

Assembly Bill 525

Date published:  
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**CHAPTER 351, LAWS OF 1967**

AN ACT to repeal 289.01 to 289.16 and 289.53 to 289.538; and to create subchapter I (title) and II (title) of chapter 289 and 289.01 to 289.17 of the statutes, relating to construction liens.

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

SECTION 1. 289.01 to 289.16 of the statutes are repealed.

SECTION 2. Subchapter I (title) of chapter 289 of the statutes is created to read:

**SUBCHAPTER I.  
CONSTRUCTION LIENS.  
(to precede s. 289.01)**

SECTION 3. 289.01 to 289.17 of the statutes are created to read:

289.01 CONSTRUCTION LIENS. (1) NAME OF LAW. This subchapter may be referred to as the construction lien law.

(2) DEFINITIONS. In this subchapter unless the context or subject matter requires otherwise:

(a) "Prime contractor" means:

1. A person, other than a laborer, but including an architect, professional engineer, or surveyor employed by the owner, who enters into a contract with an owner of land who is not himself the prime contractor as defined in subd. 2 to improve the land, or who takes over from a prime contractor his uncompleted contract; or

2. An owner of land who acts as his own general contractor in improving such land.

(b) "Lien claimant" means any person who claims a lien under this section pursuant to a contract for improvement of land entered into by an owner of the land.

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

(d) "Owner" means the owner of any interest in land who, personally or through an agent, enters into a contract, express or implied, for the improvement of the land. Agency will be presumed, in the absence of clear and convincing evidence to the contrary, between employer and employe, between spouses, between joint tenants and among tenants in common, but there shall be a similar presumption against agency in all other cases.

(3) EXTENT AND CHARACTER OF LIEN. Every person who performs any work or procures its performance or furnishes any labor or materials or plans or specifications for the improvement of land, and who complies with s. 289.02, shall have a lien therefor on all interests in the land belonging to its owners. The lien extends to all contiguous land of the owner, but if the improvement is located wholly on one or more platted lots belonging to the owner, the lien applies only to the lots on which the improvement is located.

(4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall be prior to any lien which originates subsequent to the visible com-

mencement in place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a) and 235.70. When new construction is the principal improvement involved, commencement is deemed to occur no earlier than the beginning of substantial excavation for the foundations, footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. The lien also shall be prior to any unrecorded mortgage given prior to the commencement of the work of improvement, if the lien claimant has no actual notice of the mortgage before the commencement. Lien claimants who perform work or procure its performance or furnish any labor or materials or plans or specifications for an improvement prior to the visible commencement of the work of improvement shall have lien rights, but shall have only the priority accorded to other lien claimants.

(5) ASSIGNMENT OF LIEN, GARNISHMENT. An assignment of his claim or right to a lien or any part thereof by a prime contractor, or garnishment by his creditor, shall not operate to compel the owner to pay the assignee or creditor until the lien claims of subcontractors, materialmen and laborers under this subchapter either have been paid in full, have matured by notice and filing or have expired. If such claims becomes liens, the owner shall be compelled to pay such assignee or creditor only what remains due in excess of such liens.

#### 289.02 NOTICE REQUIRED TO PRESERVE LIEN RIGHTS; EXCEPTIONS; SAVING 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 work or materials furnished, unless the claimant is a prime contractor subject to the notice requirement of sub. (2) (a).

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

(d) By any prime contractor who is himself 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.

(2) NOTICE TO OWNER, LENDER AND MATERIALMAN. (a) Every prime contractor who enters into a contract with the owner for a work of improvement on the owner's land and who has contracted or will contract with any subcontractors or materialmen to provide labor or materials for the work of improvement shall include in any written contract with the owner the notice required by this paragraph, and shall provide the owner with a copy of the written contract. If no written contract for the work of improvement is entered into, the notice shall be prepared separately and served personally or by registered mail on the owner or his author-

ized agent within 10 days after the first labor or materials are furnished for the improvement by or pursuant to the authority of the prime contractor. The notice, whether included in a written contract or separately given, shall be in at least 8-point bold type, if printed, or in capital letters, if typewritten. It shall be in substantially the following language: "As required by the Wisconsin construction lien law, builder hereby notifies owner that persons or companies furnishing labor or materials for the construction on owner's land may have lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned builder, are those who contract directly with the owner or those who give the owner notice within 60 days after they first furnish labor or materials for the construction. Accordingly, owner probably will receive notices from those who furnish labor or materials for the construction, and should give a copy of each notice received to his mortgage lender, if any. Builder agrees to co-operate with the owner and his lender, if any, to see that all potential lien claimants are duly paid."

