

---

SENATE BILL 6482

---

State of Washington

64th Legislature

2016 Regular Session

By Senators Hewitt, Keiser, Fraser, Conway, Angel, Hasegawa, King, Bailey, Brown, Dandel, Schoesler, Warnick, Honeyford, and Sheldon

Read first time 01/21/16. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to construction bonds and liens; and amending RCW  
2 18.27.040, 60.04.021, and 60.04.031.

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

4 **Sec. 1.** RCW 18.27.040 and 2007 c 436 s 4 are each amended to  
5 read as follows:

6 (1) Each applicant shall file with the department a surety bond  
7 issued by a surety insurer who meets the requirements of chapter  
8 48.28 RCW in the sum of (~~twelve~~) twenty-four thousand dollars if  
9 the applicant is a general contractor and (~~six~~) twelve thousand  
10 dollars if the applicant is a specialty contractor. If no valid bond  
11 is already on file with the department at the time the application is  
12 filed, a bond must accompany the registration application. The bond  
13 shall have the state of Washington named as obligee with good and  
14 sufficient surety in a form to be approved by the department. The  
15 bond shall be continuous and may be canceled by the surety upon the  
16 surety giving written notice to the director. A cancellation or  
17 revocation of the bond or withdrawal of the surety from the bond  
18 automatically suspends the registration issued to the contractor  
19 until a new bond or reinstatement notice has been filed and approved  
20 as provided in this section. The bond shall be conditioned that the  
21 applicant will pay all persons performing labor, including employee

1 benefits, for the contractor, will pay all taxes and contributions  
2 due to the state of Washington, and will pay all persons furnishing  
3 material or renting or supplying equipment to the contractor and will  
4 pay all amounts that may be adjudged against the contractor by reason  
5 of breach of contract including improper work in the conduct of the  
6 contracting business. A change in the name of a business or a change  
7 in the type of business entity shall not impair a bond for the  
8 purposes of this section so long as one of the original applicants  
9 for such bond maintains partial ownership in the business covered by  
10 the bond.

11 (2) At the time of initial registration or renewal, the  
12 contractor shall provide a bond or other security deposit as required  
13 by this chapter and comply with all of the other provisions of this  
14 chapter before the department shall issue or renew the contractor's  
15 certificate of registration. Any contractor registered as of July 1,  
16 2001, who maintains that registration in accordance with this chapter  
17 is in compliance with this chapter until the next renewal of the  
18 contractor's certificate of registration.

19 (3) Any person, firm, or corporation having a claim against the  
20 contractor for any of the items referred to in this section may bring  
21 suit against the contractor and the bond or deposit in the superior  
22 court of the county in which the work was done or of any county in  
23 which jurisdiction of the contractor may be had. The surety issuing  
24 the bond shall be named as a party to any suit upon the bond. Action  
25 upon the bond or deposit brought by a residential homeowner for  
26 breach of contract by a party to the construction contract shall be  
27 commenced by filing the summons and complaint with the clerk of the  
28 appropriate superior court within two years from the date the claimed  
29 contract work was substantially completed or abandoned, whichever  
30 occurred first. Action upon the bond or deposit brought by any other  
31 authorized party shall be commenced by filing the summons and  
32 complaint with the clerk of the appropriate superior court within one  
33 year from the date the claimed labor was performed and benefits  
34 accrued, taxes and contributions owing the state of Washington became  
35 due, materials and equipment were furnished, or the claimed contract  
36 work was substantially completed or abandoned, whichever occurred  
37 first. Service of process in an action filed under this chapter  
38 against the contractor and the contractor's bond or the deposit shall  
39 be exclusively by service upon the department. Three copies of the  
40 summons and complaint and a fee adopted by rule of not less than

1 fifty dollars to cover the costs shall be served by registered or  
2 certified mail, or other delivery service requiring notice of  
3 receipt, upon the department at the time suit is started and the  
4 department shall maintain a record, available for public inspection,  
5 of all suits so commenced. Service is not complete until the  
6 department receives the fee and three copies of the summons and  
7 complaint. The service shall constitute service and confer personal  
8 jurisdiction on the contractor and the surety for suit on claimant's  
9 claim against the contractor and the bond or deposit and the  
10 department shall transmit the summons and complaint or a copy thereof  
11 to the contractor at the address listed in the contractor's  
12 application and to the surety within two days after it shall have  
13 been received.

