

State of Wisconsin



2005 Senate Bill 450

Date of enactment: **March 27, 2006**

Date of publication*: **April 10, 2006**

2005 WISCONSIN ACT 204

AN ACT *to amend* 59.40 (2) (f), 66.0901 (2), 703.22 (title), 703.22 (2), 703.22 (3), 779.01 (2) (a), 779.01 (2) (d) (intro.), 779.01 (2) (d) 1., 779.01 (2) (d) 2., 779.01 (3), 779.01 (4), 779.01 (5), 779.02 (1) (b), 779.02 (1) (c), 779.02 (1) (e), 779.02 (2) (title), 779.02 (2) (a), 779.02 (2) (b), 779.02 (2) (c), 779.02 (2) (d), 779.02 (2) (e), 779.02 (3), 779.02 (5), 779.03 (1), 779.035 (1), 779.035 (2) (b) 1., 779.035 (2) (b) 2. a., 779.035 (2) (b) 2. c., 779.035 (3), 779.036 (1), 779.036 (2), 779.036 (3), 779.036 (4) (a), 779.05 (1), 779.06 (1), 779.06 (2), 779.06 (3), 779.07 (1) (d), 779.08 (1), 779.08 (2), 779.10, 779.13 (2), 779.135 (1), 779.135 (3), 779.14 (1) (intro.), 779.14 (1) (a), 779.14 (1) (b), 779.14 (1e) (a), 779.14 (1e) (b), 779.14 (1m) (c) (intro.), 779.14 (1m) (d) (intro.), 779.14 (1m) (e) 2. b., 779.14 (2) (a) (intro.), 779.14 (2) (a) 2., 779.14 (2) (a) 3., 779.14 (2) (am) 1., 779.14 (2) (am) 2. a., 779.14 (2) (am) 2. b., 779.14 (2) (am) 2. c., 779.14 (3), 779.15 (title), 779.15 (1), 779.15 (2), 779.15 (3), 779.15 (4) (a), 779.155 (2), 779.155 (3), 779.155 (4), 779.155 (5) (a), 779.155 (5) (b), 779.155 (6), 779.155 (7), 779.16 and 779.17; and *to create* 779.01 (2) (am), 779.01 (2) (bm) and 779.01 (2) (e) of the statutes; **relating to:** construction liens, requirements for securing payment for work on publicly financed projects, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.40 (2) (f) of the statutes is amended to read:

59.40 (2) (f) Keep a judgment and lien docket of all claims for liens filed by prime contractors, subcontractors, ~~materialmen~~ suppliers, service providers, and laborers and all claims filed for log, mining, and maintenance liens.

SECTION 2. 66.0901 (2) of the statutes is amended to read:

66.0901 (2) **BIDDER'S PROOF OF RESPONSIBILITY.** A municipality intending to enter into a public contract may, before delivering any form for bid proposals, plans, and specifications to any person, except ~~materialmen,~~ suppliers, and others not intending to submit a direct bid, require the person to submit a full and complete state-

ment sworn to before an officer authorized by law to administer oaths. The statement shall consist of information relating to financial ability, equipment, experience in the work prescribed in the public contract, and other matters that the municipality requires for the protection and welfare of the public in the performance of a public contract. The statement shall be in writing on a standard form of a questionnaire that is adopted and furnished by the municipality. The statement shall be filed in the manner and place designated by the municipality. The statement shall not be received less than 5 days prior to the time set for the opening of bids. The contents of the statement shall be confidential and may not be disclosed except upon the written order of the person furnishing the statement, for necessary use by the public body in qualifying the person, or in cases of actions against, or by, the person or municipality. The governing body of the municipality or the committee, board, or employee charged with, or

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

delegated by the governing body with, the duty of receiving bids and awarding contracts shall properly evaluate the statement and shall find the maker of the statement either qualified or unqualified. This subsection does not apply to a 1st class city.

SECTION 3. 703.22 (title) of the statutes is amended to read:

703.22 (title) **Mechanics' and materialmen's suppliers' liens.**

SECTION 4. 703.22 (2) of the statutes is amended to read:

703.22 (2) Any mechanics' lien or ~~materialmen's suppliers' lien~~ under subch. I of ch. 779 arising as a result of repairs to or improvements of a unit by a unit owner shall be a lien only against the unit.

SECTION 5. 703.22 (3) of the statutes is amended to read:

703.22 (3) Any mechanics' or ~~materialmen's suppliers' lien~~ under subch. I of ch. 779 arising as a result of repairs to or improvements of the common elements, if authorized in writing by the association, shall be paid by the association as a common expense and until paid shall be a lien against each unit in proportion to its percentage interest in the common elements. On payment of the proportionate amount by any unit owner to the lienor or on the filing of a written undertaking in the manner specified by s. 779.08, the unit owner shall be entitled to a release of his or her unit from the lien and the association shall not be entitled to assess his or her unit for payment of the remaining amount due for the repairs or improvements.

SECTION 6. 779.01 (2) (a) of the statutes is amended to read:

779.01 (2) (a) "Improve" or "improvement" includes any building, structure, erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting, clearing ~~or~~ landscaping, repairing, or remodeling which is built, erected, made or done on or to land for its ~~permanent~~ benefit. This enumeration is intended as an extension rather than a limitation of the normal meaning and scope of "improve" and "improvement".

SECTION 6g. 779.01 (2) (am) of the statutes is created to read:

779.01 (2) (am) "Labor" includes any wages and related contributions for state employment taxes, worker's compensation and unemployment compensation insurance, and other fringe benefits.