(b) Every person other than a prime contractor who furnishes labor or materials for an improvement shall have the lien and remedy under this subchapter only if within 60 days after furnishing the first labor or materials he gives notice in writing, in 2 signed copies, to the owner either by personal service on the owner or his authorized agent or by registered mail with return receipt requested to the owner or his authorized agent at his last-known post-office address. The owner or his 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 contractor or builder has already advised you that those who furnish labor or materials for the work will be notifying you. The undersigned first furnished labor or materials 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."

(c) If any prime contractor required to give the notice prescribed in par. (a) fails to give notice as required, he shall not have the lien and remedy provided by this subchapter.

(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 him by this subsection.

(e) If the owner or lender complains of any insufficiency of any notice, the burden of proof is upon him to show that he has been misled or deceived by the insufficiency. If there is more than one owner, giving the notice required to any one owner or his authorized agent is sufficient. In addition, every prime contractor and subcontractor, at the time he purchases or contracts for any materials to be used in any of the cases enumerated in s. 289.01, shall upon request deliver to the materialman 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 his authorized agent, if any. Failure to receive such description and name and address does not relieve a materialman who asserts a lien from the requirement that he has given 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 personally or by registered mail on the owner or his authorized agent shall have the lien provided by s. 289.01 for any labor or materials furnished after the late notice is actually received by the owner. The burden of proving that labor or materials for which a lien is claimed were furnished after that date is on the lien claimant.

(4) NOTICE AND FILING REQUIREMENTS IN S. 289.06 UNAFFECTED. Nothing in this section shall be construed to relieve any lien claimant of the notice and filing requirements under s. 289.06.

(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 in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor and materials used for the improvements, until all the claims have been paid. 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 pro rata in cases of a deficiency, is theft of moneys so misappropriated and shall be punished under s. 943.20. If the prime contractor or subcontractor is a corporation, such misappropriation also shall be deemed theft by any officers, directors or agents of the corporation responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder of the corporation not responsible for the misappropriation shall be a civil liability of the shareholder and may be recovered from him and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose.

(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 his own 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, he 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.

(7) WRONGFUL USE OF MATERIALS. Any prime contractor or any subcontractor furnishing materials under him 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.

289.03 LIEN VALID UNLESS WAIVED BY CLAIMANT PERSONALLY, OR UNLESS PAYMENT BOND FURNISHED. (1) No

**AGREEMENT BY OTHER THAN CLAIMANT MAY INVALIDATE LIEN.** Subject to s. 289.05, a lien claimant may waive the lien given by s. 289.01 by a writing signed by him, but no action by nor agreement between any other persons shall invalidate the lien, other than payment in full to the claimant for the labor or materials to which the lien claim relates.

(2) **PAYMENT BOND MAY ELIMINATE LIEN RIGHTS.** In any case where the prime contractor, pursuant to agreement with the owner, has furnished a payment bond under s. 289.035, all liens provided by s. 289.01 do not exist, ss. 289.02 (1) to (4) and 289.06 do not apply and all claimants shall follow the requirements and procedures specified in ss. 289.035 and 289.036.