14 (4) The surety upon the bond shall not be liable in an aggregate  
15 amount in excess of the amount named in the bond nor for any monetary  
16 penalty assessed pursuant to this chapter for an infraction. The  
17 liability of the surety shall not cumulate where the bond has been  
18 renewed, continued, reinstated, reissued or otherwise extended. The  
19 surety upon the bond may, upon notice to the department and the  
20 parties, tender to the clerk of the court having jurisdiction of the  
21 action an amount equal to the claims thereunder or the amount of the  
22 bond less the amount of judgments, if any, previously satisfied  
23 therefrom and to the extent of such tender the surety upon the bond  
24 shall be exonerated but if the actions commenced and pending and  
25 provided to the department as required in subsection (3) of this  
26 section, at any one time exceed the amount of the bond then  
27 unimpaired, claims shall be satisfied from the bond in the following  
28 order:

29 (a) Employee labor and claims of laborers, including employee  
30 benefits;

31 (b) Claims for breach of contract by a party to the construction  
32 contract;

33 (c) Registered or licensed subcontractors, material, and  
34 equipment;

35 (d) Taxes and contributions due the state of Washington;

36 (e) Any court costs, interest, and attorneys' fees plaintiff may  
37 be entitled to recover. The surety is not liable for any amount in  
38 excess of the penal limit of its bond.

39 A payment made by the surety in good faith exonerates the bond to  
40 the extent of any payment made by the surety.

1 (5) The total amount paid from a bond or deposit required of a  
2 general contractor by this section to claimants other than  
3 residential homeowners must not exceed one-half of the bond amount.  
4 The total amount paid from a bond or deposit required of a specialty  
5 contractor by this section to claimants other than residential  
6 homeowners must not exceed one-half of the bond amount or four  
7 thousand dollars, whichever is greater.

8 (6) The prevailing party in an action filed under this section  
9 against the contractor and contractor's bond or deposit, for breach  
10 of contract by a party to the construction contract involving a  
11 residential homeowner, is entitled to costs, interest, and reasonable  
12 attorneys' fees. The surety upon the bond or deposit is not liable in  
13 an aggregate amount in excess of the amount named in the bond or  
14 deposit nor for any monetary penalty assessed pursuant to this  
15 chapter for an infraction.

16 (7) If a final judgment impairs the liability of the surety upon  
17 the bond or deposit so furnished that there is not in effect a bond  
18 or deposit in the full amount prescribed in this section, the  
19 registration of the contractor is automatically suspended until the  
20 bond or deposit liability in the required amount unimpaired by  
21 unsatisfied judgment claims is furnished.

22 (8) In lieu of the surety bond required by this section the  
23 contractor may file with the department an assigned savings account,  
24 upon forms provided by the department.

25 (9) Any person having filed and served a summons and complaint as  
26 required by this section having an unsatisfied final judgment against  
27 the registrant for any items referred to in this section may execute  
28 upon the security held by the department by serving a certified copy  
29 of the unsatisfied final judgment by registered or certified mail  
30 upon the department within one year of the date of entry of such  
31 judgment. Upon the receipt of service of such certified copy the  
32 department shall pay or order paid from the deposit, through the  
33 registry of the superior court which rendered judgment, towards the  
34 amount of the unsatisfied judgment. The priority of payment by the  
35 department shall be the order of receipt by the department, but the  
36 department shall have no liability for payment in excess of the  
37 amount of the deposit.

38 (10) Within ten days after resolution of the case, a certified  
39 copy of the final judgment and order, or any settlement documents  
40 where a case is not disposed of by a court trial, a certified copy of

1 the dispositive settlement documents must be provided to the  
2 department by the prevailing party. Failure to provide a copy of the  
3 final judgment and order or the dispositive settlement documents to  
4 the department within ten days of entry of such an order constitutes  
5 a violation of this chapter and a penalty adopted by rule of not less  
6 than two hundred fifty dollars may be assessed against the prevailing  
7 party.

8 (11) The director may require an applicant applying to renew or  
9 reinstate a registration or applying for a new registration to file a  
10 bond of up to three times the normally required amount, if the  
11 director determines that an applicant, or a previous registration of  
12 a corporate officer, owner, or partner of a current applicant, has  
13 had in the past five years a total of three final judgments in  
14 actions under this chapter involving a residential single-family  
15 dwelling on two or more different structures.

16 (12) The director may adopt rules necessary for the proper  
17 administration of the security.

18 **Sec. 2.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to  
19 read as follows:

20 Except as provided in RCW 60.04.031, any person furnishing labor,  
21 professional services, materials, or equipment for the improvement of  
22 real property shall have a lien upon the improvement for the  
23 ~~((contract price of))~~ actual costs to the person furnishing labor,  
24 professional services, materials, or equipment ~~((furnished))~~ at the  
25 instance of the owner, or the agent or construction agent of the  
26 owner.

