or license without their  
5 knowledge. No lien rights described in this (~~section~~) chapter shall  
6 be lost or denied by virtue of the absence, suspension, or revocation  
7 of such registration or license with respect to any contractor or  
8 subcontractor not in immediate contractual privity with the lien  
9 claimant.

10 **Sec. 5.** RCW 60.04.051 and 1991 c 281 s 5 are each amended to read  
11 as follows:

12 The lot, tract, or parcel of land which is improved is subject to  
13 a lien to the extent of the interest of the (~~person for whom~~) owner  
14 at whose instance, directly or through a common law or construction  
15 agent the labor, professional services, equipment, or materials were  
16 furnished, as the court deems appropriate for satisfaction of the lien.  
17 If, for any reason, the title or interest in the land upon which the  
18 improvement is situated cannot be subjected to the lien, the court in  
19 order to satisfy the lien may order the sale and removal of the  
20 improvement from the land which is subject to the lien(~~(, from the~~  
21 ~~land)~~).

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

24 (1) Any owner of real property subject to a recorded (~~notice of~~)  
25 claim of lien under this chapter, or (~~the~~) contractor (~~or~~),  
26 subcontractor, lender, or lien claimant who believes the claim of lien  
27 to be frivolous and made without reasonable cause, or clearly excessive  
28 may apply by motion to the superior court for the county where the

1 property, or some part thereof is located, for an order directing the  
2 lien claimant to appear before the court at a time no earlier than six  
3 nor later than fifteen days following the date of service of the  
4 application and order on the lien claimant, and show cause, if any he  
5 or she has, why the ~~((lien claim))~~ relief requested should not be  
6 ~~((dismissed, with prejudice))~~ granted. The motion shall state the  
7 grounds upon which relief is asked, and shall be supported by the  
8 affidavit of the applicant or his or her attorney setting forth a  
9 concise statement of the facts upon which the motion is based.

10 (2) The order shall clearly state that if the lien claimant fails  
11 to appear at the time and place noted the lien ~~((claim))~~ shall be  
12 ~~((dismissed))~~ released, with prejudice ~~((+))~~, and that the lien  
13 claimant shall be ordered to pay the costs requested by the applicant  
14 including reasonable attorneys' fees.

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

20 (4) If, following a ~~((full))~~ hearing on the matter, the court  
21 determines that the lien ~~((claim))~~ is frivolous and made without  
22 reasonable cause, or clearly excessive, the court shall issue an order  
23 ~~((dismissing))~~ releasing the lien claim if frivolous and made without  
24 reasonable cause, or reducing the ~~((claim))~~ lien if clearly excessive,  
25 and awarding costs and reasonable attorneys' fees to the applicant to  
26 be paid by the lien claimant. If the court determines that the ~~((claim~~  
27 ~~of))~~ lien is not frivolous and was made with reasonable cause, and is  
28 not clearly excessive, the court shall issue ~~((and))~~ an order so  
29 stating and awarding costs and reasonable attorneys' fees to the lien  
30 claimant to be paid by the applicant.

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

3 **Sec. 7.** RCW 60.04.091 and 1991 c 281 s 9 are each amended to read  
4 as follows:

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

11 (1) Shall state in substance and effect:

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

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

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

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

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

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

23 (2) Shall be signed by the claimant or some person authorized to  
24 act on his or her behalf who shall affirmatively state they have read  
25 the notice of claim of lien and believe the notice of claim of lien to  
26 be true and correct under penalty of perjury, and shall be acknowledged  
27 pursuant to chapter 64.08 RCW. If the (~~claim~~) lien has been  
28 assigned, the name of the assignee shall be stated. Where an action to  
29 foreclose the lien has been commenced such notice of claim of lien may

1 be amended as pleadings may be by order of the court insofar as the  
2 interests of third parties are not adversely affected by such  
3 amendment. A claim of lien substantially in the following form shall  
4 be sufficient:

5 CLAIM OF LIEN

6 ....., claimant, vs .., (~~owner or reputed owner~~) defendant:

