

SENATE BILL REPORT

ESHB 1708

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, March 24, 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: Passed House: 3/04/11, 97-0.

Committee Activity: Labor, Commerce & Consumer Protection: 3/10/11, 3/24/11 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Keiser and Kline.

Staff: Mac Nicholson (786-7445)

Background: Any person furnishing labor, professional services, materials, or equipment on real property improvement has a lien on the improvement for the contract price of the services or materials furnished. These liens are known as mechanics' and materialmen's liens, and a person that has not been paid for services or materials can use the lien procedures to recover payment. In order to claim a lien, notice of a claim of lien must be filed in the county where the property is located and must be signed by the claimant or an individual authorized to act on behalf of the claimant. The lien claim must also be acknowledged pursuant to statutory provisions on the acknowledgment of documents (Chapter 64.08 RCW), which sets forth specific forms of acknowledgment for individuals and corporations.

State law provides a statutory form for a lien claim, known as a safe harbor form. A lien claim is valid if it substantially complies with the statutory form. The safe harbor form contains an attestation clause, signed under penalty of perjury, that the individual who signs the lien claim is the claimant or the claimant's attorney, has read or heard the claim, read and knows the contents of the claim, and believes the claim to be true and correct.

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.

In *Williams v. Athletic Field*, the Washington Court of Appeals, Division II (*Williams*), invalidated a lien claim because the claim wasn't properly acknowledged. The issue in *Williams* was whether the lien's attestation clause signed in a representative capacity on behalf of a lien filing company complied with the corporate acknowledgment requirement in Chapter 64.08 RCW. Although the attestation clause in the lien claim was identical to the safe harbor form, the court concluded that the corporate acknowledgement requirement was not satisfied, consequently the lien claim was invalid. The court also concluded that, where corporate acknowledgement is required, the safe harbor form cannot be sufficient because it only satisfies the individual acknowledgement requirement in Chapter 64.08 RCW. 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 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 Bill: The stated intent of the legislation is to clarify that (1) the use of the statutory 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.

A lien claim is no longer required to be acknowledged pursuant to Chapter 64.08 RCW, the acknowledgments law. Instead, a lien claim signed by a corporate representative, attorney, lien filing agent, or other individual authorized to act on the claimant's behalf must indicate the individual's capacity to sign on behalf of the claimant. Additionally, the requirements for signing the lien claim are changed, so that 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 attestation clause on the safe harbor form is changed to reflect the ability of an authorized individual to sign the lien claim. The safe harbor form for the lien claim is also changed to include a new paragraph, with language indicating the individual's capacity to sign on behalf of the claimant.

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 to be liberally construed 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.

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 is an attempt to clarify a confusing part of law. The bill doesn't make substantive changes to law; it just clarifies current law. The statute provides for liberal interpretation of the laws and has for 20 years, but not all courts recognize that requirement. The 1991 law created the safe harbor forms, and it worked well for years until a court had a different interpretation. If the safe harbor form is used, a person should have a sufficient lien. All the formalities required of signing a lien are intact in the legislation and self-contained in the safe harbor form. The bill doesn't provide for retroactive application, it just clarifies a confusion that arose last year. This bill is a clear statement of legislative intent.

CON: All the stakeholders in this issue have not been involved in the discussion. This legislation will substantially and dramatically change how lien claims are dealt with. The bill will result in more litigation and more uncertainty. The legislation is going too far in allowing individuals to sign lien claims. This issue demands that all stakeholders come together and work through the issue among themselves. Mechanic liens are secret and unilateral and for these reasons special protections have developed. Two of those protections are challenged in the legislation. The bill would remove the acknowledgement requirement and change the presumption that has to be met by the party claiming the lien. There are cases providing for strict construction of lien validity. The bill is not simply a clarification. The parties should be given time, after the court case, to work together to develop language.

Persons Testifying: PRO: Representative Moeller, prime sponsor; John Riper, Ashbaugh Beal; Rick Slunaker, Associated General Contractors.

CON: Klaus Snyder; Steve Sirianni; Tom Larkin, Fidelity National Financial; John Lancaster, Washington Land Title Association.