SECTION 6r. 779.01 (2) (bm) of the statutes is created to read:

779.01 (2) (bm) "Materials" includes any construction materials, supplies, tools, fixtures, equipment, machinery, vehicles, fuel, and energy.

SECTION 7. 779.01 (2) (d) (intro.) of the statutes is amended to read:

779.01 (2) (d) (intro.) "Prime contractor" means any of the following:

SECTION 8. 779.01 (2) (d) 1. of the statutes is amended to read:

779.01 (2) (d) 1. A person, other than a laborer, but including an architect, professional engineer, ~~or construction manager, surveyor, or other service provider,~~ employed by the owner, who enters into a contract with an owner of land who is not personally the prime contractor as defined in subd. 2. to improve the land, or who takes over from a prime contractor the uncompleted contract; ~~or~~

SECTION 9. 779.01 (2) (d) 2. of the statutes is amended to read:

779.01 (2) (d) 2. An owner of land who acts personally as ~~general~~ prime contractor in improving such land.

SECTION 10. 779.01 (2) (e) of the statutes is created to read:

779.01 (2) (e) "Serve" or "served" means personal delivery, delivery by registered or certified mail, service in a manner described for service of a summons under s. 801.14, or any other means of delivery in which the recipient makes written confirmation of the delivery; except that in s. 779.15, with respect to serving the state, "serve" or "served" means delivery by registered or certified mail.

SECTION 11. 779.01 (3) of the statutes is amended to read:

779.01 (3) EXTENT AND CHARACTER OF LIEN. ~~Every~~ Any person who performs, furnishes, or procures any work ~~or procures its performance or furnishes any~~ labor ~~or service,~~ materials ~~or~~ plans, or specifications, used or consumed for the improvement of land, and who complies with s. 779.02, shall have a lien therefor on all interests in the land belonging to its owners. The lien extends to all contiguous land of the owner, but if the improvement is located wholly on one or more platted lots belonging to the owner, the lien applies only to the lots on which the improvement is located.

SECTION 12. 779.01 (4) of the statutes is amended to read:

779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall be prior to any lien which originates subsequent to the visible commencement in place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a), 292.31 (8) (i), 292.81 and 706.11 (1) and (1m). When new construction is the principal improvement involved, commencement is considered to occur no earlier than the beginning of substantial excavation for the foundations, footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. The lien also shall be prior to any unrecorded mortgage given

prior to the commencement of the work of improvement, if the lien claimant has no actual notice of the mortgage before the commencement. Lien claimants who perform work ~~or, furnish, or~~ procure its performance ~~or furnish~~ any labor ~~or, services,~~ materials ~~or, plans,~~ or specifications for an improvement prior to the visible commencement of the work of improvement shall have lien rights, but shall have only the priority accorded to other lien claimants.

SECTION 13. 779.01 (5) of the statutes is amended to read:

779.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. Assignment of a claim or right to a lien or any part thereof by a prime contractor, or garnishment by the creditor of a prime contractor, subcontractor, ~~materialman supplier,~~ service provider, laborer or mechanic, shall not operate to compel the owner, prime contractor, subcontractor ~~or materialman, supplier, or service provider~~ to pay the assignee or creditor until the lien claims of subcontractors, ~~materialmen suppliers, service providers,~~ and laborers under this subchapter have either been paid in full, matured by notice and filing or expired. If such claims become liens, the owner, prime contractor, subcontractor ~~or materialman, supplier, or service provider~~ shall be compelled to pay such assignee or creditor only what remains due in excess of such liens.

SECTION 14. 779.02 (1) (b) of the statutes is amended to read:

779.02 (1) (b) By any lien claimant who has contracted directly with the owner for the ~~work or labor, ser-~~ vices, materials, plans, or specifications performed, furnished, ~~or procured,~~ unless the claimant is a prime contractor subject to the notice requirement of sub. (2) (a).

SECTION 15. 779.02 (1) (c) of the statutes is amended to read:

779.02 (1) (c) By any lien claimant performing, furnishing, or procuring labor ~~or, services,~~ materials, plans, or specifications for an improvement in any case where more than 4 family living units are to be provided or added by such work of improvement, if the improvement is wholly residential in character, or in any case where ~~more than 10,000 total usable square feet of floor space is to be provided or added by such work of improvement,~~ if the improvement is partly or wholly nonresidential in character.

SECTION 16. 779.02 (1) (e) of the statutes is amended to read:

779.02 (1) (e) By any lien claimant, other than a prime contractor, who performs, furnishes, or procures labor ~~or, services,~~ materials, plans, or specifications for an improvement on a project on which the prime contractor is not required to give notice under this section.

