

2013 DRAFTING REQUEST

Bill

Received: 11/14/2013 Received By: rnelson
Wanted: As time permits Same as LRB:
For: Luther Olsen (608) 266-0751 By/Representing: Amy H
May Contact: Drafter: rnelson
Subject: Liens Addl. Drafters:
Extra Copies: PJH

Submit via email: YES
Requester's email: Sen.Olsen@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	scalvin 12/2/2013		_____			
/P1	rnelson 1/28/2014		rschluet 12/2/2013	_____	mbarman 12/2/2013		
/1		scalvin 1/28/2014	rschluet 1/28/2014	_____	sbasford 1/28/2014	sbasford 1/30/2014	

FE Sent For:

*None
Needed*

<END>

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/P1			rschluet 12/2/2013	_____	mbarman 12/2/2013		
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FE Sent For: /1 sac 01/28/2014 /1 sac 01/28/2014
<END>
12814

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No specific pre topic given

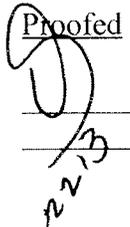
Topic:

Procedures for liens ✓

Instructions:

See attached

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<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:

999.02(1)(c) make a 1. & 2. 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 eff.?

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.

Am 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



3640

LRB-3639/P1

RPN:/.....

SAC

Plus
(per
requester)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

gan ca A

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.

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.

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, 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. 779.06 (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

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

40
LRB-3639/P1dn
RPN:/.....

Sac

- draft -

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-3640/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



1/20 wanted 1/29
State of Wisconsin
2013 - 2014 LEGISLATURE



3640/1
LRB-3639/2 40/De
RPN:sacff

(Comparison to 3639/2)

2013 BILL

see chgs - anal. + p 5, 14
LPS: note that base doc has changed from -3640/1 to -3639/2.
Written changes show changes from ~~-3639/1~~ to -3639/2.

Proffers: Contents of -3640/1 were deleted and replaced with contents of -3639/2 (rel. ed., analysis, body, nonsubs.) after marked changes were made to -3639/2.

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 ^{and any other interested party} 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.

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 *and 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

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.

SECTION 7. Initial applicability.

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

11 (END)

Basford, Sarah

From: Harriman, Amy
Sent: Thursday, January 30, 2014 8:46 AM
To: LRB.Legal
Subject: Draft Review: LRB -3640/1 Topic: Procedures for liens

Please Jacket LRB -3640/1 for the SENATE.