**289.035 FORM OF CONTRACT; PAYMENT BOND; REMEDY.**  
(1) To eliminate lien rights as provided in s. 289.03 (2), the contract between the owner and the prime contractor for the construction of the improvement shall contain a provision for the payment by the prime contractor of all claims for labor performed and materials or plans or specifications furnished, used or consumed in making such improvement and performing the work of improvement. The contract shall not be effective to eliminate lien rights unless the prime contractor gives a bond issued by a surety company licensed to do business in this state. The bond shall carry a penalty for unpaid claims of not less than the contract price, and shall be conditioned for the payment to every person entitled thereto of all the claims for labor performed, and materials furnished under the contract and subsequent amendments thereto, to be used or consumed in making the improvement or performing the work of improvement as provided in the contract and subsequent amendments thereto. The bond shall be approved by the owner and by any mortgage lender furnishing funds for the construction of the improvement. No assignment, modification or change in the contract, or change in the work covered thereby, or any extension of time for completion of the contract shall release the sureties on the bond.

(2) Any party in interest may, not later than one year after the completion of the contract, maintain an action in his own name against the prime contractor and the sureties upon the bond for the recovery of any damages he has sustained by reason of the failure of the prime contractor to comply with the contract or with the contract between the prime contractor and subcontractors. If the amount realized on the bond is insufficient to satisfy all of the claims of the parties in full, it shall be distributed among the parties pro rata.

(3) In any case in which the improvement contract and bond have been prepared and executed pursuant to sub. (1) upon inquiry by any subcontractor, materialman, laborer or mechanic furnishing labor or materials for said improvement, the prime contractor and the owner shall so advise the person making the inquiry and shall give the person reasonable opportunity to inspect and examine the contract and bond.

**289.036 CONTRACTS WITH PAYMENT BOND; LIEN; NOTICE; DUTY OF OWNER AND LENDER.** (1) In any case in which an improvement is constructed or to be constructed pursuant to a contract and payment bond under s. 289.035, any person furnishing labor or materials or plans or specifications to be used or consumed in making the improvement, to any prime contractor or subcontractor shall have a lien on the money or other payment due or to become due the prime contractor or subcontractor therefor, if the lienor, before payment is made to the prime contractor or subcontractor, gives written notice of his claim by registered mail with return receipt requested to the owner or his authorized agent and to any mortgage lender furnishing funds for the construction of the improvement. Upon receipt of the notice, the owner and lender shall

assure that a sufficient amount is withheld to pay the claim and, when it is admitted by the prime contractor or subcontractor involved or established under sub. (3), shall pay the claim and charge it to the prime contractor or subcontractor as appropriate. Any owner or lender violating this duty shall be liable to the claimant for the damages resulting from the violation. There shall be no preference among lienors serving such notices.

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

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

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

(b) If an action is commenced, all claimants, the owner and the lender shall be made parties. Such action shall be brought within 6 months after completion of the work of improvement or within the time limit prescribed by par. (a), whichever is earlier.

(c) Within 10 days after the filing of a certified copy of the judgment in any such action with the owner and lender, the money due the prime contractor or subcontractor shall be paid to the clerk of court to be distributed in accordance with the judgment.

**289.04 CLAIMS ASSIGNABLE; NOTICE; PRIOR PAYMENT.** All claims for liens and right to recover therefor under this subchapter are assignable. Notice in writing of such assignment may be served upon the owner of the property affected and all payments made by him before service of such notice shall discharge his debt to the amount paid. The assignee may file petitions for such liens and may bring an action in his own name to enforce the same, subject to the limitations in s. 289.01 (5).

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

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

(2) A promissory note or other evidence of debt given for any lienable claim shall not be deemed a waiver of lien rights unless the note or other instrument is received as payment and expressly declares that receipt thereof is a waiver of lien rights.

**289.06 FILING CLAIM AND BEGINNING ACTION; NOTICE REQUIRED BEFORE FILING; CONTENTS OF CLAIM DOCUMENT.** (1) No lien under s. 289.01 shall exist and no action to enforce the same shall be maintained unless within 6 months from the date the lien claimant furnished the last labor or materials a claim for such lien is filed in the office of the clerk of circuit court of the county in which the lands affected thereby lie, and unless within 2 years from the date of filing a claim for lien an action is brought and summons and complaint filed therein. Such claim for lien may be filed and docketed, and action brought, notwithstanding the death of the owner of the property affected thereby or of the person with whom the original contract was made, with like effect as if he were then living.