SECTION 17. 779.02 (2) (title) of the statutes is amended to read:

779.02 (2) (title) NOTICE TO OWNER, LENDER, AND ~~MATERIALMAN SUPPLIER.~~

SECTION 18. 779.02 (2) (a) of the statutes is amended to read:

779.02 (2) (a) Every prime contractor who enters into a contract with the owner for a work of improvement on the owner's land and who has contracted or will contract with any subcontractors ~~or materialmen, suppliers, or service providers~~ to ~~provide perform, furnish, or procure~~ labor ~~or, services,~~ materials, plans, or specifications for the work of improvement shall include in any written contract with the owner the notice required by this paragraph, and shall provide the owner with a copy of the written contract. If no written contract for the work of improvement is entered into, the notice shall be prepared separately and served ~~personally or by registered mail~~ on the owner or authorized agent within 10 days after the first labor ~~or, services,~~ materials, plans, or specifications are performed, furnished, or procured for the improvement by or pursuant to the authority of the prime contractor. The notice, whether included in a written contract or separately given, shall be in at least 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in substantially the following language: "As required by the Wisconsin construction lien law, builder claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor ~~or, services,~~ materials, plans, or specifications for the construction on owner's land may have lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned builder claimant, are those who contract directly with the owner or those who give the owner notice within 60 days after they first perform, furnish, or procure labor ~~or, services,~~ materials, plans or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor ~~or, services,~~ materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Builder Claimant agrees to cooperate with the owner and the owner's lender, if any, to see that all potential lien claimants are duly paid".

SECTION 19. 779.02 (2) (b) of the statutes is amended to read:

779.02 (2) (b) Every person other than a prime contractor who performs, furnishes, or procures labor ~~or,~~ materials, plans, or specifications for an improvement shall have the lien and remedy under this subchapter only if within 60 days after performing, furnishing, or procuring the first labor ~~or, services,~~ materials, plans, or specifications the person ~~gives serves a written~~ notice in writing, in 2 signed copies, ~~to the owner either by personal service on the owner or authorized agent or by registered mail with return receipt requested to the owner or authorized agent~~ at the last-known post-office address. The owner

or agent shall provide a copy of the notice received, within 10 days after receipt, to any mortgage lender who is furnishing or is to furnish funds for construction of the improvement to which the notice relates. The notice to the owner shall be in substantially the following language, with blanks accurately filled in: "As a part of your construction contract, your prime contractor or builder claimant has already advised you that those who perform, furnish, or procure labor ~~or, services,~~ materials, plans, or specifications for the work will be notifying you. The undersigned first performed, furnished, or procured labor ~~or, services,~~ materials, plans, or specifications on (give date) for the improvement now under construction on your real estate at (give legal description, street address or other clear description). Please give your mortgage lender the extra copy of this notice within 10 days after you receive this, so your lender, too, will know that the undersigned is included in the job".

SECTION 20. 779.02 (2) (c) of the statutes is amended to read:

779.02 (2) (c) If any prime contractor required to give the notice prescribed in par. (a) fails to give notice as required, ~~such the prime contractor~~ does not have the lien and remedy provided by this subchapter unless the prime contractor pays all of the prime contractor's obligations to its subcontractors and materialmen, suppliers, and service providers in respect to the work of improvement within the time periods under s. 779.06 and until the time for notice under par. (b) has elapsed and ~~no lien claimant either none of its subcontractors, suppliers, or service providers gives notice as a lien claimant under par. (b) gives notice or all of its subcontractors, suppliers, and service providers have waived all lien rights in full under s. 779.05.~~

SECTION 21. 779.02 (2) (d) of the statutes is amended to read:

779.02 (2) (d) Every mortgage lender making an improvement or construction loan shall make reasonable inquiry of the owner as to whether any notices required by this subsection have been given. A lender is not required to pay out any loan proceeds unless or until the prime contractor has given any notice required of ~~such the prime contractor~~ by this subsection.

SECTION 22. 779.02 (2) (e) of the statutes is amended to read:

779.02 (2) (e) If the owner or lender complains of any insufficiency of any notice, the burden of proof is upon the owner or lender to show that he or she has been misled or deceived by the insufficiency. If there is more than one owner, giving the notice required to any one owner or authorized agent is sufficient. In addition, every prime contractor and subcontractor, at the time of purchasing or contracting for any materials to be used in any of the cases enumerated in s. 779.01, shall upon request deliver to the materialman supplier a description of the real estate upon which the materials are to be used and the name and

post-office address of the owner and authorized agent, if any. Failure to receive such description and name and address does not relieve a ~~materialman~~ supplier who asserts a lien from the requirement of giving timely notice.

SECTION 23. 779.02 (3) of the statutes is amended to read:

779.02 (3) FAILURE TO GIVE NOTICE; SAVING CLAUSE. Any lien claimant, other than the prime contractor, who fails to give a notice as required by sub. (2) (b) shall have no lien on the land or improvement to which the failure relates. Any claimant who serves a late but otherwise proper notice ~~personally or by registered mail~~ on the owner or authorized agent shall have the lien provided by s. 779.01 for any labor ~~or, services,~~ materials, plans, or specifications performed, furnished, or procured after the late notice is actually received by the owner. The burden of proving that labor ~~or, services,~~ materials, plans, or specifications for which a lien is claimed were furnished after that date is on the lien claimant.

SECTION 24. 779.02 (5) of the statutes is amended to read:

779.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid to any prime contractor or any subcontractor for improvements upon the mortgaged premises, and all moneys paid to any prime contractor or subcontractor by any owner for improvements, constitute a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor ~~and, services,~~ materials, plans, and specifications used for the improvements, until all the claims have been paid, and shall not be a trust fund in the hands of any other person. The use of any such moneys by any prime contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or proportionally in cases of a deficiency, is theft by the prime contractor or subcontractor of moneys so misappropriated and is punishable under s. 943.20. If the prime contractor or subcontractor is a corporation, limited liability company, or other legal entity other than a sole proprietorship, such misappropriation also shall be deemed theft by any officers, directors ~~or, members, partners, or~~ agents of the corporation responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder ~~of the corporation, member, or partner~~ not responsible for the misappropriation shall be a civil liability of the ~~shareholder~~ that person and may be recovered and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose. Except as provided in this subsection, this section does not create a civil cause of action against any ~~other person~~

other than the prime contractor or subcontractor to whom such moneys are paid. Until all claims are paid in full, have matured by notice and filing or have expired, such proceeds and moneys shall not be subject to garnishment, execution, levy or attachment.

