

to exist, and this act shall take effect immediately upon its passage and approval by the governor.

Approved February 21, 1893.

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## CHAPTER XXIV.

[H. B. No. 21.]

### ENFORCEMENT OF LIENS FOR LABOR AND MATERIAL.

AN ACT creating and providing for the enforcement of liens for labor and material.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure, or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed or materials furnished by each, respectively, whether performed or furnished at the instance of the owner of the property subject to the lien, or his agent; and every contractor, subcontractor, architect, builder or person having charge of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this act: *Provided*, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics and material men, and persons who supply such contractors with provisions, all just dues to such persons or to any person to whom any part of such work is given, incurred in carrying on such work,

Bond.

which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. Liability.

SEC. 2. The land upon which the property subject to the lien created by section one of this act is situated, or which is a part thereof, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment in a foreclosure of the lien, is also subject to the lien, if at the commencement of the performance of the labor or of the furnishing of the materials, the land belonged to the person who, in his own behalf, or who, through any of the persons designated in section one of this act to be the agent of the owner, caused the performance of the labor, or the construction, alteration or repair of the property subject to the lien: *Provided*, That if such person own less than a fee simple in such land, then only his interest therein is subject to the lien. Land subject to lien.

SEC. 3. Any person who, at the request of the owner of any real property, his agent, contractor or subcontractor, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, has a lien upon such real property for the labor performed, or the materials furnished for such purposes.

SEC. 4. The liens created by this act are preferred to any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this act, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice.

SEC. 5. No lien created by this act shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor or of the furnishing of such materials, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, or furnishing the material, the name of the person who performed the labor, or furnished the material, the name of the person by whom the laborer was employed (if known) or to whom the material was furnished, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, in so far as the interests of third parties shall not be affected by such amendment. A claim for lien substantially in the following form shall be sufficient:

Time for filing lien.

Contents of claim.

....., claimant, vs. ....

Form of claim for lien.

Notice is hereby given that on the ..... day (date of commencement of performing labor or furnishing material) ..... at the request of ..... commenced to perform labor (or to furnish material to be used) upon ..... (here describe property subject to the lien) of which property the owner, or reputed owner, is ..... (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material) ceased on the ..... day of ..... ; that said labor performed (or material furnished) was of the value of ..... dollars, for which labor (or material) the

undersigned claims a lien upon the property herein described for the sum of ..... dollars. (In case the claim has been assigned, add the words "and ..... is assignee of said claim," or claims, if several are united.)

....., Claimant.

STATE OF WASHINGTON, COUNTY OF ....., ss.

....., being sworn, says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

Subscribed and sworn to before me this ..... day of .....

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: *Provided*, It shall not be necessary to insert in the notice of claim of lien provided for by this act any itemized statement or bill of particulars of such claim.

Joinder of claimants.

SEC. 6. The county auditor must record the claims mentioned in this act in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed.

County auditor.

SEC. 7. Any lien or right of lien created by law and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made.

SEC. 8. In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor or material for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property.

SEC. 9. No lien created by this act binds the property subject to the lien for a longer period than eight calendar

Length of time property is bound.

months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action, or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien.

SEC. 10. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed and materials furnished; and in all cases where a claim shall be filed under this act for labor performed or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to the contractor.

Foreclosure  
of liens.

SEC. 11. The liens provided by this act, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims of liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to such prior action, he may

apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien.

SEC. 12. In every case in which different liens are Rank of liens. claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

1. All persons performing labor.
2. All persons furnishing material.
3. The subcontractors.
4. The original contractors.

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the Attorney's fee. moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior and supreme courts.

SEC. 13. Nothing contained in this act shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed or material furnished to maintain a personal action to recover such debt against the person liable therefor.

SEC. 14. The taking of a promissory note or other evidence of indebtedness for any labor performed or material furnished for which lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein.

SEC. 15. Whenever material shall have been furnished Material. for use in the construction, alteration or repair of property

subject to a lien created by this act, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property.

Community  
interest.

SEC. 16. The claim of lien, when filed as required by this act, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien.

SEC. 17. When, for any reason the title or interest in the land, upon which the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and removal from the land of the property subject to the lien to satisfy the lien.

SEC. 18. The provisions of law relating to liens created by this act, and all proceedings thereunder, shall be liberally construed with a view to effect their objects.

SEC. 19. All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 21, 1893.