(2) No lien claim may be filed or action brought thereon unless, at least 30 days before timely filing of the lien claim, the lien claimant serves on the owner, personally or by registered mail with return receipt requested, a written notice of intent to file a lien claim. The notice is required to be given whether or not the claimant has been required to and has given a previous notice pursuant to s. 289.02. Such notice shall briefly describe the nature of the claim, its amount and the land and improvement to which it relates.

(3) Such a claim for lien shall have attached thereto a copy of any notice given in compliance with s. 289.02 and a copy of the notice given in compliance with sub. (2), and shall contain a statement of the contract or demand upon which it is founded, the name of the person against whom the demand is claimed, the name of the claimant and any assignee, the last date of the performance of any labor or the furnishing of any materials, a legal description of the property against which the lien is claimed, a statement of the amount claimed and all other material facts in relation thereto. Such claim document shall be signed by the claimant or by his attorney, need not be verified, and in case of action brought, may be amended, as pleadings are.

**289.07 DOCKET OF LIENS.** (1) Every clerk of the circuit court shall keep a separate docket, entitled "lien docket," in which shall be entered immediately upon its filing, the proper entries under the appropriate headings specified in this subsection, relative to each claim for lien filed with him, opposite the names of the persons against whom the lien is claimed. The names shall be entered alphabetically, or an alphabetical index shall be kept as judgment dockets are required by law to be kept. Each page of the docket shall be divided into 9 columns, with headings in the following sequence to the respective columns, as follows:

- (a) Name of person against whom lien is claimed.
- (b) Name of claimant or assignee.
- (c) Attorney for claimant.
- (d) Last date of performance of labor or furnishing materials.
- (e) Description of copies of notices attached to claim when filed.
- (f) Date and time of filing claim.
- (g) Description of property.
- (h) Amount claimed.
- (i) Satisfaction.

(2) Such docket shall be presumptive evidence of the correctness of the entries therein made.

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

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

(3) The person against whom the lien is claimed or other interested party depositing the security shall cause to be served upon the lien claimant a notice of the filing of the undertaking or deposit of other security and, if an undertaking, a copy thereof, which notice shall state where and when the undertaking was filed or the security was deposited.

(4) Any action brought after the furnishing of security or pending at the time of the furnishing thereof in accordance with this section shall proceed as if no security had been furnished, except that after the time within which exceptions may be taken to the security, or pursuant to order of the court upon any exception so taken, the clerk shall satisfy the claim for lien of record and discharge any *lis pendens* filed, and except that the lien thereupon shall attach to the security and the amount adjudged due in the proceeding for foreclosure thereof shall be satisfied out of the security, and the property described in the lien claim shall thenceforth be entirely free of the lien and shall in no way be involved in subsequent proceedings.

(5) If no action to foreclose the lien is brought within the time specified by s. 289.06 (1), the clerk of circuit court in whose office the undertaking or other security was filed or deposited shall on request, and without notice, return the undertaking or security to the party filing or depositing it.

**289.09 FORECLOSURE OF LIEN; PROCEDURE; PARTIES.** In the foreclosure of liens mentioned in s. 289.01, ch. 278 shall control as far as applicable unless otherwise provided in this subchapter. All persons having filed claims for liens under s. 289.01 may join as plaintiffs, and if any do not join they may be made defendants. All persons having liens subsequent to such lien may be joined as defendants. If any person who is a proper party is not a party to the action he may, at any time before judgment, be made a defendant, and any person who after the commencement of the action obtains a lien or becomes a purchaser may, at any time before judgment, be made a defendant.

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

**289.11 DISTRIBUTION OF PROCEEDS OF SALE.** The several claimants whose liens were established in the action shall be paid without priority among themselves. If the sum realized at the sale under s. 289.10 is insufficient after paying the costs of the action and the costs of making the sale to pay the liens in full they shall be paid pro rata.

