

HOUSE BILL REPORT

ESHB 1708

As Passed House:
March 4, 2011

Title: An act relating to mechanics' and materialmen's claims of liens.

Brief Description: Concerning mechanics' and materialmen's claims of liens.

Sponsors: House Committee on Labor & Workforce Development (originally sponsored by Representative Moeller).

Brief History:

Committee Activity:

Labor & Workforce Development: 2/2/11, 2/15/11 [DPS].

Floor Activity:

Passed House: 3/4/11, 97-0.

Brief Summary of Engrossed Substitute Bill

- Changes the requirements for signing a lien claim, and adds a paragraph consistent with the changes to the statutory form.
- Makes certain court rules applicable to civil actions to foreclose lien claims.
- Specifies that "all aspects" of certain provisions of the lien law are liberally construed.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sells, Chair; Reykdal, Vice Chair; Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Fagan, Green, Kenney, Miloscia, Moeller, Ormsby, Roberts, Taylor and Warnick.

Staff: Jill Reinmuth (786-7134).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

State law authorizes mechanics' and materialmen's liens to benefit any person furnishing labor, professional services, material, or equipment for the improvement of real property. If such a person is not paid for services or materials, the lien procedures may be used to recover the payment.

A person claiming a lien must file a notice of claim of lien. The lien claim must be recorded in the county where the property is located, contain certain information about the claim and the claimant, and be signed by the claimant or someone authorized to act on his or her behalf.

There are several requirements for signing the lien claim. The person who signs the lien claim must affirmatively state that he or she has read it, and believes it to be true and correct under penalty of perjury. The lien claim must be acknowledged pursuant to the law on acknowledgements of documents.

There is also a statutory form for a lien claim. A lien claim substantially in that form is sufficient, and thus, the form is sometimes referred to as a "safe harbor." A person who signs the lien claim attests that he or she has read or heard the claim, read and knows the contents of the claim, and believes the claim to be true and correct. The person also attests that the claim is not frivolous, is made with reasonable cause, and is not clearly excessive. The attestation clause is signed under penalty of perjury.

In *Williams v. Athletic Field*, the Washington Court of Appeals, Division II (*Williams*), held that a particular lien was invalid. The central issue was whether the lien's attestation clause complied with the corporate acknowledgment requirement in the acknowledgements law. Although the attestation clause in the lien claim was identical to that in the statutory form, the court concluded that the corporate acknowledgement requirement was not satisfied. The court also concluded that, where corporate acknowledgement is required, the statutory form cannot be sufficient because it only satisfies the individual acknowledgement requirement in the acknowledgements law. The Washington Supreme Court has granted a petition for review of the *Williams* decision.

A person claiming a lien may file a civil action to foreclose the lien. A civil action to foreclose a lien proceeds in the same manner as judicial foreclosure of a mortgage.

Case law requires strict construction when determining whether a lien attaches. Liberal construction, however, is required when applying the provisions of the lien law. The purpose of liberal construction is to provide security for parties intended to be protected by the statutory provisions.

Summary of Engrossed Substitute Bill:

The Legislature intends to clarify that: (1) the use of the "safe harbor" form is sufficient to state a lien claim; (2) the procedures available in civil actions are also available in lien foreclosure actions; and (3) all aspects of certain provisions of the lien law are to be liberally construed.

The requirements for signing the lien claim are changed. The person who signs the lien claim must affirmatively state that the lien claim is not frivolous, is made with reasonable

cause, and is not clearly excessive. The person must sign the lien claim under penalty of perjury before a notary public. The lien claim need not be acknowledged pursuant to the acknowledgements law. The lien claim must indicate an individual's capacity to sign on behalf of a claimant if the lien claim is signed by a corporate representative, attorney, lien filing agent, or other individual authorized to act on the claimant's behalf.

The statutory form for the lien claim is also changed. A new paragraph, with language indicating the individual's capacity to sign on behalf of the claimant, is added.

The court rules ordinarily applicable to a civil action also apply to a civil action to foreclose a lien claim.

"All aspects" of certain provisions of the lien law are liberally construed. The purpose of liberal construction is to protect the interests of permit applicants and of persons furnishing labor, professional services, materials, or equipment for the improvement of real property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature included the "safe harbor" form when it enacted the current version of the lien statute. The form was included in treatises, and attorneys and others used it when drafting mechanics' liens. If the form was used, the lien was sufficient. For nearly 20 years, this worked great. Now, there are "hitches in the giddy up" that need to be fixed. In the *Williams* decision, the Court of Appeals read the statute in a way that no one had ever read it before. As a result, there are many liens out there that are in jeopardy.

This bill will resolve confusion as to how liens are formed, signed, and interpreted. It will make the form consistent with the content required by the statute, and also keep protections against excessive, false, and fraudulent liens intact.

There is one additional correction that would help make the form more consistent with the requirements. The information on page four, lines six through eight, should be incorporated in line nine, after the word "correct." That way, the requirements and the form are consistent.

The lien statute has always said that courts may use the same rules to correct technical deficiencies in liens as are used for pleadings. This bill clarifies that the civil rules are intended to apply to these proceedings, so long as no one is negatively affected. Competing petitions will be resolved on the merits and not on whether the form was properly filled out.

Some courts say strict construction applies to the lien statute and others say liberal construction. This bill clarifies that liberal construction applies and that courts are not supposed to take a different approach.

(Opposed) None.

Persons Testifying: Mike Bomar and Bryce Sinner, Southwest Washington Contractors Association; Kerry Lawrence; Rick Slunaker and John Riper, Associated General Contractors of Washington; and Larry Stevens, Mechanical Contractors of Western Washington and National Electrical Contractors Association.

Persons Signed In To Testify But Not Testifying: None.