

**2013 DRAFTING REQUEST**

**Bill**

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Procedures for liens

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/19/2013			_____			
/P1	rnelson 1/9/2014	scalvin 12/2/2013	rschluet 12/2/2013	_____	mbarman 12/2/2013		
/P2	rnelson 1/20/2014	scalvin 1/13/2014	jfrantze 1/13/2014	_____	lparisi 1/13/2014		
/1	rnelson	scalvin	jfrantze	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	1/27/2014	1/23/2014	1/24/2014	_____	1/24/2014		
/2		scalvin 1/28/2014	rschluet 1/28/2014	_____	sbasford 1/28/2014	lparisi 2/4/2014	

FE Sent For:

*none  
needed*

<END>

## 2013 DRAFTING REQUEST

### Bill

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Procedures for liens

---

### Instructions:

See attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/19/2013			_____			
/P1	rnelson 1/9/2014	scalvin 12/2/2013	rschluet 12/2/2013	_____	mbarman 12/2/2013		
/P2	rnelson 1/20/2014	scalvin 1/13/2014	jfrantze 1/13/2014	_____	lparisi 1/13/2014		
/1	rnelson	scalvin	jfrantze	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	1/27/2014	1/23/2014	1/24/2014	_____	1/24/2014		
/2		scalvin 1/28/2014	rschluet 1/28/2014	_____	sbasford 1/28/2014		

FE Sent For:

**<END>**

**2013 DRAFTING REQUEST**

**Bill**

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Procedures for liens

---

**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/19/2013			_____			
/P1	rnelson 1/9/2014	scalvin 12/2/2013	rschluet 12/2/2013	_____	mbarman 12/2/2013		
/P2	rnelson 1/20/2014	scalvin 1/13/2014	jfrantze 1/13/2014	_____	lparisi 1/13/2014		
/1	rnelson	scalvin	jfrantze	_____	sbasford		



<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	1/23/2014	1/23/2014	1/24/2014	_____	1/24/2014		

FE Sent For:            *1/2 sac*            *1/2 sac*  
                                 *01/28/2014*    *01/28/2014*

<END>

## 2013 DRAFTING REQUEST

### Bill

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Procedures for liens

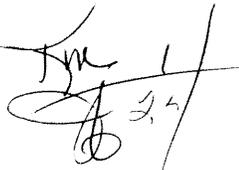
---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/19/2013			_____			
/P1	rnelson 1/9/2014	scalvin 12/2/2013	rschluet 12/2/2013	_____	mbarman 12/2/2013		
/P2		scalvin 1/13/2014	jfrantze 1/13/2014	_____	lparisi 1/13/2014		
		1 sac 01/23/2014	1 sue 01/23/2014				

FE Sent For:

**<END>**

**2013 DRAFTING REQUEST**

**Bill**

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

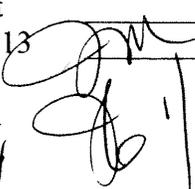
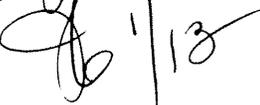
**Topic:**

Procedures for liens

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 11/19/2013			_____			
/P1		scalvin 12/2/2013	rschluet 12/2/2013		mbarman 12/2/2013		
FE Sent For:		/P2 sac 01/13/2014	/P2 sac 01/13/2014				

<END>

### 2013 DRAFTING REQUEST

#### Bill

Received: 11/14/2013 Received By: rnelson  
Wanted: As time permits Same as LRB:  
For: David Murphy (608) 266-7500 By/Representing: Diane H  
May Contact: Drafter: rnelson  
Subject: Liens Addl. Drafters:  
Extra Copies: PJH

Submit via email: YES  
Requester's email: Rep.Murphy@legis.wisconsin.gov  
Carbon copy (CC) to:

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Procedures for liens ✓

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	rnelson	PI sac 12/02/2013	PI sac 12/02/2013				

FE Sent For:

<END>

Construction?

Representative Murphy and Senator Olsen would like to draft a bill that makes procedural changes to how lien rights are preserved and how lien actions are commenced on private construction projects, and clarifies how money can be withheld on public construction projects.

We would like to draft a bill to do the following:

1). Currently, on projects where more than four family living units are to be provided or added, lien rights insure to the benefit of subcontractors at every tier upon performing, providing, furnishing or procuring labor, services, materials, plans, or specifications for an improvement. Prime contractors do not have direct contracts with second tier and lower subcontractors and suppliers, and therefore are potentially not aware of future lien claimants.

We would like to draft a bill that requires all subcontractors that do not have a direct contract with the prime contractor to provide a Notice of Furnishings within 45 days of first performing, providing, furnishing or procuring labor, services, materials, plans, or specifications for an improvement to preserve lien rights.

2). Currently, once a claim for lien is properly recorded a lien claimant has two years to file a lawsuit to determine the validity of the lien.

We would like to draft a bill that permits an owner or prime contractor to serve written demand upon a lien claimant to file a lawsuit to determine the validity of the lien within 90 days or the lien is forfeited. Further, it provides a notice procedure for anyone who performs a title search to clarify that the lien was forfeited.

3). Currently, a first tier subcontractor on a public works project can provide notice to the state, county, town, or municipality making a claim on money that is due a prime contractor because of a dispute between the first tier subcontractor and the prime contractor. Upon receipt of the notice and if there are sufficient funds, the state, county, town, or municipality must withhold a sufficient amount to pay the claim. Furthermore, the prime contractor must, within thirty days, provide written notice that it disputes the claim or the amount withheld shall be paid over to the first tier subcontractor on demand.

We would like to draft a bill that clarifies that the state, county, town, or municipality may continue to make scheduled or progress payments to the prime contractor during the project, as they currently have the ability to do, provided there is sufficient money remaining at the end of the project to pay the claim. Furthermore, it will be presumed that the prime contractor disputes the first tier subcontractors claim if the prime contractor does not dispute the claim within thirty days.

Collectively, we would like to draft 1 bill that would resolve these three issues. Representative Murphy and Senator Olsen would like to start with a P-draft first however. Please feel free to call or email either of us with thoughts.

Thanks,

Diane Handrick  
Representative Murphy's Office

Amy Harriman  
Senator Olsen's Office 6-0751

Diane Handrick  
Office of Representative Dave Murphy

608-266-7500  
Room 304 North, State Capitol  
Madison WI 53708



This  
(pls. request)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-N

gen act

1 **AN ACT** ...; **relating to:** procedures to preserve and determine the validity of  
2 certain liens and to make payments to prime contractors of public works  
3 contracts.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

---

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

4 **SECTION 1.** 779.02 (1) (c) of the statutes is amended to read:  
5 779.02 (1) (c) By any ~~lien claimant~~ prime contractor or any subcontractor that  
6 has a contract with the prime contractor performing, furnishing, or procuring labor,  
7 services, materials, plans, or specifications for an improvement in any case where  
8 more than 4 family living units are to be provided or added by such work of  
9 improvement, if the improvement is wholly residential in character, or in any case  
10 where the improvement is partly or wholly nonresidential in character.