**289.12 SALE; NOTICE AND REPORT; DEFICIENCY JUDGMENT; WRIT OF ASSISTANCE.** (1) All sales under judgments in accordance with s. 289.10 shall be noticed, conducted and reported in the manner provided for the sale of real estate upon execution and shall be absolute and without redemption. In case such sale is confirmed, the deed given thereon shall be effectual to pass to the purchaser all that interest in the premises which is directed to be sold.

(2) If any deficiency arises upon the sale in the payment of the sums adjudged to be due to any lien claimant, the court, upon confirming such sale, may render judgment therefor if demanded in the pleadings against the defendant legally liable to pay the same which judgment may be docketed and enforced in the same manner that ordinary judgments are. The purchasers at such sale shall be entitled to a writ of assistance under s. 272.63 to obtain possession of the premises sold.

**289.13 SATISFACTION OF JUDGMENT OR LIEN; CORRECTION OF ERRORS.** (1) Every lien claimant, or the attorney who executed and filed a claim for lien on his behalf, who has received satisfaction or tender of such claim with the costs of any action brought thereon shall, at the request of any person interested in the premises affected and on payment of the costs of satisfying the same, execute and deliver the necessary satisfaction of such interested person. On filing the satisfaction with the clerk of circuit court, the clerk shall enter satisfaction of the claim on his lien docket. Failure to execute and deliver the satisfaction or to satisfy the lien on the docket shall render the person so refusing liable to pay to the person requiring the satisfaction a sum equal to one-half of the sum claimed in his claim for lien.

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

**289.14 PUBLIC WORKS, FORM OF CONTRACT, BOND, REMEDY.** (1) All contracts with the state involving \$2,500 or more and all other

contracts involving \$500 or more for the performance of labor or furnishing materials when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor performed and materials furnished, used or consumed in making the public improvement or performing the public work, including, without limitation because of specific enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, premiums for workmen's compensation insurance and contributions for unemployment compensation. A contract shall not be made unless the prime contractor gives a bond issued by a surety company licensed to do business in this state. The bond shall carry a penalty of not less than the contract price, and shall be conditioned for the faithful performance of the contract and the payment to every person entitled thereto of all the claims for labor performed and materials furnished under the contract, to be used or consumed in making the public improvement or performing the public work as provided in the contract and as above specified. The bond shall be approved in the case of the state by the governor, of a county by its district attorney, of a city by its mayor, of a village by its president, of a town by its chairman, of a school district by the director or president and of any other public board or body by the presiding officer thereof. No assignment, modification or change of the contract, or change in the work covered thereby, or any extension of time for the completion of the contract shall release the sureties on the bond. Neither the invitation for bids, nor the person having power to approve the prime contractor's bond, shall require that such bond be furnished by a specified surety company or through a specified agent or broker.

(2) Not later than one year after the completion of work under the contract, any party in interest may maintain an action in his own name against the prime contractor and the sureties upon the bond for the recovery of any damages he may have sustained by reason of the failure of the prime contractor to comply with the contract or with the contract between the prime contractor and subcontractors. If the amount realized on the bond is insufficient to satisfy all claims of the parties in full, it shall be distributed among the parties pro rata.

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

**289.15 PUBLIC IMPROVEMENTS; LIEN ON CONTRACTOR; DUTY OF OFFICIALS.** (1) Any person furnishing labor or materials to be used or consumed in making public improvements or performing public work, including fuel, lumber, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases, premiums for workmen's compensation insurance and contributions for unemployment compensation, to any prime contractor, except in cities of the 1st class, shall have a lien on the money or bonds or warrants due or to become due the prime contractor therefor, if the lienor, before payment is made to the prime contractor, gives written notice to the debtor state, county, town or municipality of his claim. The debtor shall withhold a sufficient amount to pay the claim and, when it is admitted by the prime contractor or established under sub. (3), shall pay the claim and charge it to the prime contractor. Any officer violating the duty hereby imposed shall be liable on

his official bond to the claimant for the damages resulting from the violation. There shall be no preference between the lienors serving the notices.

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

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

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

(b) If an action is commenced, all claimants shall be made parties and the action shall be commenced within 3 months after acceptance of the work by the proper public authority except as otherwise herein provided.