SECTION 25. 779.03 (1) of the statutes is amended to read:

779.03 (1) NO AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN. Subject to s. 779.05, a lien claimant may waive the lien given by s. 779.01 by a writing signed by the lien claimant, but no action by nor agreement between any other persons shall invalidate the lien, other than payment in full to the claimant for the labor ~~or, ser-~~ services, materials, plans, or specifications to which the lien claim relates.

SECTION 26. 779.035 (1) of the statutes is amended to read:

779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract between the owner and the prime contractor for the construction of the improvement shall contain a provision for the payment by the prime contractor of all claims for labor ~~performed and, services,~~ materials or, plans, or specifications performed, furnished, procured, used, or consumed, except plans or specifications furnished by the architect, professional engineer or surveyor employed by the owner, in making such improvement and performing the work of improvement. The contract shall not be effective to eliminate lien rights unless the prime contractor gives a bond issued by a surety company licensed to do business in this state. The bond shall carry a penalty for unpaid claims of not less than the contract price, and shall be conditioned for the payment to every person entitled thereto of all the claims for labor ~~performed, and, services, materials, plans, and specifications performed,~~ performed, furnished, or procured under the contract and subsequent amendments thereto, to be used or consumed in making the improvement or performing the work of improvement as provided in the contract and subsequent amendments thereto. The bond shall be approved by the owner and by any mortgage lender furnishing funds for the construction of the improvement. No assignment, modification or change in the contract, or change in the work covered thereby, or any extension of time for completion of the contract shall release the sureties on the bond.

SECTION 27. 779.035 (2) (b) 1. of the statutes is amended to read:

779.035 (2) (b) 1. Except as provided in subd. 2., a subcontractor ~~or, supplier, or service provider~~ may maintain an action under par. (a) only if the subcontractor ~~or, supplier, or service provider~~ has notified the prime contractor in writing that the subcontractor ~~or, supplier, or service provider~~ was ~~providing performing, furnishing, or procuring~~ labor or, services, materials, plans, or specifications for the construction of the improvement. The notice must be provided no later than 60 days after the

date on which the subcontractor ~~or, supplier, or service provider~~ first ~~provided performed, furnished, or procured~~ the labor or, services, materials, plans, or specifications.

SECTION 28. 779.035 (2) (b) 2. a. of the statutes is amended to read:

779.035 (2) (b) 2. a. The contract for the ~~provision of performing, furnishing, or procuring~~ the labor or, ser- services, materials, plans, or specifications does not exceed \$5,000.

SECTION 29. 779.035 (2) (b) 2. c. of the statutes is amended to read:

779.035 (2) (b) 2. c. The subcontractor ~~or, supplier, or service provider~~ is listed in a written contract, or in a document appended to a written contract, between a subcontractor ~~or, supplier, or service provider~~ and the prime contractor.

SECTION 30. 779.035 (3) of the statutes is amended to read:

779.035 (3) In any case in which the improvement contract and bond have been prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor, ~~mat-~~ erialman supplier, service provider, laborer, or mechanic ~~performing, furnishing, or procuring~~ labor or, services, materials, plans, or specifications for said improvement, the prime contractor and the owner shall so advise the person making the inquiry and shall give the person reasonable opportunity to inspect and examine the contract and bond.

SECTION 31. 779.036 (1) of the statutes is amended to read:

779.036 (1) In any case in which an improvement is constructed or to be constructed pursuant to a contract and payment bond under s. 779.035, any person ~~perform-~~ ing, furnishing, or procuring labor ~~or, services, materials~~ or, plans, or specifications to be used or consumed in making the improvement, to any prime contractor or subcontractor shall have a lien on the money or other payment due or to become due the prime contractor or subcontractor therefor, if the lienor, before payment is made to the prime contractor or subcontractor, ~~gives serves a~~ written notice of the lienor's claim by registered mail with return receipt requested to on the owner or authorized agent and ~~to on~~ any mortgage lender furnishing funds for the construction of the improvement. Upon receipt of the notice, the owner and lender shall assure that a sufficient amount is withheld to pay the claim and, when it is admitted ~~or not disputed~~ by the prime contractor or subcontractor involved or established under sub. (3), shall pay the claim and charge it to the prime contractor or subcontractor as appropriate. Any owner or lender violating this duty shall be liable to the claimant for the damages resulting from the violation. There shall be no preference among lienors serving such notices.

SECTION 32. 779.036 (2) of the statutes is amended to read:

779.036 (2) A copy of the notice provided in sub. (1) also shall be served by the lienor, within 7 days after service of the notice upon the owner and lender, upon the prime contractor or subcontractor by registered mail with return receipt requested.

SECTION 33. 779.036 (3) of the statutes is amended to read:

779.036 (3) If the prime contractor or subcontractor does not dispute the claim by serving written notice on the owner and the lien claimant within 30 days after service of written notice under sub. (2), ~~by registered mail with return receipt requested to the owner and lender,~~ the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor or subcontractor pursuant to sub. (1). If the prime contractor or subcontractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the claimant or the prime contractor or subcontractor. If the action is not brought within 3 months from the time the notice required by sub. (1) is served, the lien rights under this section are barred.