\*

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

2 779.02 (2) (b) Every person other than a prime contractor who has a contract  
3 with the prime contractor and who performs, furnishes, or procures labor, materials,  
4 plans, or specifications for an improvement shall have the lien and remedy under this  
5 subchapter only if within 60 days after performing, furnishing, or procuring the first  
6 labor, services, materials, plans, or specifications the person serves a written notice,  
7 in 2 signed copies, on the owner or authorized agent at the last-known post-office  
8 address. Every person other than a prime contractor who does not have a contract  
9 with the prime contractor and who performs, furnishes, or procures labor, materials,  
10 plans, or specifications for an improvement shall have the lien and remedy under this  
11 subchapter only if within 45 days after performing, furnishing, or procuring the first  
12 labor, services, materials, plans, or specifications the person serves a written notice,  
13 in 2 signed copies, on the owner or authorized agent at the last-known post-office  
14 address. The owner or agent shall provide a copy of the notice received, within 10  
15 days after receipt, to any mortgage lender who is furnishing or is to furnish funds for  
16 construction of the improvement to which the notice relates. The notice to the owner  
17 shall be in substantially the following language, with blanks accurately filled in: “As  
18 a part of your construction contract, your prime contractor or claimant has already  
19 advised you that those who perform, furnish, or procure labor, services, materials,  
20 plans, or specifications for the work will be notifying you. The undersigned first  
21 performed, furnished, or procured labor, services, materials, plans, or specifications  
22 on .... (give date) for the improvement now under construction on your real estate at  
23 .... (give legal description, street address or other clear description). Please give your

1 mortgage lender the extra copy of this notice within 10 days after you receive this,  
2 so your lender, too, will know that the undersigned is included in the job”.

3 **History:** 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 52 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395; 2005 a. 204.

3 **SECTION 3.** 779.06 (4) of the statutes is created to read:

4 779.06 (4) After a lien claim that has been filed under sub. (1) is served upon  
5 the owner of the property on which the lien is placed, the owner may serve upon the  
6 lien claimant a written demand that the claimant commence an action to determine  
7 the validity of the lien. If the lien claimant fails to commence an action to determine  
8 the validity of the lien within 90 days after being served the written demand, the lien  
9 is forfeited.

x

10 **SECTION 4.** 779.15 (3) of the statutes is amended to read:

11 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor ~~does not~~  
12 ~~dispute~~ admits the claim within 30 days after service on the prime contractor of the  
13 notice provided in sub. (2), by serving written notice on the debtor state, county, town,  
14 or municipality and the lien claimant, the amount claimed shall be paid over to the  
15 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the  
16 prime contractor ~~disputes~~ does not admit the claim within 30 days after service on  
17 the prime contractor of the notice provided in sub. (2), the right to a lien and to the  
18 moneys in question shall be determined in an action brought by the claimant or the  
19 prime contractor. If the action is not brought within 3 months from the time the  
20 notice required by sub. (1) is served, and notice of bringing the action filed with the  
21 officer with whom the claim is filed, the lien rights are barred. During the period that  
22 a claim is disputed under this subsection, the state, county, town, or municipality  
23 may continue to make scheduled or progress payments to the prime contractor

1 provided that the state, county, town, or municipality withholds sufficient funds to  
2 pay the claim.

3 **History:** 1975 c. 147 s. 54; 1975 c. 199, 224, 422; 1979 c. 32 s. 57; 1979 c. 176; Stats. 1979 s. 779.15; 1997 a. 39; 2005 a. 204.

3 **SECTION 5. Initial applicability.**

4 (1) This act first applies to contracts entered into on the effective date of this  
5 subsection.

6 (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3639/P1dn

RPN:/:....

*Sac*

*- date -*

Please review this draft carefully to ensure that it is consistent with your intent.

Robert Nelson  
Senior Legislative Attorney  
Phone: (608) 266-9739  
E-mail: robert.nelson@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3639/P1dn  
RPN:sac:rs

December 2, 2013

Please review this draft carefully to ensure that it is consistent with your intent.

Robert Nelson  
Senior Legislative Attorney  
Phone: (608) 266-9739  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)

*Construction?*

Representative Murphy and Senator Olsen would like to draft a bill that makes procedural changes to how lien rights are preserved and how lien actions are commenced on private construction projects, and clarifies how money can be withheld on public construction projects.

We would like to draft a bill to do the following:

*999.02(1)(c) with 2*

1). Currently, on projects where more than four family living units are to be provided or added, lien rights insure to the benefit of subcontractors at every tier upon performing, providing, furnishing or procuring labor, services, materials, plans, or specifications for an improvement. Prime contractors do not have direct contracts with second tier and lower subcontractors and suppliers, and therefore are potentially not aware of future lien claimants.

*999.02(2)(a)*

We would like to draft a bill that requires all subcontractors that do not have a direct contract with the prime contractor to provide a Notice of Furnishings within **45 days** of first performing, providing, furnishing or procuring labor, services, materials, plans, or specifications for an improvement to preserve lien rights.

2). Currently, once a claim for lien is properly recorded a lien claimant has two years to file a lawsuit to determine the validity of the lien.

*999.06(1) and (2)?*  
*999.01(2)(a) serve. mail? of when? to receipt of demand?*

We would like to draft a bill that permits an owner or prime contractor to serve written demand upon a lien claimant to file a lawsuit to determine the validity of the lien within **90 days** or the lien is forfeited. Further, it provides a notice procedure for anyone who performs a title search to clarify that the lien was forfeited.

*how - file written demand?*

3). Currently, a first tier subcontractor on a public works project can provide notice to the state, county, town, or municipality making a claim on money that is due a prime contractor because of a dispute between the first tier subcontractor and the prime contractor. Upon receipt of the notice and if there are sufficient funds, the state, county, town, or municipality must withhold a sufficient amount to pay the claim. Furthermore, the prime contractor must, within thirty days, provide written notice that it disputes the claim or the amount withheld shall be paid over to the first tier subcontractor on demand.

*999.15(1) & (3)*

We would like to draft a bill that clarifies that the state, county, town, or municipality may continue to make scheduled or progress payments to the prime contractor during the project, as they currently have the ability to do, provided there is sufficient money remaining at the end of the project to pay the claim. Furthermore, it will be presumed that the prime contractor disputes the first tier subcontractors claim if the prime contractor does not dispute the claim within thirty days.

*Act 999.15(3)*

Collectively, we would like to draft 1 bill that would resolve these three issues. Representative Murphy and Senator Olsen would like to start with a P-draft first however. Please feel free to call or email either of us with thoughts.

Thanks,

Diane Handrick  
Representative Murphy's Office

Amy Harriman  
Senator Olsen's Office 6-0751

Diane Handrick  
Office of Representative Dave Murphy

608-266-7500  
Room 304 North, State Capitol  
Madison WI 53708

*3639/PI*

## **Nelson, Robert**

---

**From:** Harriman, Amy  
**Sent:** Monday, December 16, 2013 3:18 PM  
**To:** Nelson, Robert  
**Cc:** David Bohl; Handrick, Diane; Jim Boullion  
**Subject:** LRB -3639/P1 Topic: Procedures for liens

Hey Bob-

After doing the rounds on the p-draft, it sounds like there may be some concerns that the bill may affect the notice of furnishing procedures for residential projects. We were intending for the proposal to only affect commercial contractors. Could you confirm if the bill does in fact affect residential projects? If so, is there something you can work up that would make it only affect commercial?

Let me know your thoughts or if you have concerns!