(c) Within 10 days after the filing of a certified copy of judgment in any such action with the officers with whom the notice authorized by sub. (1) is filed, the money due the prime contractor shall be paid to the clerk of court to be distributed in accordance with the judgment.

**289.155 JUDGMENT CREDITORS, ATTACHMENT OF FUNDS DUE TO PUBLIC CONTRACTORS. (1) LIMITATIONS.** This section does not apply to cases covered by s. 267.23. Demands covered by s. 289.15 have priority over judgments filed under this section. The remedies afforded by s. 289.15 and by this section are complementary.

(2) **CERTIFIED COPIES OF JUDGMENTS FILED.** In this section, "municipality" includes city, village, county, town, school district and any quasi municipal corporation. When the state or any municipality is indebted to any contractor, the owner of a judgment against him may attach the debt by filing a certified copy of his judgment in the manner and subject to the conditions and limitations provided by this section. If the debt is owed by the state upon a contract for public improvements, the certified copy shall be filed with the officer, board, department or commission having jurisdiction over the work. Otherwise, the copy shall be filed with the department of administration. If the debt is owed by a municipality, the copy shall be filed with the municipal clerk or corresponding officer. The

judgment creditor shall promptly notify the judgment debtor of the filing, within the time and as provided by s. 267.07 for service upon the defendant.

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

(4) **SAME; FUNDS DUE PUBLIC CONTRACTORS.** When the state or a municipality is indebted to a contractor for public improvements, payment shall not be made to the judgment creditor until 3 months after final completion and acceptance of the public work and then only out of moneys due the contractor in excess of unpaid lienable claims having priority under s. 289.15.

(5) **ADJUSTMENT OF LIEN CLAIMS.** (a) For the purpose of administering this section, sworn statements of the contractor setting forth the unpaid lien claims filed or fileable under s. 289.15 may be accepted by the proper officer, board, department or commission, unless the judgment creditor or other interested person gives written notice that an action is pending to determine whether specified lien claims were incurred in performing the public work and the amount thereof, or to determine priorities in which event payments shall await the result of the action.

(b) Within 10 days after filing the certified copy of the judgment under sub. (2), the contractor shall file the sworn statement in duplicate, with the proper officer, board, department or commission, who shall immediately furnish the judgment creditor with one of the statements. The judgment creditor shall have 10 days from the receipt thereof in which to serve the notice of pendency of the court action.

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

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

**289.16 THEFT BY CONTRACTORS.** All moneys, bonds or warrants paid or to become due, to any prime contractor or subcontractor for public improvements are a trust fund in his hands; and the use of the moneys by him for any purpose other than the payment of claims on such public improvement, before the claims have been satisfied, constitutes theft and is punishable under s. 943.20.

**289.17 RELEASE OF FUNDS ON FILING BOND.** At any time after the service of a notice of lien claim or filing of judgment or pending the determination of any action commenced thereunder, the contractor shall be entitled to the release of any moneys due him under the contract upon filing a bond, executed by a surety company duly authorized to transact business in this state, with the public authority having jurisdiction over the work, guaranteeing that the contractor will pay any judgment of the court rendered in favor of the lien claimant and all judgments filed. Such bond shall be in an amount sufficient to insure payment of the lien claims and judgments, and shall be approved as to form and amount by the public authority.

SECTION 4. Subchapter II (title) of chapter 289 of the statutes is created to read:

SUBCHAPTER II.  
OTHER LIENS.  
(to precede s. 289.18)

SECTION 5. 289.53 to 289.538 of the statutes are repealed.

SECTION 6. In the sections listed in column A, the cross references to the sections in column B are changed to the cross references shown in column C:

A	B	C
Statute sections	Old cross references	New cross references
84.06 (2), (3) and (4)	289.16	289.14
84.41 (4)	289.16	289.14
84.41 (4)	289.53	289.53
289.70 (6)	289.12	289.10
289.70 (6)	289.13	289.11
289.70 (6)	289.14	289.12
289.70 (6)	289.15	289.13

Approved January 23, 1968.