SECTION 34. 779.036 (4) (a) of the statutes is amended to read:

779.036 (4) (a) When the total lien claims exceed the sum due the prime contractor or subcontractor concerned and where the prime contractor or subcontractor has not disputed the amounts of the claims filed, the owner with the concurrence of the lender shall determine on a proportional basis who is entitled to the amount being withheld and shall ~~notify~~ serve a written notice of the determination on all claimants and the prime contractor or subcontractor ~~in writing of the determination.~~ Unless an action is commenced by a claimant or by the prime contractor or subcontractor within 20 days after the mailing service of said notice, the money shall be paid out in accordance with the determination and the liability of the owner and lender to any claimant shall cease.

SECTION 35. 779.05 (1) of the statutes is amended to read:

779.05 (1) Any document signed by a lien claimant or potential claimant and purporting to be a waiver of construction lien rights under this subchapter, is valid and binding as a waiver whether or not consideration was paid therefor and whether the document was signed before or after the labor ~~or material was,~~ services, materials, plans, or specifications were performed, furnished, or procured, or contracted for. Any ambiguity in such document shall be construed against the person signing it. Any waiver document shall be deemed to waive all lien rights of the signer for all labor ~~and,~~ services, materials, plans, or specifications performed, furnished, or procured, or to be performed, furnished, or procured, by the claimant at any time for the improvement to which the waiver relates, except to the extent that the document specifically and expressly limits the waiver to apply to a particular portion of such labor ~~and,~~ services, materials,

plans, or specifications. A lien claimant or potential lien claimant of whom a waiver is requested is entitled to refuse to furnish a waiver unless paid in full for the ~~work~~ or material labor, services, materials, plans, or specifications to which the waiver relates. A waiver furnished is a waiver of lien rights only, and not of any contract rights of the claimant otherwise existing.

SECTION 36. 779.06 (1) of the statutes is amended to read:

779.06 (1) No lien under s. 779.01 shall exist and no action to enforce a lien under s. 779.01 shall be maintained unless within 6 months from the date the lien claimant performed, furnished, or procured the last labor ~~or,~~ services, materials, plans, or specifications, a claim for the lien is filed in the office of the clerk of circuit court of the county in which the lands affected by the lien lie, and unless within 2 years from the date of filing a claim for lien an action is brought and summons and complaint filed. A lien claimant shall serve a copy of the claim for lien on the owner of the property on which the lien is placed within 30 days after filing the claim. A claim for a lien may be filed and entered in the judgment and lien docket, and action brought, notwithstanding the death of the owner of the property affected by the action or of the person with whom the original contract was made, with like effect as if he or she were then living.

SECTION 37. 779.06 (2) of the statutes is amended to read:

779.06 (2) No lien claim may be filed or action brought thereon unless, at least 30 days before timely filing of the lien claim, the lien claimant serves on the owner, ~~personally or by registered mail with return receipt requested,~~ a written notice of intent to file a lien claim. The notice is required to be given whether or not the claimant has been required to and has given a previous notice pursuant to s. 779.02. Such notice shall briefly describe the nature of the claim, its amount and the land and improvement to which it relates.

SECTION 38. 779.06 (3) of the statutes is amended to read:

779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice given in compliance with s. 779.02 and a copy of the notice given in compliance with sub. (2), and shall contain a statement of the contract or demand upon which it is founded, the name of the person against whom the demand is claimed, the name of the claimant and any assignee, the last date of ~~the performance of performing,~~ performing, furnishing, or procuring any labor ~~or the furnishing of any,~~ services, materials, plans, or specifications, a legal description of the property against which the lien is claimed, a statement of the amount claimed and all other material facts in relation thereto. Such claim document shall be signed by the claimant or attorney, need not be verified, and in case of action brought, may be amended, as pleadings are.

SECTION 39. 779.07 (1) (d) of the statutes is amended to read:

779.07 (1) (d) Last date of ~~performance of performing, furnishing, or procuring~~ labor or furnishing, services, materials, plans, or specifications.

SECTION 40. 779.08 (1) of the statutes is amended to read:

779.08 (1) The person against whom a lien is claimed or any other interested party may file with the clerk of court in whose office the claim for lien is filed an undertaking executed by ~~2 or more sufficient sureties~~ a surety to the effect that the person against whom the lien is claimed shall pay the amount of the claim and all costs and damages which may be awarded against that person on account of the lien or in lieu thereof deposit with the clerk of the court a sum of money, certified check or negotiable government bonds in par value equal to 125% of the claim for lien. The court in which any action to foreclose the lien may be brought shall determine any question of sufficiency of the ~~sureties~~ surety if exception is taken thereto by the lien claimant within 10 days after notice of the filing of such undertaking or deposit of other security and may upon notice and upon motion of any party, order any sum of money deposited to be invested. The clerk of court shall remove the lien from the judgment and lien docket upon the court's order approving the surety in substitution for the lien. The depositor shall be entitled to any income from the investments, certified check or negotiable U.S. government bonds deposited and the clerk shall pay the income to the depositor without order when received or, in the case of coupons, as the income becomes due.

SECTION 41. 779.08 (2) of the statutes is amended to read:

779.08 (2) If an undertaking is furnished, it shall be accompanied by the ~~affidavits~~ affidavit of the ~~sureties~~ surety in which ~~each~~ states that the surety is worth, over and above all debts and liabilities in property within this state not exempt from execution, an amount in the aggregate equal to 125% or more of the amount of the claim for lien.