Thanks,

Amy Harriman

**Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)

## **Nelson, Robert**

---

**To:** Harriman, Amy  
**Subject:** RE: LRB -3639/P1 Topic: Procedures for liens

Amy,

Parts of this bill apply to residential properties and parts do not:

Section 1 of the bill amends s. 779.02 (1) (c), which is part of the subsection that lists who is not required to give notice to the property owner to preserve a lien right. Section 1 provides that prime contractors and subcontractors that have a contract with the prime contractor are not required to give that notice if the improvement is partially or wholly nonresidential in character or if the improvement involves more than 4 family units as part of a wholly residential improvement. The change in the law, replacing "lien claimant" with "prime contractors and subcontractors that have a contract with a prime contractor" means that other lien claimants, such as subcontractors that do not have a contract with a prime contractor, are required to give notice to preserve their lien right even if the improvement is partially or wholly nonresidential in character or if the improvement involves more than 4 family units as part of a wholly residential improvement. Thus, this change does apply to nonresidential and residential properties.

Section 2 of the bill amends s. 779.02 (2) (b), which is the provision specifying when and to whom a person who is not a prime contractor has to give notice to preserve a lien right. Because s. 779.02 (1) (c) exempts prime contractors and subcontractors that have a contract with a prime contractor from giving the notice if the improvement is partially or wholly nonresidential in character or if the improvement involves more than 4 family units as part of a wholly residential improvement, this Section generally affects only residential properties.

Section 3 of the bill creates s. 779.06 (4), which is part of the statutory section that specifies how and where to file a lien claim. This section applies to all lien claims, residential and nonresidential, so the addition of s. 779.06 (4) will apply to residential and nonresidential improvements.

Section 4 of the bill amends s. 779.15 (3), which concerns liens regarding public improvements, so it probably does not apply to residential improvements, unless the public improvement involved residential property.

I am not sure if this answers your question. I am not exactly sure what the intent is of this bill, so I do not know how to apply the changes only to nonresidential improvements.

Bob Nelson, LRB

---

**From:** Harriman, Amy  
**Sent:** Monday, December 16, 2013 3:18 PM  
**To:** Nelson, Robert  
**Cc:** David Bohl; Handrick, Diane; Jim Boullion  
**Subject:** LRB -3639/P1 Topic: Procedures for liens

Hey Bob-

After doing the rounds on the p-draft, it sounds like there may be some concerns that the bill may affect the notice of furnishing procedures for residential projects. We were intending for the proposal to only affect commercial contractors. Could you confirm if the bill does in fact affect residential projects? If so, is there something you can work up that would make it only affect commercial?

Let me know your thoughts or if you have concerns!

Thanks,

Amy Harriman

**Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)

12/18 Mtg  
 of ~~the~~ removed in 2005 notice  
 furnishing.

lien claimant w/ ~~to~~ Lt

Amy-Sen Olsen Diane & Rep. Murphy

David Bohl

Jim Boullion

dbohl @ agcwi.org

608-221-3821

608-575-6143

(608) 221-3821 (0)

jboullion@agcwi.org

(608) 575-7199

~~the~~ Add p 2

Demand for lien w/ 90 days  
 (See p 3, Ls 2-9)

## **Nelson, Robert**

---

**From:** Harriman, Amy  
**Sent:** Tuesday, January 07, 2014 10:51 AM  
**To:** Nelson, Robert  
**Subject:** FW: LRB 3639  
**Attachments:** Subcontractor.Listing.II.Alternate.Draft.doc

Hey Bob-

Just wanted to follow up. David sent me the attached ideas for drafting. Let me know if you need anything else!

Thanks,

Amy Harriman

### **Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)

**779.02 Notice required to preserve lien rights; exceptions; savings clause; obligations of contractors.**

(1) EXCEPTIONS TO NOTICE REQUIREMENT. The notice required to be given by lien claimants under sub. (2) shall not be required to be given in the following cases only:

(a) By any laborer or mechanic employed by any prime contractor or subcontractor.

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

(c) By any prime contractor or lien claimant who has a direct contractual relationship with the prime contractor performing, furnishing, or procuring labor, 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 the improvement is partly or wholly nonresidential in character.

(d) By any prime contractor who is personally an owner of the land to be improved, by any corporate prime contractor of which an owner of the land is an officer or controlling shareholder, by any prime contractor who is an officer or controlling shareholder of a corporation which is an owner of the land or by any corporate prime contractor managed or controlled by substantially the same persons who manage or control a corporation which is an owner of the land.

~~(e) By any lien claimant, other than a prime contractor, who performs, furnishes, or procures labor, 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.~~

(2) NOTICE TO OWNER, LENDER, AND SUPPLIER.

(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, suppliers, or service providers to perform, furnish, or procure labor, 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 on the owner or authorized agent within 10 days after the first labor, 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, claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor, 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 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, services, materials, plans or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor, services,

1

materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the owner and the owner's lender, if any, to see that all potential lien claimants are duly paid".

✓ (b) For an improvement in any case where 4 family living units or fewer are to be provided or added and the improvement is wholly residential in character. Every person other than a prime contractor who performs, furnishes, or procures labor, 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, services, materials, plans, or specifications the person serves a written notice, in 2 signed copies, on 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 claimant has already advised you that those who perform, furnish, or procure labor, services, materials, plans, or specifications for the work will be notifying you. The undersigned first performed, furnished, or procured labor, 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".

(b)(2) For an improvement in any case where more than 4 family living units are to be provided or added if the improvement is wholly residential in character, or in any case where the improvement is partly or wholly nonresidential in character, every person, other than a prime contractor or lien claimant who has a direct contractual relationship with prime contractor, who performs, furnishes, or procures labor, materials, plans, or specifications for an improvement, shall have the lien and remedy under this subchapter only if within 45 days after performing, furnishing, or procuring the first labor, services, materials, plans, or specifications the person serves a written notice on the owner or authorized agent and the prime contractor 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 shall be in substantially the following language, with blanks accurately filled in:

**NOTICE OF FURNISHING**

TO: \_\_\_\_\_

\_\_\_\_\_  
(Name and address of property owner, property owner's designee or prime contractor. Note: pursuant to Wis. Stat. s. 779.02(2)(b) a copy of this notice must be served on both the property owner and the prime contractor)

Please take notice that the undersigned is furnishing to \_\_\_\_\_

\_\_\_\_\_  
(Name and address of other contracting party)

(2)

labor and material for \_\_\_\_\_  
(Describe type of work)

In connection with the improvement of the real property located at \_\_\_\_\_  
\_\_\_\_\_  
(Address of property, including county)

**THIS IS NOT A LIEN. THIS NOTICE IS REQUIRED BY WISCONSIN LIEN LAW.**

\_\_\_\_\_  
(Name of party furnishing notice)

\_\_\_\_\_  
(Address of party furnishing notice)

By: \_\_\_\_\_  
(Name of party signing)

\_\_\_\_\_  
(Title of party signing)

\_\_\_\_\_  
(Address of party signing if different from above)

Date: \_\_\_\_\_  
(Signature)

(c) If any prime contractor required to give the notice prescribed in par. (a) fails to give notice as required, 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, 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 either none of its subcontractors, suppliers, or service providers gives notice as a lien claimant under par. (b) or all of its subcontractors, suppliers, and service providers have waived all lien rights in full under s. 779.05.

(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 the prime contractor by this subsection.

(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 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 supplier who asserts a lien from the requirement of giving timely notice.

(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 on the owner or authorized agent shall have the lien provided by s. 779.01 for any labor, 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, services, materials, plans, or specifications for which a lien is claimed were furnished after that date is on the lien claimant.

(4) NOTICE AND FILING REQUIREMENTS IN S. 779.06 UNAFFECTED. Nothing in this section shall be construed to relieve any lien claimant of the notice and filing requirements under s. 779.06.