7 (~~Notice is hereby given that on the ..... day of ..... (date of~~  
8 ~~commencement of furnishing labor, professional services, materials,~~  
9 ~~or equipment and the last date contributions to any type of~~  
10 ~~employee benefit plan became due), ..... at the request of~~  
11 ~~....., ..... commenced to (perform labor, furnish~~  
12 ~~professional services, materials, or equipment) upon .....~~  
13 ~~(here describe property subject to the lien) of which property the~~  
14 ~~owner, or reputed owner, is ..... (or if the owner or reputed~~  
15 ~~owner is not known, insert the word "unknown"), the (furnishing of~~  
16 ~~labor, professional services, materials, or equipment) ceased on~~  
17 ~~the ..... day of .....; that said (labor, professional~~  
18 ~~services, material, or equipment) was of the value of .....~~  
19 ~~dollars, for which the undersigned claims a lien upon the property~~  
20 ~~herein described for the sum of ..... dollars. (In case the~~  
21 ~~claim has been assigned, add the words "and ..... is assignee~~  
22 ~~of said claim", or claims, if several are united.)) Notice is  
23 hereby given that the person named below claims a lien pursuant to  
24 chapter 64.04 RCW. In support of this lien the following  
25 information is submitted:~~

26 1. NAME OF LIEN CLAIMANT: .....  
27 TELEPHONE NUMBER: .....  
28 ADDRESS: .....

29 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,  
30 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR  
31 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME  
32 DUE: .....

33 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:  
34 .....

35 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS  
36 CLAIMED (Street address, legal description or other information  
37 that will reasonably describe the property). .....  
38 .....  
39 .....  
40 .....

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



1 No lien created by this chapter binds the property subject to the  
2 lien for a longer period than eight calendar months after the ((notice  
3 of)) claim of lien has been recorded unless an action is filed by the  
4 lien claimant within that time in the superior court in the county  
5 where the subject property is located to enforce the lien, and service  
6 is made upon the owner of the subject property within ninety days of  
7 the date of filing the action; or, if credit is given and the terms  
8 thereof are stated in the ((notice—of)) claim of lien, then eight  
9 calendar months after the expiration of such credit; and in case the  
10 action is not prosecuted to judgment within two years after the  
11 commencement thereof, the court, in its discretion, may dismiss the  
12 action for want of prosecution, and the dismissal of the action or a  
13 judgment rendered thereon that no lien exists shall constitute a  
14 cancellation of the lien. This is a period of limitation, which shall  
15 be tolled by the filing of any petition seeking protection under Title  
16 Eleven, United States Code by an owner of any property subject to the  
17 lien established by this chapter.

18 **Sec. 9.** RCW 60.04.151 and 1991 c 281 s 15 are each amended to read  
19 as follows:

20 The lien claimant shall be entitled to recover upon the claim  
21 recorded the contract price after deducting all claims of other lien  
22 claimants to whom the claimant is liable, for furnishing labor,  
23 professional services, materials, or equipment; and in all cases where  
24 a ((notice—of)) claim of lien shall be recorded under this chapter for  
25 labor, professional services, materials, or equipment supplied to any  
26 lien claimant, he or she shall defend any action brought thereupon at  
27 his or her own expense((;—and)). During the pendency of the action,  
28 the owner may withhold from the prime contractor the amount of money  
29 for which a claim is recorded by any subcontractor, supplier, or

1 laborer(~~and~~). In case of judgment against the owner or the owner's  
2 property, upon the lien, the owner shall be entitled to deduct from  
3 sums due to the prime contractor the principal amount of the judgment  
4 from any amount due or to become due from (~~him or her~~) the owner to  
5 the (~~lien claimant~~) prime contractor plus such costs, including  
6 interest and attorneys' fees, as the court deems just and equitable,  
7 and (~~he or she~~) the owner shall be entitled to recover back from the  
8 (~~lien claimant~~) prime contractor the amount for which (~~the~~) a lien  
9 (~~is~~) or liens are established in excess of any sum that may remain  
10 due from (~~him or her~~) the owner to the (~~lien claimant~~) prime  
11 contractor.