SECTION 42. 779.10 of the statutes is amended to read:

779.10 Judgment. The judgment shall adjudge the amount due to each claimant who is a party to the action. It shall direct that the interest of the owner in the premises at the commencement of the ~~work or~~ performing, furnishing, or procuring the labor, services, materials, plans, or specifications for which liens are given and which the owner has since acquired, or so much thereof as is necessary, be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the premises can be sold in parcels without injury to the parties, the court may adjudge that the sale be so made. If the plaintiff fails to establish a lien upon the premises but does establish a right to recover for

labor ~~or~~ services, materials, plans, or specifications, the plaintiff may have a judgment against the party liable.

SECTION 43. 779.13 (2) of the statutes is amended to read:

779.13 (2) Every lien claimant, or the attorney who executed and filed a claim for lien on the claimant's behalf, who has received from any person interested in the premises described in the claim a written statement that the premises described in the claim are not in fact the premises on which the claimant performed, furnished, or procured the work or labor, services, materials, plans, or specifications to which the claim relates together with a written demand that the claim be satisfied of record shall, if in fact the statement of such person about the mistaken description is true, promptly satisfy the lien claim of record at the lien claimant's expense. Failure to satisfy the lien claim of record within a reasonable time, if in fact the statement asserting the mistaken description is true, shall render the person so failing liable to pay to the person demanding the satisfaction a sum equal to one-half of the sum claimed in the claim for lien.

SECTION 44. 779.135 (1) of the statutes is amended to read:

779.135 (1) Provisions requiring ~~a contractor, subcontractor or material supplier~~ any person entitled to a construction lien to waive his or her right to a construction lien or to a claim against a payment bond before he or she has been paid for the labor ~~or~~ services, materials or both, plans, or specifications that he or she performed, furnished, or procured.

SECTION 45. 779.135 (3) of the statutes is amended to read:

779.135 (3) Provisions making a payment to a general prime contractor from any person who does not have a contractual agreement with the subcontractor ~~or~~ supplier, or service provider a condition precedent to a general prime contractor's payment to a subcontractor ~~or a~~ supplier, or service provider. This subsection does not prohibit contract provisions that may delay a payment to a subcontractor until the prime contractor receives payment from any person who does not have a contractual agreement with the subcontractor ~~or~~ supplier, or service provider.

SECTION 46. 779.14 (1) (intro.) of the statutes is amended to read:

779.14 (1) DEFINITION. (intro.) In this section, "subcontractor ~~or~~ supplier, or service provider" means the following:

SECTION 47. 779.14 (1) (a) of the statutes is amended to read:

779.14 (1) (a) Any person who has a direct contractual relationship, expressed or implied, with the prime contractor or with any subcontractor of the prime contractor to perform, furnish, or procure labor ~~or~~ furnish, services, materials, plans, or specifications, except as provided in par. (b).

SECTION 48. 779.14 (1) (b) of the statutes is amended to read:

779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) for highway improvements, any person who has a direct contractual relationship, expressed or implied, with the prime contractor to perform, furnish, or procure labor ~~or furnish, services, materials, plans, or specifications.~~

SECTION 49. 779.14 (1e) (a) of the statutes is amended to read:

779.14 (1e) (a) All contracts involving \$10,000 or more for the performance of performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans, or specifications,~~ when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor ~~performed and, services, materials, plans, or specifications performed,~~ furnished, procured, used, or consumed ~~in making that pertain to~~ the public improvement or performing the public work, ~~including, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment insurance.~~

SECTION 50. 779.14 (1e) (b) of the statutes is amended to read:

779.14 (1e) (b) All contracts that are in excess of \$30,000, as indexed under sub. (1s), and that are for the performance of performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans, or specifications~~ for a public improvement or public work shall contain a provision under which the prime contractor agrees, to the extent practicable, to maintain a list of all subcontractors ~~and, suppliers, and service providers~~ performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans, or specifications~~ under the contract.

SECTION 51. 779.14 (1m) (c) (intro.) of the statutes is amended to read:

779.14 (1m) (c) *State contracts.* (intro.) The following requirements apply to contracts with the state for the performance of performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans, or specifications~~ for a public improvement or public work:

SECTION 52. 779.14 (1m) (d) (intro.) of the statutes is amended to read:

779.14 (1m) (d) *Local government contracts.* (intro.) The following requirements apply to contracts, other than contracts with the state, for the performance of performing, furnishing, or procuring labor ~~or furnishing, services, materials, plans, or specifications~~ for a public improvement or public work:

SECTION 53. 779.14 (1m) (e) 2. b. of the statutes is amended to read:

779.14 (1m) (e) 2. b. The payment to every person, including every subcontractor ~~or, supplier, or service provider,~~ of all claims that are entitled to payment for labor ~~performed and, services, materials, plans, or specifications performed,~~ furnished, or procured for the purpose of making the public improvement or performing the public work as provided in the contract and sub. (1e) (a).