(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, 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, 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 does not create a civil cause of action against any 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.

(6) PRIME CONTRACTORS TO DEFEND LIEN ACTIONS. Where a lien is filed under this subchapter by any person other than the prime contractor, the prime contractor shall defend any action thereon at personal expense, and during the pendency of the action the owner may withhold from the prime contractor the amount for which the lien was filed and sufficient to defray the costs of the action. In case of judgment against the owner, the owner may deduct from any amount due to the prime contractor the amount of the judgment and if the judgment exceeds the amount due, the owner may recover the

difference from the prime contractor. This subsection does not apply if the lien is the result of the failure of the owner to pay the prime contractor, if the prime contractor's lien is for a disputed amount with the owner or if the lien is filed by another prime contractor.

(7) **WRONGFUL USE OF MATERIALS.** Any prime contractor or any subcontractor furnishing materials who purchases materials on credit and represents at the time of making the purchase that the materials are to be used in a designated building or other improvement and thereafter uses or causes them to be used in the construction of any improvement other than that designated, without the written consent of the seller, may be fined not more than \$300 or imprisoned not more than 3 months.

(8) **WAGE PAYMENTS TO LABORER APPLY TO EARLIER WORK.** In any situation where a laborer or mechanic employed by any prime contractor or subcontractor has wage payments due and has worked on more than one improvement for the employer during the period for which the wages are due, and a payment of less than all wages due is made, the payment is deemed to apply to the unpaid work in chronological sequence starting with the earliest unpaid time, unless the laborer agrees in writing that the payment shall be applied in a different way.

5

## Nelson, Robert

---

**From:** Harriman, Amy  
**Sent:** Wednesday, January 08, 2014 4:19 PM  
**To:** Nelson, Robert  
**Subject:** RE: LRB 3639

It is my understanding that the changes for 779.06 (4) and 779.15 (3) are good, this was just for 779.02

Thanks,

Amy Harriman

### Senator Luther Olsen

14<sup>th</sup> Senate District  
608-266-0751  
[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)  
[Senator Olsen on Facebook](#)

---

**From:** Nelson, Robert  
**Sent:** Tuesday, January 07, 2014 3:39 PM  
**To:** Harriman, Amy  
**Subject:** RE: LRB 3639

Amy,

Is the material sent by David meant to replace what I drafted before, or only to replace what was done in s. 779.02? What about the changes I made in ss. 779.06 (4) and 779.15 (3)?

Bob N

---

**From:** Harriman, Amy  
**Sent:** Tuesday, January 07, 2014 1:15 PM  
**To:** Nelson, Robert  
**Cc:** Handrick, Diane  
**Subject:** Re: LRB 3639

Wonderful. Thank you Bob!

Sent from my iPhone

On Jan 7, 2014, at 12:29 PM, "Nelson, Robert" <[Robert.Nelson@legis.wisconsin.gov](mailto:Robert.Nelson@legis.wisconsin.gov)> wrote:

Thanks Amy,

I will start working on this today.

Bob N

---

**From:** Harriman, Amy  
**Sent:** Tuesday, January 07, 2014 10:51 AM

**To:** Nelson, Robert  
**Subject:** FW: LRB 3639

Hey Bob-

Just wanted to follow up. David sent me the attached ideas for drafting. Let me know if you need anything else!

Thanks,

Amy Harriman

**Senator Luther Olsen**  
14<sup>th</sup> Senate District  
608-266-0751  
[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)  
[Senator Olsen on Facebook](#)



Today



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

- gen act

1 AN ACT to amend 779.02 (1) (c), 779.02 (2) (b) and 779.15 (3); and to create  
2 779.06 (4) of the statutes; relating to: procedures to preserve and determine  
3 the validity of certain liens and to make payments to prime contractors of public  
4 works contracts.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

\*

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

6 779.02 (1) (c) By any <sup>plain text</sup> lien claimant, prime contractor or any subcontractor that  
7 has a contract with the prime contractor performing, furnishing, or procuring labor,  
8 services, materials, plans, or specifications for an improvement in any case where  
9 more than 4 family living units are to be provided or added by such work of

1 improvement, if the improvement is wholly residential in character, or in any case  
2 where the improvement is partly or wholly nonresidential in character.

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

4 779.02 (2) (b) Every person other than a prime contractor who has a contract  
5 with the prime contractor and who performs, furnishes, or procures labor, materials,  
6 plans, or specifications for an improvement shall have the lien and remedy under this  
7 subchapter only if within 60 days after performing, furnishing, or procuring the first  
8 labor, services, materials, plans, or specifications the person serves a written notice,  
9 in 2 signed copies, on the owner or authorized agent at the last-known post-office  
10 address. Every person other than a prime contractor who does not have a contract  
11 with the prime contractor and who performs, furnishes, or procures labor, materials,  
12 plans, or specifications for an improvement shall have the lien and remedy under this  
13 subchapter only if within 45 days after performing, furnishing, or procuring the first  
14 labor, services, materials, plans, or specifications the person serves a written notice,  
15 in 2 signed copies, on the owner or authorized agent at the last-known post-office  
16 address. The owner or agent shall provide a copy of the notice received, within 10  
17 days after receipt, to any mortgage lender who is furnishing or is to furnish funds for  
18 construction of the improvement to which the notice relates. The notice to the owner  
19 shall be in substantially the following language, with blanks accurately filled in: "As  
20 a part of your construction contract, your prime contractor or claimant has already  
21 advised you that those who perform, furnish, or procure labor, services, materials,  
22 plans, or specifications for the work will be notifying you. The undersigned first  
23 performed, furnished, or procured labor, services, materials, plans, or specifications  
24 on .... (give date) for the improvement now under construction on your real estate at  
25 .... (give legal description, street address or other clear description). Please give your

1 mortgage lender the extra copy of this notice within 10 days after you receive this,  
2 so your lender, too, will know that the undersigned is included in the job".

h sent 3-2 ->

3 SECTION 3. 779.06 (4) of the statutes is created to read:

4 779.06 (4) After a lien claim that has been filed under sub. (1) is served upon  
5 the owner of the property on which the lien is placed, the owner may serve upon the  
6 lien claimant a written demand that the claimant commence an action to determine  
7 the validity of the lien. If the lien claimant fails to commence an action to determine  
8 the validity of the lien within 90 days after being served the written demand, the lien  
9 is forfeited.

10 SECTION 4. 779.15 (3) of the statutes is amended to read:

11 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor ~~does not~~  
12 ~~dispute~~ admits the claim within 30 days after service on the prime contractor of the  
13 notice provided in sub. (2), by serving written notice on the debtor state, county, town,  
14 or municipality and the lien claimant, the amount claimed shall be paid over to the  
15 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the  
16 prime contractor ~~disputes~~ does not admit the claim within 30 days after service on  
17 the prime contractor of the notice provided in sub. (2), the right to a lien and to the  
18 moneys in question shall be determined in an action brought by the claimant or the  
19 prime contractor. If the action is not brought within 3 months from the time the  
20 notice required by sub. (1) is served, and notice of bringing the action filed with the  
21 officer with whom the claim is filed, the lien rights are barred. During the period that  
22 a claim is disputed under this subsection, the state, county, town, or municipality  
23 may continue to make scheduled or progress payments to the prime contractor  
24 provided that the state, county, town, or municipality withholds sufficient funds to  
25 pay the claim.



2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3639/P2ins  
RPN:sac:rs

1 insert 3-2:

2 <sup>x</sup>  
SECTION 1. 779.02 (1) (e) of the statutes is repealed.