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

14 Any owner of real property subject to a recorded (~~notice of~~)  
15 claim of lien under this chapter, or (~~the~~) contractor (~~or~~),  
16 subcontractor, lender, or lien claimant who disputes the correctness or  
17 validity of the (~~notice of~~) claim of lien may record, either before  
18 or after the commencement of an action to enforce the lien, in the  
19 office of the county recorder or auditor in the county where the  
20 (~~notice of~~) claim of lien was recorded, a bond issued by a surety  
21 company authorized to issue surety bonds in the state. The surety  
22 shall be listed in the latest federal department of the treasury list  
23 of surety companies acceptable on federal bonds, published in the  
24 Federal Register, as authorized to issue bonds on United States  
25 government projects with an underwriting limitation, including  
26 applicable reinsurance, equal to or greater than the amount of the bond  
27 to be recorded. The bond shall contain a description of the (~~notice~~  
28 ~~of~~) claim of lien and real property involved, and be in an amount  
29 equal to the greater of five thousand dollars or two times the amount

1 of the lien claimed if it is ten thousand dollars or less, and in an  
2 amount equal to or greater than one and one-half times the amount of  
3 the lien if it is in excess of ten thousand dollars. If the ((notice  
4 of)) claim of lien affects more than one parcel of real property and is  
5 segregated to each parcel, the bond may be segregated the same as in  
6 the ((notice-of)) claim of lien. A separate bond shall be required for  
7 each ((notice-of)) claim of lien made by separate claimants. However,  
8 a single bond may be used to guarantee payment of amounts claimed by  
9 more than one ((lien)) claim of lien by a single claimant so long as  
10 the amount of the bond meets the requirements of this section as  
11 applied to the aggregate sum of all claims by such claimant. The  
12 condition of the bond shall be to guarantee payment of any judgment  
13 upon the lien in favor of the lien claimant entered in any action to  
14 recover the amount claimed in a ((notice-of)) claim of lien, or on the  
15 claim asserted in the ((notice-of)) claim of lien. The effect of  
16 recording a bond shall be to release the real property described in the  
17 notice of claim of lien from the lien and any action brought to recover  
18 the amount claimed. Unless otherwise prohibited by law, if no action  
19 is commenced to recover on a lien within the time specified in RCW  
20 60.04.141, the surety shall be discharged from liability under the  
21 bond. If an action is timely commenced, then on payment of any  
22 judgment entered in the action or on payment of the full amount of the  
23 bond to the holder of the judgment, whichever is less, the surety shall  
24 be discharged from liability under the bond.

25 Nothing in this section shall in any way prohibit or limit the use  
26 of other methods, devised by the affected parties to secure the  
27 obligation underlying a claim of lien and to obtain a release of real  
28 property from a claim of lien.

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

3       The lien provided by this chapter, for which claims of lien have  
4 been recorded, may be foreclosed and enforced by a civil action in the  
5 court having jurisdiction in the manner prescribed for the judicial  
6 foreclosure of a mortgage. The court shall have the power to order the  
7 sale of the property. In any action brought to foreclose a lien, the  
8 owner shall be joined as a party. The ~~((lien claims of all))~~ interest  
9 in the real property of any person~~((s))~~ who, prior to the commencement  
10 of the action, ~~((have legally))~~ has a recorded ~~((claims of lien~~  
11 ~~against))~~ interest in the ~~((same))~~ property, or any part thereof, shall  
12 not be foreclosed or affected unless they are joined as a party.