SECTION 54. 779.14 (2) (a) (intro.) of the statutes is amended to read:

779.14 (2) (a) (intro.) Except as provided in par. (am), no later than one year after the completion of work under the contract, any party in interest, including any subcontractor ~~or, supplier, or service provider,~~ may maintain an action in that party's name against the prime contractor and the sureties upon the bond for the recovery of any damages sustained by reason of any of the following:

SECTION 55. 779.14 (2) (a) 2. of the statutes is amended to read:

779.14 (2) (a) 2. Except as provided in subd. 3., failure of the prime contractor or a subcontractor of the prime contractor to comply with a contract, whether express or implied, with a subcontractor ~~or, supplier, or service provider~~ for the performance of performing, furnishing, or procuring labor ~~or furnishing of, services, materials, plans, or specifications~~ for the purpose of making the public improvement or performing the public work that is the subject of the contract with the governmental entity.

SECTION 56. 779.14 (2) (a) 3. of the statutes is amended to read:

779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) for highway improvements, failure of the prime contractor to comply with a contract, whether express or implied, with a subcontractor ~~or, supplier, or service provider~~ of the prime contractor for the performance of performing, furnishing, or procuring labor ~~or furnishing of, services, materials, plans, or specifications~~ for the purpose of making the highway improvement that is the subject of the contract with the governmental entity.

SECTION 57. 779.14 (2) (am) 1. of the statutes is amended to read:

779.14 (2) (am) 1. Except as provided in subd. 2., a subcontractor ~~or, supplier, or service provider~~ may maintain an action under par. (a) only if the subcontractor ~~or, supplier, or service provider~~ has ~~notified~~ served a written notice on the prime contractor ~~in writing~~ that the subcontractor ~~or, supplier, or service provider~~ has ~~provided~~ performed, furnished, or procured, or will ~~provide~~ perform, furnish, or procure labor ~~or, services, materials, plans, or specifications~~ to the public work or improvement. The notice must be ~~provided~~ served no later than 60 days after the date on which the subcontractor ~~or, supplier, or service provider~~ first ~~provided~~ performed, furnished, or pro-

cured the labor of, services, materials, plans, or specifications.

SECTION 58. 779.14 (2) (am) 2. a. of the statutes is amended to read:

779.14 (2) (am) 2. a. The contract for the provision of performing, furnishing, or procuring the labor of, services, materials, plans, or specifications does not exceed \$5,000.

SECTION 59. 779.14 (2) (am) 2. b. of the statutes is amended to read:

779.14 (2) (am) 2. b. The action is brought by an employee of the prime contractor, the subcontractor of the, supplier, or service provider.

SECTION 60. 779.14 (2) (am) 2. c. of the statutes is amended to read:

779.14 (2) (am) 2. c. The subcontractor of, supplier, or service provider is listed in the list required to be maintained under sub. (1e) (b) or in a written contract, or in a document appended to a written contract, between a subcontractor of, supplier, or service provider and the prime contractor.

SECTION 61. 779.14 (3) of the statutes is amended to read:

779.14 (3) ACTIONS BY A COUNTY. In an action by a county upon the bond all persons for whose protection it was given and who make claim thereunder may be joined in the action. The county highway commissioner may take assignments of all demands and claims for labor of material, services, materials, plans, or specifications and enforce the same in the action for the benefit of the assignors, and the judgment may provide the manner in which the assignors shall be paid.

SECTION 62. 779.15 (title) of the statutes is amended to read:

779.15 (title) Public improvements; lien on money, bonds, or warrants due the prime contractor; duty of officials.

SECTION 63. 779.15 (1) of the statutes is amended to read:

779.15 (1) Any person furnishing who performs, furnishes, procures, manages, supervises, or administers any labor of, services, materials, plans, or specifications to be used or consumed in making public improvements or performing public work, including fuel, lumber, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment insurance, to any prime contractor, except in cities of the 1st class, shall have a lien on the money or bonds or warrants due or to become due the prime contractor therefor, if the lienor, before payment is made to the prime contractor, gives serves a written notice to of the claim on the debtor state, county, town, or municipality of the claim. The debtor shall withhold a sufficient amount to pay the claim and,

when it is admitted by the prime contractor or established under sub. (3), shall pay the claim and charge it to the prime contractor. Any officer violating the duty hereby imposed shall be liable on his or her official bond to the claimant for the damages resulting from the violation. There shall be no preference between the lienors serving the notices.

SECTION 64. 779.15 (2) of the statutes is amended to read:

779.15 (2) Service of the notice under sub. (1) shall be made by registered mail upon the clerk of the municipality or in the clerk's absence upon the treasurer. If any of the money due the prime contractor is payable by the state, service of the notice under sub. (1) shall be served by registered mail upon the state department, board, or commission having jurisdiction over the work. A copy of the notice shall be served concurrently by registered mail upon the prime contractor.

SECTION 65. 779.15 (3) of the statutes is amended to read:

779.15 (3) If a valid lien exists under sub. (1) and the prime contractor does not dispute the claim within 30 days after service on the prime contractor of the notice provided in sub. (2), by servicing written notice to on the debtor state, county, town, or municipality and the lien claimant, the amount claimed shall be paid over to the claimant on demand and charged to the prime contractor pursuant to sub. (1). If the prime contractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the claimant or the prime contractor. If the action is not brought within 3 months from the time the notice required by sub. (1) is served, and notice of bringing the action filed with the officer with whom the claim is filed, the lien rights are barred.

SECTION 66. 779.15 (4) (a) of the statutes is amended to read:

779.15 (4) (a) When the total of the lien claims exceeds the sum due the prime contractor and where the prime contractor has not disputed the amounts of the claims filed, the debtor state, county, town or municipality, through the officer, board, department or commission with whom the claims are filed, shall determine on a proportional basis who is entitled to the money and shall notify all claimants and the prime contractor in writing of the determination. Unless an action is commenced by a claimant or by the prime contractor within 20 days after the mailing of the notice, the money shall be paid out in accordance with the determination and the liability of the state, county, town or municipality to any lien claimant shall cease.