3 <sup>v</sup>  
SECTION 2. 779.02 (2) (b) of the statutes is renumbered 779.02 (2) (b) 1. and  
4 amended to read:

5 779.02 (2) (b) <sup>1.</sup> ~~Every~~ For an improvement in any case where 4 family units or  
6 fewer are to <sup>be</sup> provided or added and the improvement is wholly residential in  
7 character, every person other than a prime contractor who performs, furnishes, or  
8 procures labor, materials, plans, or specifications for an improvement shall have the  
9 lien and remedy under this subchapter only if within 60 days after performing,  
10 furnishing, or procuring the first labor, services, materials, plans, or specifications  
11 the person serves a written notice, in 2 signed copies, on the owner or authorized  
12 agent at the last-known post-office address. The owner or agent shall provide a copy  
13 of the notice received, within 10 days after receipt, to any mortgage lender who is  
14 furnishing or is to furnish funds for construction of the improvement to which the  
15 notice relates. The notice to the owner shall be in substantially the following  
16 language, with blanks accurately filled in: "As a part of your construction contract,  
17 your prime contractor or claimant has already advised you that those who perform,  
18 furnish, or procure labor, services, materials, plans, or specifications for the work will  
19 be notifying you. The undersigned first performed, furnished, or procured labor,  
20 services, materials, plans, or specifications on .... (give date) for the improvement  
21 now under construction on your real estate at .... (give legal description, street  
22 address or other clear description). Please give your mortgage lender the extra copy

(X)

1 of this notice within 10 days after you receive this, so your lender, too, will know that  
2 the undersigned is included in the job.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395; 2005 a. 204.

3 SECTION 3. 779.02 (2) (b) 2. of the statutes is created to read:

4 779.02 (2) (b) 2. For an improvement in any case where more than 4 family  
5 units are to<sup>be</sup> provided or added if the improvement is wholly residential in character,  
6 or in any case where the improvement is partly or wholly nonresidential in character,  
7 every person other than a prime contractor, or lien claimant who has a contract with  
8 the prime contractor, who performs, furnishes, or procures labor, materials, plans,  
9 or specifications for an improvement shall have the lien and remedy under this  
10 subchapter only if within 45 days after performing, furnishing, or procuring the first  
11 labor, services, materials, plans, or specifications the person serves a written notice  
12 on the owner or authorized agent at the last-known post-office address. The owner  
13 or agent shall provide a copy of the notice received, within 10 days after receipt, to  
14 any mortgage lender who is furnishing or is to furnish funds for construction of the  
15 improvement to which the notice relates. The notice to the owner shall be in  
16 substantially the following language, with blanks accurately filled in:

17 TO: (Name and address of property owner, property owner's designee, or prime  
18 contractor)....

19 Please take notice that the undersigned is furnishing to: (Name and address of  
20 other contracting party).... labor and materials for: (Describe type of work).... in  
21 connection with the improvement of the real property located at (Address of property  
22 being improved, including county)....

23 THIS IS NOT A LIEN. THIS NOTICE IS REQUIRED BY WISCONSIN  
24 LIEN LAW.

1  
2  
3  
4

(Name and address of party furnishing notice)...

By: (Name and title of person signing notice)...

(Address of person signing if different from address furnishing notice)...

(Date)...

(Signature)...

of party  
furnishing notice

SECTION 4. 779.02 (6) of the statutes is amended to read:

779.02 (6) PRIME CONTRACTORS TO DEFEND LIEN ACTIONS. Where a lien is filed under this subchapter by any person other than the prime contractor, the prime contractor shall defend any action thereon at personal expense, and during the pendency of the action the owner may withhold from the prime contractor the amount for which the lien was filed and sufficient to defray the costs of the action. In case of judgment against the owner, the owner may deduct from any amount due to the prime contractor the amount of the judgment and if the judgment exceeds the amount due, the owner may recover the difference from the prime contractor. This subsection does not apply if the lien is the result of the failure of the owner to pay the prime contractor, if the prime contractor's lien is for a disputed amount with the owner, or if the lien is filed by another prime contractor.

History: 1973 c. 229, 231; 1975 c. 409; 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); 1979 c. 176, 355; Stats. 1979 s. 779.02; 1983 a. 362; 1995 a. 395; 2005 a. 204.  
(end of insert 3-2)

\*\*\*\* Note: Currently, s. 779.02 (2)(b) requires the person to submit two ~~at~~ signed copies of the notice so the owner can give one to the mortgage lender. This new language only requires one <sup>copy of the</sup> notice. Should it require two?

## **Nelson, Robert**

---

**From:** Harriman, Amy  
**Sent:** Wednesday, January 15, 2014 4:34 PM  
**To:** Nelson, Robert  
**Cc:** Handrick, Diane; Jim Boullion <[jboullion@agcwi.org](mailto:jboullion@agcwi.org)> ([jboullion@agcwi.org](mailto:jboullion@agcwi.org)); David Bohl ([dbohl@agcwi.org](mailto:dbohl@agcwi.org))  
**Subject:** FW: Revision on LRB 3636/P2

Hey Bob,

Here at the comments from the General Contractors on your questions.

So, first- it's ok that the Commercial form is different than the Residential.

Second- would going with what David suggested be ok?

Let me know your thoughts! Also, feel free to contact Jim and David with these questions as well.

Thanks,

Amy Harriman

### **Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)

---

**From:** David Bohl [<mailto:dbohl@agcwi.org>]  
**Sent:** Wednesday, January 15, 2014 3:44 PM  
**To:** Harriman, Amy; Jim Boullion; Handrick, Diane  
**Subject:** RE: Revision on LRB 3636/P2

Amy,

The different notices in Section 4 reflect the different circumstances and recipients. During our pre-holiday discussion at the capitol we agreed that a separate process for the Residential and Commercial sides of the industry would work best as it would provide the least disruption to the Residential side. However, the Residential notice doesn't really make sense for our purposes on the Commercial side. Also, our notice is a fairly simple boilerplate.

On the "disputed" vs. "admitted" question, perhaps we could change the opening clause on Page 5, lines 14-15 to read "After a claim has been noticed under this subsection, the state, county, town..."

Thoughts?

David Bohl  
General Counsel  
AGC of Wisconsin  
4814 E. Broadway  
Madison, WI 53716

(608) 221-3821  
(608) 221-4446 fax  
[dbohl@agcwi.org](mailto:dbohl@agcwi.org)

---

**From:** Harriman, Amy [<mailto:Amy.Harriman@legis.wisconsin.gov>]  
**Sent:** Tuesday, January 14, 2014 4:40 PM  
**To:** David Bohl; Jim Boullion; Handrick, Diane  
**Subject:** FW: Revision on LRB 3636/P2

I am assuming the GCs would prefer consistent forms, and would therefore like the bill to reflect current forms and not change them? Changing the forms could raise concerns with the big GCs I assume and make it harder to pass this bill.

Also- what is the difference between not admitted and disputed? Does 'not admitted' suggest there's a possibility of responsibility while disputed suggests there isn't? Have GCs gotten caught up with disputed?

AH

---

**From:** Nelson, Robert  
**Sent:** Tuesday, January 14, 2014 2:17 PM  
**To:** Harriman, Amy  
**Subject:** RE: Revision on LRB 3636/P2

Amy,

I can remove Section 5 and will leave the single copy of the notice on page 3, line 12.