13       A person shall not begin an action to foreclose a lien upon any  
14 property while a prior action begun to foreclose another lien on the  
15 same property is pending, but if not made a party plaintiff or  
16 defendant to the prior action, he or she may apply to the court to be  
17 joined as a party thereto, and his or her lien may be foreclosed in the  
18 same action. The filing of such application shall toll the running of  
19 the period of limitation established by RCW 60.04.141 until disposition  
20 of the application or other time set by the court. The court shall  
21 grant the application for joinder unless to do so would create an undue  
22 delay or cause hardship which cannot be cured by the imposition of  
23 costs or other conditions as the court deems just. If a lien  
24 foreclosure action is filed during the pendency of another such action,  
25 the court may, on its own motion or the motion of any party,  
26 consolidate actions upon such terms and conditions as the court deems  
27 just, unless to do so would create an undue delay or cause hardship  
28 which cannot be cured by the imposition of costs or other conditions.  
29 If consolidation of actions is not permissible under this section, the  
30 lien foreclosure action filed during the pendency of another such

1 action shall not be dismissed if the filing was the result of mistake,  
2 inadvertence, surprise, excusable neglect, or irregularity. An action  
3 to foreclose a lien shall not be dismissed at the instance of a  
4 plaintiff therein to the prejudice of another party to the suit who  
5 claims a lien.

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

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

11 (a) Liens for the performance of labor;

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

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

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

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

17 (2) The proceeds of the sale of property must be applied to each  
18 lien or class of liens in order of its rank and, in an action brought  
19 to foreclose a lien, pro rata among each claimant in each separate  
20 priority class. A personal judgment may be rendered against any party  
21 personally liable for any debt for which the lien is claimed. If the  
22 lien is established, the judgment shall provide for the enforcement  
23 thereof upon the property liable as in the case of foreclosure of  
24 judgment liens. The amount realized by such enforcement of the lien  
25 shall be credited upon the proper personal judgment. The deficiency,  
26 if any, remaining unsatisfied, shall stand as a personal judgment, and  
27 may be collected by execution against any party liable therefor.

28 (3) The court may allow the prevailing party in the action, whether  
29 plaintiff or defendant, as part of the costs of the action, the moneys

1 paid for recording the (~~notice of~~) claim of lien, costs of title  
2 report, bond costs, and attorneys' fees and necessary expenses incurred  
3 by the attorney in the superior court, court of appeals, supreme court,  
4 or arbitration, as the court or arbitrator deems reasonable. Such  
5 costs shall have the priority of the class of lien to which they are  
6 related, as established by subsection (1) of this section.

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

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

13 Any lender providing interim or construction financing where there  
14 is not a payment bond of at least fifty percent of the amount of  
15 construction financing shall observe the following procedures and the  
16 rights and liabilities of the lender and potential lien claimant shall  
17 be affected as follows:

18 (1) Any potential lien claimant who has not received a payment  
19 within five days after the date required by their contract, invoice,  
20 employee benefit plan agreement, or purchase order may within thirty-  
21 five days of the date required for payment of the contract, invoice,  
22 employee benefit plan agreement, or purchase order, (~~file~~) give a  
23 notice as provided in subsections (2) and (3) of this section of the  
24 sums due and to become due, for which a potential lien claimant may  
25 claim a lien under this chapter.

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

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

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

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

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

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

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

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

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

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

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

25 NOTICE TO REAL PROPERTY LENDER  
26 (Authorized by RCW .....

27 TO: .....  
28 (Name of Lender)  
29 .....  
30 (Administrative Office-Street Address)  
31 .....  
32 (City) (State) (Zip)

1 AND TO: .....  
2 (Owner)  
3 AND TO: .....  
4 (Prime Contractor-If Different Than Owner)  
5 .....  
6 (Name of Laborer, Professional, Materials, or Equipment Supplier)  
7 whose business address is ....., did at the  
8 property located at .....  
9 (Check appropriate box) ( ) perform labor ( ) furnish professional  
10 services ( ) provide materials ( ) supply equipment as follows:  
11 .....  
12 .....  
13 .....  
14 which was ordered by .....,  
15 (Name of Person)  
16 whose address was stated to be.....  
17 .....

