

SENATE BILL REPORT

ESSB 6740

As of Third Reading

Title: An act relating to protecting homeowners who hire contractors to remodel or build their homes.

Brief Description: Protecting homeowners who hire contractors to remodel or build their homes.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Fraser, Kohl-Welles, Fairley, Keiser and Franklin).

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/30/06, 2/2/06 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6740 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.

Signed by Senators Hewitt and Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette, Ranking Minority Member.

Staff: John Dziedzic (786-7784)

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.

A lien based on goods and services supplied to the repair or remodel of an owner-occupied single-family residence may only be satisfied from amounts not yet paid by the homeowner to the prime contractor at the time the notice of right to claim a lien is received by the homeowner.

To pursue a lien claim, a claimant that provided a "notice of right to claim a lien" must: (1) record the lien not later than 90 days after the claimant last provided services, materials, or equipment to the project; (2) commence an action to enforce the lien within eight months after the lien is recorded; and (3) complete the enforcement action within two years after it was commenced.

An owner of a corporation or limited liability company can be held personally liable for the debts of the business entity if a court finds that: (1) the form or structure chosen by the business has been intentionally used to evade a duty; and (2) it is necessary to disregard the business form in order to prevent an unjustified loss.

Summary of Bill: Before a building permit can be issued on a residential construction or remodel project, the homeowner must acknowledge receipt of a document explaining financial safeguards to consider.

The amount of the lien claimed cannot include interest, collection costs, etc., although a court may award such amounts as part of a judgment. If a homeowner has fully paid the contractor for all amounts due on a remodel project, and timely notifies a lien claimant, the lien claim is void.

The definitions of contractor and specialty contractor are amended. A contractor includes a developer or a person providing management services, as well as door, window, and cabinet installers, and others. A person is presumed to be a contractor if the person owns, improves, and offers for sale more than two residences in a 2-year period, or any residence without using it for at least one year. A residential contractor must identify the financially responsible members of the contracting business when registering or renewing with L&I, and L&I may increase bonding requirements if any such person has, in the preceding two years, been a party to a case where a homeowner was required to pay some or all of a lien claim subject to this bill.

It is a gross misdemeanor for a contractor to subcontract work to or employ an unregistered contractor. An unregistered contractor cannot commence an action against a client to compel arbitration, or enforce an arbitration ruling.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2007.

Testimony For: It is simply immoral that under current lien laws, a contractor is able to avoid responsibility for failing to forward the homeowner's payment to suppliers and sub-contractors. Lien claimants have no incentive to hold the contractor responsible because they have a guaranteed avenue to recover their costs by threatening or seeking liens against the homeowners. It should not be the state's policy to support a system that makes an innocent homeowner pay twice, sometimes tens and hundreds of thousands of dollars.

Testimony Against: The bill is not going to just impact unscrupulous contractors, and it probably won't stop the ones that currently are flying under the radar. Piercing the corporate

veil is unwarranted, and there are other technical issues with the bill that make it unworkable. Restricting lien rights of suppliers and subcontractors is unfair because they are innocent parties in the transaction as well.

Testimony Other: This bill takes many steps in the right direction. There seems to be a willingness to keep working on alternatives that can achieve more of a consensus answer to this problem.

Who Testified: PRO: Senator Fraser, prime sponsor.

CON: Kerry Lawrence, Attorney; Debbie DeBoer, National Assn. of Credit Managers; Bob Gee, Western Building Materials Assn.; Amy Brackenbury, Building Industry Assn. of WA; Gordon Gregg, John Bratton, JW Bratton, LLC.

OTHER: Partick Woods, Labor & Industries; Gary Smith, Independent Business Assn.