I have been writing an analysis of the bill and noticed a few concerns that I have about the draft:

The new language for the form in Section 4 of the bill includes much more specific requirements than is required under current law (see page 3, line 18 to page 3, line 2, including the name and address of the owner, the description of the type of work, and the name and address of the party furnishing the notice. Should the current form be amended to be consistent with the new form?

On page 5, line 15, the word "disputed" is used in the added language but that word was removed on page 5, lines 5 and 9. Should I change "disputed" to "not admitted" to be consistent?

Bob N

---

**From:** Harriman, Amy  
**Sent:** Tuesday, January 14, 2014 12:16 PM  
**To:** Nelson, Robert  
**Cc:** Handrick, Diane  
**Subject:** Revision on LRB 3636/P2

Hey Bob-

Senator Olsen would like to make two changes to the bill, which are the following:

- 1- Drafter note- we only need the one copy of the lien notice not two.
- 2- Can we eliminate Section 5 on Page 4?

Let me know if you have questions or concerns.

Thanks,

Amy Harriman

**Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)

## **Nelson, Robert**

---

**From:** Harriman, Amy  
**Sent:** Tuesday, January 14, 2014 12:16 PM  
**To:** Nelson, Robert  
**Cc:** Handrick, Diane  
**Subject:** Revision on LRB 3636/P2

Hey Bob-

Senator Olsen would like to make two changes to the bill, which are the following:

- 1- Drafter note- we only need the one copy of the lien notice not two.
- 2- Can we eliminate Section 5 on Page 4?

Let me know if you have questions or concerns.

Thanks,

Amy Harriman

**Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)



by 1/24



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-N

RB

gen cat

1 AN ACT *to repeal* 779.02 (1) (e); *to renumber and amend* 779.02 (2) (b); *to*  
2 *amend* 779.02 (1) (c), 779.02 (6) and 779.15 (3); and *to create* 779.02 (2) (b) 2.  
3 and 779.06 (4) of the statutes; **relating to:** procedures to preserve and  
4 determine the validity of certain liens and to make payments to prime  
5 contractors of public works contracts.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

ins and ->

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

6 SECTION 1. 779.02 (1) (c) of the statutes is amended to read:  
7 779.02 (1) (c) By any prime contractor or any lien claimant that has a contract  
8 with the prime contractor performing, furnishing, or procuring labor, services,  
9 materials, plans, or specifications for an improvement in any case where more than

1 4 family living units are to be provided or added by such work of improvement, if the  
2 improvement is wholly residential in character, or in any case where the  
3 improvement is partly or wholly nonresidential in character.

4 SECTION 2. 779.02 (1) (e) of the statutes is repealed.

5 SECTION 3. 779.02 (2) (b) of the statutes is renumbered 779.02 (2) (b) 1. and  
6 amended to read:

7 779.02 (2) (b) 1. Every For an improvement in any case where 4 family units  
8 or fewer are to be provided or added and the improvement is wholly residential in  
9 character, every person other than a prime contractor who performs, furnishes, or  
10 procures labor, materials, plans, or specifications for an improvement shall have the  
11 lien and remedy under this subchapter only if within 60 days after performing,  
12 furnishing, or procuring the first labor, services, materials, plans, or specifications  
13 the person serves a written notice, in 2 signed copies, on the owner or authorized  
14 agent at the last-known post-office address. The owner or agent shall provide a copy  
15 of the notice received, within 10 days after receipt, to any mortgage lender who is  
16 furnishing or is to furnish funds for construction of the improvement to which the  
17 notice relates. The notice to the owner shall be in substantially the following  
18 language, with blanks accurately filled in: “As a part of your construction contract,  
19 your prime contractor or claimant has already advised you that those who perform,  
20 furnish, or procure labor, services, materials, plans, or specifications for the work will  
21 be notifying you. The undersigned first performed, furnished, or procured labor,  
22 services, materials, plans, or specifications on .... (give date) for the improvement  
23 now under construction on your real estate at .... (give legal description, street  
24 address or other clear description). Please give your mortgage lender the extra copy

1 of this notice within 10 days after you receive this, so your lender, too, will know that  
2 the undersigned is included in the job. <sup>plain</sup>

3 **SECTION 4.** 779.02 (2) (b) 2. of the statutes is created to read:

4 779.02 (2) (b) 2. For an improvement in any case where more than 4 family  
5 units are to be provided or added if the improvement is wholly residential in  
6 character, or in any case where the improvement is partly or wholly nonresidential  
7 in character, every person other than a prime contractor, or lien claimant who has  
8 a contract with the prime contractor, who performs, furnishes, or procures labor,  
9 materials, plans, or specifications for an improvement shall have the lien and  
10 remedy under this subchapter only if within 45 days after performing, furnishing,  
11 or procuring the first labor, services, materials, plans, or specifications the person  
12 serves a written notice on the owner or authorized agent at the last-known  
13 post-office address. The owner or agent shall provide a copy of the notice received,  
14 within 10 days after receipt, to any mortgage lender who is furnishing or is to furnish  
15 funds for construction of the improvement to which the notice relates. The notice to  
16 the owner shall be in substantially the following language, with blanks accurately  
17 filled in:

18 TO: (Name and address of property owner, property owner's designee, or prime  
19 contractor) ....

20 Please take notice that the undersigned is furnishing to: (Name and address of  
21 other contracting party) .... labor and materials for: (Describe type of work) .... in  
22 connection with the improvement of the real property located at (Address of property  
23 being improved, including county) ....

24 **THIS IS NOT A LIEN. THIS NOTICE IS REQUIRED BY WISCONSIN**  
25 **LIEN LAW.**

1 (Name and address of party furnishing notice) ....

2 By: (Name and title of person signing notice) ....

3 (Address of person signing if different from address of party furnishing notice)

4 ....

5 (Date) ....

(Signature) ....

\*\*\*\*NOTE: Currently, s. 779.02 (2) (b) requires the person to submit two signed copies of the notice so the owner can give one to the mortgage lender. This new language only requires one copy of the notice. Should it require two?

6 SECTION 5. 779.02 (6) of the statutes is amended to read:

7 779.02 (6) PRIME CONTRACTORS TO DEFEND LIEN ACTIONS. Where a lien is filed  
8 under this subchapter by any person other than the prime contractor, the prime  
9 contractor shall defend any action thereon at personal expense, and during the  
10 pendency of the action the owner may withhold from the prime contractor the  
11 amount for which the lien was filed and sufficient to defray the costs of the action.  
12 In case of judgment against the owner, the owner may deduct from any amount due  
13 to the prime contractor the amount of the judgment and if the judgment exceeds the  
14 amount due, the owner may recover the difference from the prime contractor. This  
15 subsection does not apply if the lien is the result of the failure of the owner to pay the  
16 prime contractor, if the prime contractor's lien is for a disputed amount with the  
17 owner, or if the lien is filed by another prime contractor.

18 SECTION 6. 779.06 (4) of the statutes is created to read:

19 779.06 (4) After a lien claim that has been filed under sub. (1) is served upon  
20 the owner of the property on which the lien is placed, the owner may serve upon the  
21 lien claimant a written demand that the claimant commence an action to determine  
22 the validity of the lien. If the lien claimant fails to commence an action to determine

1 the validity of the lien within 90 days after being served the written demand, the lien  
2 is forfeited.