18 The amount owing to the undersigned according to contract or  
19 purchase order for labor, supplies, or equipment (as above  
20 mentioned) is the sum of ..... Dollars  
21 (\$ ..... ). Said sums became due and owing as of  
22 .....  
23 (State Date)  
24 ....., .....

25 You are hereby required to withhold from any future draws on  
26 existing construction financing which has been made on the subject  
27 property (to the extent there remain undisbursed funds) the sum of  
28 ..... Dollars  
29 (\$ ..... ).

30 IMPORTANT

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

34 DATE: .....  
35 By: .....  
36 Its: .....

37 ((+4)) (5) After the receipt of the notice, the lender shall  
38 withhold from the next and subsequent draws the amount claimed to be  
39 due as stated in the notice. Alternatively, the lender may obtain from  
40 the prime contractor or borrower a payment bond for the benefit of the  
41 potential lien claimant in an amount sufficient to cover the amount  
42 stated in the potential lien claimant's notice. The lender shall be  
43 obligated to withhold amounts only to the extent that sufficient

1 interim or construction financing funds remain undisbursed as of the  
2 date the lender receives the notice.

3 ~~((+5))~~ (6) Sums so withheld shall not be disbursed by the lender,  
4 except by the written agreement of the potential lien claimant, owner,  
5 and prime contractor in such form as may be prescribed by the lender,  
6 or the order of a court of competent jurisdiction.

7 ~~((+6))~~ (7) In the event a lender fails to abide by the provisions  
8 of subsections (4) and (5) of this section, then the mortgage, deed of  
9 trust, or other encumbrance securing the lender ~~((will))~~ shall be  
10 subordinated to the lien of the potential lien claimant to the extent  
11 of the interim or construction financing wrongfully disbursed, but in  
12 no event more than the amount stated in the notice plus costs as fixed  
13 by the court, including reasonable attorneys' fees.

14 ~~((+7))~~ (8) Any potential lien claimant shall be liable for any  
15 loss, cost, or expense, including reasonable attorneys' fees and  
16 statutory costs, to a party injured thereby arising out of any unjust,  
17 excessive, or premature notice filed under purported authority of this  
18 section. "Notice" as used in this subsection does not include notice  
19 given by a potential lien claimant of the right to claim liens under  
20 this chapter where no actual claim is made.

21 ~~((+8))~~ (9)(a) Any owner of real property subject to a notice to  
22 real property lender under this section, or the contractor or  
23 subcontractor, or lien claimants who believe~~((s))~~ the claim that  
24 underlies the notice is frivolous and made without reasonable cause, or  
25 is clearly excessive may apply by motion to the superior court for the  
26 county where the property, or some part thereof is located, for an  
27 order commanding the potential lien claimant who issued the notice to  
28 the real property lender to appear before the court at a time no  
29 earlier than six nor later than fifteen days from the date of service  
30 of the application and order on the potential lien claimant, and show

1 cause, if any he or she has, why the notice to real property lender  
2 should not be declared void. The motion shall state the grounds upon  
3 which relief is asked and shall be supported by the affidavit of the  
4 applicant or his or her attorney setting forth a concise statement of  
5 the facts upon which the motion is based.

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

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

14 (d) If, following a (~~full~~) hearing on the matter, the court  
15 determines that the claim upon which the notice to real property lender  
16 is based is frivolous and made without reasonable cause, or clearly  
17 excessive, the court shall issue an order declaring the notice to real  
18 property lender void if frivolous, made without reasonable cause, or  
19 reducing the amount stated in the notice if clearly excessive, and  
20 awarding costs and reasonable attorneys' fees to the applicant to be  
21 paid by the person who issued the notice. If the court determines that  
22 the claim underlying the notice to real property lender is not  
23 frivolous and was made with reasonable cause, and is not clearly  
24 excessive, the court shall issue an order so stating and awarding costs  
25 and reasonable attorneys' fees to the issuer of the notice to be paid  
26 by the applicant.

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

1        NEW SECTION.    **Sec. 14.**        This act shall take effect April 1,  
2 1992.