SECTION 67. 779.155 (2) of the statutes is amended to read:

779.155 (2) CERTIFIED COPIES OF JUDGMENTS FILED. In this section, "municipality" includes city, village, county, town, school district, technical college district

and any quasi municipal corporation. When the state or any municipality is indebted to any prime contractor, the owner of a judgment against the prime contractor may attach the debt by filing a certified copy of his or her judgment in the manner and subject to the conditions and limitations of this section. If the debt is owed by the state upon a contract for public improvements, the certified copy shall be filed with the officer, board, department or commission having jurisdiction over the work. Otherwise, the copy shall be filed with the department of administration. If the debt is owed by a municipality, the copy shall be filed with the municipal clerk or corresponding officer. The judgment creditor shall promptly notify the judgment debtor of the filing, within the time and as provided by s. 812.07 for service upon the defendant.

SECTION 68. 779.155 (3) of the statutes is amended to read:

779.155 (3) PAYMENT TO JUDGMENT CREDITOR; EXCEPTION. Except as to prime contractors on public works, the proper officers of the state or municipality shall pay the judgment out of moneys due the prime contractor or which become due the prime contractor, but no payment shall be made until 30 days after the creditor has filed with such officers proof that the contractor had been notified of the filing of a copy of the judgment against the contractor.

SECTION 69. 779.155 (4) of the statutes is amended to read:

779.155 (4) SAME; FUNDS DUE PUBLIC PRIME CONTRACTORS. When the state or a municipality is indebted to a prime contractor for public improvements, payment shall not be made to the judgment creditor until 3 months after final completion and acceptance of the public work and then only out of moneys due the prime contractor in excess of unpaid lienable claims having priority under s. 779.15.

SECTION 70. 779.155 (5) (a) of the statutes is amended to read:

779.155 (5) (a) For the purpose of administering this section, sworn statements of the prime contractor setting forth the unpaid lien claims that have been or may be filed under s. 779.15 may be accepted by the proper officer, board, department, or commission, unless the judgment creditor or other interested person gives written notice that an action is pending to determine whether specified lien claims were incurred in performing the public work and the amount thereof, or to determine priorities in which event payments shall await the result of the action.

SECTION 71. 779.155 (5) (b) of the statutes is amended to read:

779.155 (5) (b) Within 10 days after filing the certified copy of the judgment under sub. (2), the prime contractor shall file the sworn statement in duplicate, with the proper officer, board, department or commission, who shall immediately furnish the judgment creditor

with one of the statements. The judgment creditor shall have 10 days from the receipt thereof in which to serve the notice of pendency of the court action.

SECTION 72. 779.155 (6) of the statutes is amended to read:

779.155 (6) PAYMENTS TO JUDGMENT CREDITOR. After the expiration of the 3-month period, the moneys due the prime contractor in excess of unpaid lienable expenses and claims incurred in performing the public work shall be paid to the judgment creditor, but not exceeding the amount due on the judgment.

SECTION 73. 779.155 (7) of the statutes is amended to read:

779.155 (7) PRIORITY OF JUDGMENTS OVER ASSIGNMENTS. Any judgment filed under this section has priority over an assignment made by the prime contractor after the commencement of the action in which the judgment was obtained.

SECTION 74. 779.16 of the statutes is amended to read:

779.16 Theft by contractors. All moneys, bonds or warrants paid or to become due to any prime contractor or subcontractor for public improvements are a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor, services, materials, plans, and specifications performed, furnished, or procured for the improvements, until all the claims have been paid, and shall not be a trust fund in the hands of any other person. The use of the any such moneys by the any prime contractor or subcontractor for any other purpose other than the payment of claims on such public improvement, before the until all claims have been satisfied, constitutes, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or proportionally in cases of a deficiency, is theft by the prime contractor or subcontractor of moneys so misappropriated and is punishable under s. 943.20. This If the prime contractor or subcontractor is a corporation, limited liability company, or other legal entity other than a sole proprietorship, such misappropriation also shall be deemed theft by any officers, directors, members, partners, or agents responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder, member, or partner not responsible for the misappropriation shall be a civil liability of that person and may be recovered and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose. Except as provided in this subsection, this section shall not create a civil cause of action against any person other than the prime contractor or subcontractor to whom such moneys are paid or become due. Until all claims are paid in full, have matured by notice and filing or have expired,

2005 Senate Bill 450

2005 Wisconsin Act 204

such money, bonds and warrants shall not be subject to garnishment, execution, levy or attachment.

SECTION 75. 779.17 of the statutes is amended to read:

779.17 Release of funds on filing bond. At any time after the service of a notice of lien claim or filing of judgment or pending the determination of any action commenced thereunder, the prime contractor shall be entitled to the release of any moneys due the prime contractor under the contract upon filing a bond, executed by a surety company duly authorized to transact business in

this state, with the public authority having jurisdiction over the work, guaranteeing that the prime contractor will pay any judgment of the court rendered in favor of the lien claimant and all judgments filed. Such bond shall be in an amount sufficient to insure payment of the lien claims and judgments, and shall be approved as to form and amount by the public authority.

SECTION 76. Initial applicability.

(1) This act first applies to improvements that visibly commence on the effective date of this subsection.