3 SECTION 7. 779.15 (3) of the statutes is amended to read:

4 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor ~~does not~~  
5 ~~dispute~~ admits the claim within 30 days after service on the prime contractor of the  
6 notice provided in sub. (2), by serving written notice on the debtor state, county, town,  
7 or municipality and the lien claimant, the amount claimed shall be paid over to the  
8 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the  
9 prime contractor ~~disputes~~ does not admit the claim within 30 days after service on  
10 the prime contractor of the notice provided in sub. (2), the right to a lien and to the  
11 moneys in question shall be determined in an action brought by the claimant or the  
12 prime contractor. If the action is not brought within 3 months from the time the  
13 notice required by sub. (1) is served, and notice of bringing the action filed with the  
14 officer with whom the claim is filed, the lien rights are barred. During the period that  
15 a claim is disputed under this ~~sub~~ section, the state, county, town, or municipality  
16 may continue to make scheduled or progress payments to the prime contractor  
17 provided that the state, county, town, or municipality withholds sufficient funds to  
18 pay the claim.

19 SECTION 8. Initial applicability.

20 (1) This act first applies to contracts entered into on the effective date of this  
21 subsection.

RPN:sac:

(END)

*DN*  
*Please review the analysis to see if it adequately explained the bill.*  
*-dada-*  
*Bob N*

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3639/lins  
RPN:sac:jf

insert anl:

Current law allows a person who provides services or goods to improve land, such as building a home, to have a claim against the land owner for the person's cost of providing the services or goods (a construction lien) if the person follows certain procedures, including providing notice of the claim to the owner. The person can then file a construction lien with the clerk of circuit court, who is required to keep a judgment and lien docket.

\*  
four  
Currently, the notice requirement does not apply if a person provides services or goods for an improvement to land that is wholly residential in character and involves more than 4 family living units, or is partially or wholly nonresidential (a commercial project). In addition, certain other persons are not required to give notice of his or her claim to the land owner to maintain the right to a construction lien, including a person other than a prime contractor who works on an improvement on which the prime contractor is not required to give notice.

This bill limits those who do not have to give notice of his or her claim to maintain the right to a construction lien for a commercial project to prime contractors and other claimants who have a contract with the prime contractor.

5  
Currently, those persons who are not prime contractors and who are required to give notice to the land owner to maintain the right to a construction lien must serve the written notice on the owner or authorized agent within 60 days after providing the first services or goods.

\*  
four  
This bill continues that requirement if the improvement involves 4 family units or fewer and is wholly residential in character. However, under the bill, if the improvement involves a commercial project, the persons who are required to give notice of a claim to maintain the right to a construction lien must serve the written notice on the owner or authorized agent within 45 days after providing the first services or goods.

\* six  
two  
Currently, no action may be maintained to enforce a construction lien unless the lien claimant files a claim for the lien with the office of the clerk of circuit court within 6 months from the date that the services or goods were first provided and then commences an action within 2 years of filing the claim. Current law requires the lien claimant to notify the owner of the land that he or she intends to file the claim for a lien. The lien claimant is also required under current law to serve a copy of the claim for a lien within 30 days after the filing of the lien claim. last

Under this bill, after the lien is filed, the land owner may serve the lien claimant with a written demand that the lien claimant bring an action to determine the validity of the lien. Under the bill, if the lien claimant fails to bring that action within 90 days after being served with the demand, the lien is forfeited.

Under current law, certain contract, payment, and performance assurance requirements exist for contracts involving public improvements and public works. Liens may also be obtained for those improvements if certain notice requirements are met. Currently, if the notice requirements are met, and the prime contractor does not dispute the claim within 30 days after service of notice of the claim by notifying

the public agency and the lien claimant, the public agency is required to pay the amount of the claim and charge that amount to the prime contractor. If the prime contractor disputes the claim, current law requires the commencement of an action by the claimant or prime contractor to determine the validity of the claim.

This bill requires that if a valid lien exists regarding public improvements or public works, and the prime contractor admits the claim within 30 days after service of notice of the claim by notifying the public agency and the lien claimant, the public agency is required to pay the amount of the claim and charge that amount against what is owed to the prime contractor. If the prime contractor does not admit the claim within 30 days after receipt of the notice, this bill requires the commencement of an action by the claimant or prime contractor to determine the validity of the claim. In addition, under the bill, during the period that a claim is disputed the public agency may continue to make payments to the prime contractor provided the public agency withholds sufficient funds to pay the claim.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3639/1dn  
RPN:sac:jf

January 24, 2014

Please review the analysis to see if it adequately explains the bill.

Robert Nelson  
Senior Legislative Attorney  
Phone: (608) 266-9739  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)

## **Nelson, Robert**

---

**From:** Harriman, Amy  
**Sent:** Monday, January 27, 2014 11:14 AM  
**To:** Nelson, Robert  
**Cc:** Handrick, Diane; Jim Boullion <[jboullion@agcwi.org](mailto:jboullion@agcwi.org)> ([jboullion@agcwi.org](mailto:jboullion@agcwi.org))  
**Subject:** Need a /2 for 3639

Bob-

I hate to ask you this, but could we get 5 words added to the bill? This would be, "Or any other interested party". This is on page 5, section 5, line 12. So it would read:

After a lien claim that has been filed under sub. (1) is served upon the owner of the property on which the lien is placed, the owner, "Or any other interested party", may serve upon the lien claimant a written demand that the claimant commence an action to determine the validity of the lien.

Let me know if you have questions. Thanks again for being so patient!

Thanks,

Amy Harriman

**Senator Luther Olsen**

14<sup>th</sup> Senate District

608-266-0751

[amy.harriman@legis.wisconsin.gov](mailto:amy.harriman@legis.wisconsin.gov)

[Senator Olsen on Facebook](#)



## 2013 BILL

1 AN ACT *to repeal* 779.02 (1) (e); *to renumber and amend* 779.02 (2) (b); *to*  
2 *amend* 779.02 (1) (c) and 779.15 (3); and *to create* 779.02 (2) (b) 2. and 779.06  
3 (4) of the statutes; **relating to:** procedures to preserve and determine the  
4 validity of certain liens and to make payments to prime contractors of public  
5 works contracts.

---

### *Analysis by the Legislative Reference Bureau*

Current law allows a person who provides services or goods to improve land, such as building a home, to have a claim against the land owner for the person's cost of providing the services or goods (a construction lien) if the person follows certain procedures, including providing notice of the claim to the owner. The person can then file a construction lien with the clerk of circuit court, who is required to keep a judgment and lien docket.

Currently, the notice requirement does not apply if a person provides services or goods for an improvement to land that is wholly residential in character and involves more than four family living units, or is partially or wholly nonresidential (a commercial project). In addition, certain other persons are not required to give notice of his or her claim to the land owner to maintain the right to a construction lien, including a person other than a prime contractor who works on an improvement on which the prime contractor is not required to give notice.

This bill limits those who do not have to give notice of his or her claim to maintain the right to a construction lien for a commercial project to prime contractors and other claimants who have a contract with the prime contractor.

**BILL**

Currently, those persons who are not prime contractors and who are required to give notice to the land owner to maintain the right to a construction lien must serve the written notice on the owner or authorized agent within 60 days after providing the first services or goods.

This bill continues that requirement if the improvement involves four family units or fewer and is wholly residential in character. However, under the bill, if the improvement involves a commercial project, the persons who are required to give notice of a claim to maintain the right to a construction lien must serve the written notice on the owner or authorized agent within 45 days after providing the first services or goods.

