

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	8 - 1 - 0
Yeas:	Gilliam, Krieger, Matthews, Riley, Smith J., Tomei, Wingard, Holvey
Nays:	Whisnant
Exc.:	0
Prepared By:	Patrick Brennan, Administrator
Meeting Dates:	2/3, 2/10

WHAT THE MEASURE DOES: Prohibits unlicensed contractors from filing or perfecting a claim of lien against a homeowner's property if the contractor participated in performing improvements on the property. Specifies that a materials supplier may not file or perfect a lien if they provided materials to an unlicensed contractor on a home improvement project. Authorizes the Construction Contractors Board to notify a person of a contractor's license status and to charge for the cost of notification. Eliminates the ability of a purchaser of a residential property to waive protection against a claim of lien. Allows Board to set, by rule, the maximum down payment that may be required by a contractor before commencing work. Declares an emergency and takes effect upon passage.

ISSUES DISCUSSED:

- Work group process
- Concept of probation for contractors
- Variations of up-front costs and materials costs from project to project
- Fiscal impact
- Fee for use of notification system for contractor license status
- Previous concept of a fund to pay uncompensated contractors and suppliers
- Effectiveness of probationary system
- Number of cases where a subcontractor or supplier exercises lien right

EFFECT OF COMMITTEE AMENDMENT: Clarifies language on when materials supplier must check license status of subcontractors. Modifies section 4 to apply to persons who provide labor. Restricts applicability of section 5 to single residences. Deletes provisions limiting maximum required deposits. Authorizes Construction Contractors Board to place a contractor on probation if the contractor accepts a deposit of more than 50 percent and fails to perform the improvement diligently and in accordance with the contract specifications for which the contractor received the deposit or fails to perform the improvement and fails to return the deposit within 10 days. Deletes statutory lien waiver sample forms in section 4.

BACKGROUND: A construction lien is a security interest in real property that secures the payment of a debt involving the property by either the homeowner to a construction contractor who performs work on the property or an entity that supplies materials that are used in repairs or improvements to the property. Under Oregon law, the following may file a construction lien: a general contractor who performs work for the owner of a commercial or residential property; a person who performs work to improve the property (e.g. a subcontractor); a person who supplies or transports materials to improve the property (e.g. a building supply store); a person who rents equipment to improve the property; trustees of an employee benefit plan that receives contributions allocated by labor performed on an improvement; and certain persons who perform work related to construction activity, such as architects, land surveyors and engineers.

In certain cases, a homeowner who retains a general contractor to perform an improvement on their property may pay that general contractor in full for the work performed, only to find later that the general contractor failed to pay in full a

2/12/2010 9:06:00 AM

This summary has not been adopted or officially endorsed by action of the committee.

subcontractor who performed work on the project or a supplier that provided materials used in the project. As a result, the homeowner can face a lien on the property despite having paid the agreed-to price in full. This typically occurs when the general contractor goes out of business between collecting payment from the homeowner and paying the entities that performed the work and supplied the materials.

House Bill 3689-A seeks to address this issue by stipulating that unlicensed contractors may not file or perfect a lien against a homeowner's property, and that materials suppliers may not file or perfect a construction lien if they provide supplies to an unlicensed contractor performing work on the project. To assist suppliers with checking license status, the measure authorizes the CCB to notify them of the license status of subcontractors. The measure also specifies that contractors who fail to perform work for which they have contracted, without refunding any deposit made by the homeowner, may be placed on probationary status by the CCB.