

SENATE BILL REPORT

SB 6482

As of February 1, 2016

Title: An act relating to construction bonds and liens.

Brief Description: Concerning contractor bonds and mechanics' and materialmen's liens.

Sponsors: Senators Hewitt, Keiser, Fraser, Conway, Angel, Hasegawa, King, Bailey, Brown, Dinsel, Schoesler, Warnick, Honeyford and Sheldon.

Brief History:

Committee Activity: Commerce & Labor: 1/27/16.

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Susan Jones (786-7404)

Background: Contractor Surety Bonds. Each applicant for registration as a contractor must file with the Department of Labor and Industries (L&I) a surety bond issued by a surety insurer in the sum of \$12,000 if the applicant is a general contractor and \$6,000 if the applicant is a specialty contractor. If no valid bond is already on file with L&I at the time the application is filed, a bond must accompany the registration application. The bond must have the state of Washington named as obligee with good and sufficient surety in a form to be approved by L&I. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to L&I. A cancellation or revocation of the bond or withdrawal of the surety from the bond automatically suspends the registration issued to the contractor until a new bond or reinstatement notice has been filed with L&I.

Mechanics' and Materialmen's Liens. Any person furnishing labor, professional services, materials, or equipment for the improvement of real property generally has a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner. There are exceptions.

Notice of Right to Claim a Lien for Mechanics' and Materialmen's Liens. The person furnishing the services, materials, or equipment must give the owner notice in writing of the right to claim a lien. The notice may be given at any time but only protects the right to claim a lien after the date which is 60 days before:

- mailing the notice by certified or registered mail to the owner; or

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.

- delivering or serving the notice personally upon the owner and obtaining evidence of delivery.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien after a date which is 10 days before the notice is given.

Notices of a right to claim a lien are not be required of:

- persons who contract directly with the owner;
- laborers whose claim of lien is based solely on performing labor; or
- subcontractors who contract for the improvement of real property directly with the prime contractor.

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

- contract directly with the owner-occupier are not be required to send a written notice of the right to claim a lien and have a lien for the full amount due under their contract; or
- do not contract directly with the owner-occupier must give notice of the right to claim a lien to the owner-occupier. Liens of persons furnishing professional services, materials, or equipment who do not contract directly with the owner-occupier may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice is received, regardless of whether amounts not yet paid to the prime contractor are due.

The notice of right to claim a lien must include the information provided in statute.

Summary of Bill: Contractor Bonds Increased. The amount of contractor surety bonds are increased to \$24,000 for general contractors and \$12,000 for specialty contractors.

Lien Limited to Actual Costs. The amount of the lien for persons furnishing labor, professional services, materials, or equipment for the improvement of real property is limited to actual costs to the person furnishing labor, professional services, materials, or equipment.

Owner's Access to Information on Late Payments to Mechanic/Materialmen. Once the notice of lien has been given, the person who gave the owner or reputed owner the notice of the right to claim a lien must, after a written request from the owner, provide in writing information regarding any late payments or overdue amounts during the previous five years by the person who ordered, purchased, or requested the labor, professional services, materials, or equipment for the improvement of the real property. Late payments or overdue amounts include, but are not limited to, payment made more than 30 days late or amounts overdue by more than 30 days.

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 comes from an actual situation in Walla Walla. Under current law, if you hire a contractor to remodel your home, you end up with a secondary lien with the building supply company. If the consumer pays the contractor but the contractor does not pay the building supply company, the building supply company has the right to come back and sue the consumer. The consumer can end up paying twice for a remodel of a home or a home-build. This bill is trying to weed out the bad guys and make sure the consumer is protected. This is a good consumer protection bill. The best part of the bill is the last part where the building supply company has to notify the consumer that the contractor has not paid the bill. This is a complicated area to try to make sure everyone is paid. There may be an issue with raising the bond limit too high and creating an underground economy.

CON: There is understanding of the problem but the solution needs additional work. This can be as a result of a bad builder or a bad consumer as a result of nonpayment. If the consumer is late in paying, that can cause late payment by the contractor to the vendor. Increasing the bonds does not solve the problem and drives more people to the underground economy.

OTHER: Page 5, line 23 needs some changes. You don't want to change the lien from the contract price. Also, the "actual costs" needs clarification and also the lien should be on the "contract price". With respect to providing information to the property owner, most systems do not track five years so that would be very difficult. Most of the time when a consumer calls, the supplier provides references verbally with respect to the contractors' credit. The bill asks the supplier to lose their profit. The suppliers do send out the preliminary notices.

Persons Testifying: PRO: Senator Mike Hewitt, prime sponsor.

CON: Bill Stauffacher, Building Industry Association of Washington.

OTHER: Larry Stevens, Mechanical Contractors, and Electrical Contractors MCA/NECA; Jon Flora, National Association of Credit Managers; Paulyne VanderSloot, Mutual Materials; Shoni Tiede, Stoneway Concrete.

Persons Signed In To Testify But Not Testifying: No one.