Currently, no action may be maintained to enforce a construction lien unless the lien claimant files a claim for the lien with the office of the clerk of circuit court within six months from the date that the services or goods were last provided and then commences an action within two years of filing the claim. Current law requires the lien claimant to notify the owner of the land that he or she intends to file the claim for a lien. The lien claimant is also required under current law to serve a copy of the claim for a lien within 30 days after the filing of the lien claim.

Under this bill, after the lien is filed, the land owner ~~may~~ <sup>or another interested party</sup> serve the lien claimant with a written demand that the lien claimant bring an action to determine the validity of the lien. Under the bill, if the lien claimant fails to bring that action within 90 days after being served with the demand, the lien is forfeited.

Under current law, certain contract, payment, and performance assurance requirements exist for contracts involving public improvements and public works. Liens may also be obtained for those improvements if certain notice requirements are met. Currently, if the notice requirements are met, and the prime contractor does not dispute the claim within 30 days after service of notice of the claim by notifying the public agency and the lien claimant, the public agency is required to pay the amount of the claim and charge that amount to the prime contractor. If the prime contractor disputes the claim, current law requires the commencement of an action by the claimant or prime contractor to determine the validity of the claim.

This bill requires that if a valid lien exists regarding public improvements or public works, and the prime contractor admits the claim within 30 days after service of notice of the claim by notifying the public agency and the lien claimant, the public agency is required to pay the amount of the claim and charge that amount against what is owed to the prime contractor. If the prime contractor does not admit the claim within 30 days after receipt of the notice, this bill requires the commencement of an action by the claimant or prime contractor to determine the validity of the claim. In addition, under the bill, during the period that a claim is disputed the public agency may continue to make payments to the prime contractor provided the public agency withholds sufficient funds to pay the claim.

---

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

**BILL**

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

2           779.02 (1) (c) By any prime contractor or any lien claimant that has a contract  
3 with the prime contractor performing, furnishing, or procuring labor, services,  
4 materials, plans, or specifications for an improvement in any case where more than  
5 4 family living units are to be provided or added by such work of improvement, if the  
6 improvement is wholly residential in character, or in any case where the  
7 improvement is partly or wholly nonresidential in character.

8           **SECTION 2.** 779.02 (1) (e) of the statutes is repealed.

9           **SECTION 3.** 779.02 (2) (b) of the statutes is renumbered 779.02 (2) (b) 1. and  
10 amended to read:

11           779.02 (2) (b) 1. ~~Every~~ For an improvement in any case where 4 family units  
12 or fewer are to be provided or added and the improvement is wholly residential in  
13 character, every person other than a prime contractor who performs, furnishes, or  
14 procures labor, materials, plans, or specifications for an improvement shall have the  
15 lien and remedy under this subchapter only if within 60 days after performing,  
16 furnishing, or procuring the first labor, services, materials, plans, or specifications  
17 the person serves a written notice, in 2 signed copies, on the owner or authorized  
18 agent at the last-known post-office address. The owner or agent shall provide a copy  
19 of the notice received, within 10 days after receipt, to any mortgage lender who is  
20 furnishing or is to furnish funds for construction of the improvement to which the  
21 notice relates. The notice to the owner shall be in substantially the following  
22 language, with blanks accurately filled in: "As a part of your construction contract,  
23 your prime contractor or claimant has already advised you that those who perform,  
24 furnish, or procure labor, services, materials, plans, or specifications for the work will  
25 be notifying you. The undersigned first performed, furnished, or procured labor,

**BILL****SECTION 3**

1 services, materials, plans, or specifications on .... (give date) for the improvement  
2 now under construction on your real estate at .... (give legal description, street  
3 address or other clear description). Please give your mortgage lender the extra copy  
4 of this notice within 10 days after you receive this, so your lender, too, will know that  
5 the undersigned is included in the job”.

6 **SECTION 4.** 779.02 (2) (b) 2. of the statutes is created to read:

7 779.02 (2) (b) 2. For an improvement in any case where more than 4 family  
8 units are to be provided or added if the improvement is wholly residential in  
9 character, or in any case where the improvement is partly or wholly nonresidential  
10 in character, every person other than a prime contractor, or lien claimant who has  
11 a contract with the prime contractor, who performs, furnishes, or procures labor,  
12 materials, plans, or specifications for an improvement shall have the lien and  
13 remedy under this subchapter only if within 45 days after performing, furnishing,  
14 or procuring the first labor, services, materials, plans, or specifications the person  
15 serves a written notice on the owner or authorized agent at the last-known  
16 post-office address. The owner or agent shall provide a copy of the notice received,  
17 within 10 days after receipt, to any mortgage lender who is furnishing or is to furnish  
18 funds for construction of the improvement to which the notice relates. The notice to  
19 the owner shall be in substantially the following language, with blanks accurately  
20 filled in:

21 TO: (Name and address of property owner, property owner’s designee, or prime  
22 contractor) ....

23 Please take notice that the undersigned is furnishing to: (Name and address of  
24 other contracting party) .... labor and materials for: (Describe type of work) .... in

**BILL**

1 connection with the improvement of the real property located at (Address of property  
2 being improved, including county) ....

3 **THIS IS NOT A LIEN. THIS NOTICE IS REQUIRED BY WISCONSIN**  
4 **LIEN LAW.**

5 (Name and address of party furnishing notice) ....

6 By: (Name and title of person signing notice) ....

7 (Address of person signing if different from address of party furnishing notice)

8 ....

9 (Date) ....

(Signature) ....

10 **SECTION 5.** 779.06 (4) of the statutes is created to read:

11 779.06 (4) After a lien claim that has been filed under sub. (1) is served upon  
12 the owner of the property on which the lien is placed, the owner *or any other interested party* may serve upon the  
13 lien claimant a written demand that the claimant commence an action to determine  
14 the validity of the lien. If the lien claimant fails to commence an action to determine  
15 the validity of the lien within 90 days after being served the written demand, the lien  
16 is forfeited.

17 **SECTION 6.** 779.15 (3) of the statutes is amended to read:

18 779.15 (3) If a valid lien exists under sub. (1) and the prime contractor ~~does not~~  
19 ~~dispute~~ admits the claim within 30 days after service on the prime contractor of the  
20 notice provided in sub. (2), by serving written notice on the debtor state, county, town,  
21 or municipality and the lien claimant, the amount claimed shall be paid over to the  
22 claimant on demand and charged to the prime contractor pursuant to sub. (1). If the  
23 prime contractor ~~disputes~~ does not admit the claim within 30 days after service on  
24 the prime contractor of the notice provided in sub. (2), the right to a lien and to the  
25 moneys in question shall be determined in an action brought by the claimant or the

**BILL****SECTION 6**

1 prime contractor. If the action is not brought within 3 months from the time the  
2 notice required by sub. (1) is served, and notice of bringing the action filed with the  
3 officer with whom the claim is filed, the lien rights are barred. During the period that  
4 a claim is disputed under this section, the state, county, town, or municipality may  
5 continue to make scheduled or progress payments to the prime contractor provided  
6 that the state, county, town, or municipality withholds sufficient funds to pay the  
7 claim.

8 **SECTION 7. Initial applicability.**

9 (1) This act first applies to contracts entered into on the effective date of this  
10 subsection.

11 (END)

**Parisi, Lori**

---

**From:** Handrick, Diane  
**Sent:** Tuesday, February 04, 2014 4:22 PM  
**To:** LRB.Legal  
**Subject:** RUSH Review: LRB -3639/2 Topic: Procedures for liens  
  
**Importance:** High

Thank you!

Please Jacket LRB -3639/2 for the ASSEMBLY.