27 **Sec. 3.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to  
28 read as follows:

29 (1) Except as otherwise provided in this section, every person  
30 furnishing professional services, materials, or equipment for the  
31 improvement of real property shall give the owner or reputed owner  
32 notice in writing of the right to claim a lien. If the prime  
33 contractor is in compliance with the requirements of RCW 19.27.095,  
34 60.04.230, and 60.04.261, this notice shall also be given to the  
35 prime contractor as described in this subsection unless the potential  
36 lien claimant has contracted directly with the prime contractor. The  
37 notice may be given at any time but only protects the right to claim

1 a lien for professional services, materials, or equipment supplied  
2 after the date which is sixty days before:

3 (a) Mailing the notice by certified or registered mail to the  
4 owner or reputed owner; or

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

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

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

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

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

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

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

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

30 (b) Who do not contract directly with the owner-occupier or their  
31 common law agent shall give notice of the right to claim a lien to  
32 the owner-occupier. Liens of persons furnishing professional  
33 services, materials, or equipment who do not contract directly with  
34 the owner-occupier or their common law agent may only be satisfied  
35 from amounts not yet paid to the prime contractor by the owner at the  
36 time the notice described in this section is received, regardless of  
37 whether amounts not yet paid to the prime contractor are due. For the  
38 purposes of this subsection "received" means actual receipt of notice  
39 by personal service, or registered or certified mail, or three days

1 after mailing by registered or certified mail, excluding Saturdays,  
2 Sundays, or legal holidays.

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

8 NOTICE TO OWNER

9 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

10 PROTECT YOURSELF FROM PAYING TWICE

11 To:.....Date:.....

12 Re: (description of property: Street address or general location.)

13 From: . . . . .

14 AT THE REQUEST OF: (Name of person ordering the professional  
15 services, materials, or equipment)

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

21 OWNER/OCCUPIER OF EXISTING  
22 RESIDENTIAL PROPERTY

23 Under Washington law, those who furnish labor, professional services,  
24 materials, or equipment for the repair, remodel, or alteration of  
25 your owner-occupied principal residence and who are not paid, have a  
26 right to enforce their claim for payment against your property. This  
27 claim is known as a construction lien.

28 The law limits the amount that a lien claimant can claim against your  
29 property. Claims may only be made against that portion of the  
30 contract price you have not yet paid to your prime contractor as of  
31 the time this notice was given to you or three days after this notice  
32 was mailed to you. Review the back of this notice for more  
33 information and ways to avoid lien claims.

34 COMMERCIAL AND/OR NEW  
35 RESIDENTIAL PROPERTY

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

10 Sender: . . . . .  
11 Address: . . . . .  
12 Telephone: . . . . .

13 Brief description of professional services, materials, or equipment  
14 provided or to be provided: . . . . .

15 IMPORTANT INFORMATION

16 ON REVERSE SIDE

17 IMPORTANT INFORMATION

18 FOR YOUR PROTECTION

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

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

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

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

35 LIEN RELEASES: You may require your contractor to provide  
36 lien releases signed by all the suppliers and subcontractors



1 from whom you have received this notice. If they cannot  
2 obtain lien releases because you have not paid them, you may  
3 use the dual payee check method to protect yourself.

4 YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM  
5 LIENS.

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

9 \* \* \* \* \*

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

27 NOTICE OF FURNISHING  
28 PROFESSIONAL SERVICES

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

32 [Legal Description  
33 is mandatory]

34 The general nature of the professional services provided is . . .  
35 The owner or reputed owner of the real property is . . . . .  
36 . . . . .

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

.....  
(Signature)  
.....  
(Name of Claimant)  
.....  
(Street Address)  
.....  
(City, State, Zip Code)  
.....  
(Phone Number)

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

14 (7) Once the notice under subsection (1) of this section has been  
15 given, the person who gave the owner or reputed owner the notice of  
16 the right to claim a lien must, after a written request from the  
17 owner or reputed owner, provide in writing information regarding any  
18 late payments or overdue amounts during the previous five years by  
19 the person who ordered, purchased, or requested the labor,  
20 professional services, materials, or equipment for the improvement of  
21 the real property. Late payments or overdue amounts include, but are  
22 not limited to, payment made more than thirty days late or amounts  
23 overdue by more than thirty days.

--- END ---