



1997 SENATE BILL 45

January 29, 1997 - Introduced by Senators WELCH, HUELSMAN, COWLES and BUETTNER, cosponsored by Representatives GARD, MUSSER, SERATTI, OLSEN, HAHN, GROTHMAN, SCHAFER, POWERS, OTT and WARD. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to amend** 779.01 (2) (a), 779.01 (2) (d) 1., 779.01 (3), 779.01 (4) and
2 779.035 (1) of the statutes; **relating to:** including surveys, appraisals and
3 architectural and engineering plans under the construction lien law.

Analysis by the Legislative Reference Bureau

Under current law, a person who performs work or furnishes labor, material, plans or specifications for the improvement of land may obtain a construction lien against the owner's land for the value of the work or materials provided. This bill provides that surveys, appraisals, architectural plans or specifications and engineering plans or specifications constitute improvements to land. Persons providing those services may obtain a construction lien against the owner's land for the value of the services provided.

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

4 **SECTION 1.** 779.01 (2) (a) of the statutes is amended to read:
5 779.01 (2) (a) "Improve" or "improvement" includes any building, structure,
6 erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting,
7 clearing or landscaping which is built, erected, made or done on or to land for its

SENATE BILL 45**SECTION 1**

1 permanent benefit. ~~This enumeration is intended as an extension rather than a~~
2 ~~limitation of the normal meaning and scope of “improve” and “improvement”, and~~
3 ~~any survey, appraisal, architectural plan or specification or engineering plan or~~
4 ~~specification prepared to facilitate an improvement to land.~~

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

6 779.01 (2) (d) 1. A person, other than a laborer, but including an architect,
7 professional engineer, appraiser or surveyor employed by the owner, who enters into
8 a contract with an owner of land who is not personally the prime contractor as defined
9 in subd. 2. to improve the land, or who takes over from a prime contractor the
10 uncompleted contract; or

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

12 779.01 (3) EXTENT AND CHARACTER OF LIEN. Every person who performs any work
13 or procures its performance or furnishes any labor or materials or surveys,
14 appraisals, plans or specifications for the improvement of land, and who complies
15 with s. 779.02, shall have a lien therefor on all interests in the land belonging to its
16 owners. The lien extends to all contiguous land of the owner, but if the improvement
17 is located wholly on one or more platted lots belonging to the owner, the lien applies
18 only to the lots on which the improvement is located.

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

20 779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall
21 be prior to any lien which originates subsequent to the visible commencement in
22 place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a),
23 292.31 (8) (i), ~~144.77~~ 292.41 (6) (d), 292.81 and 706.11 (1). When new construction
24 is the principal improvement involved, commencement is deemed to occur no earlier
25 than the beginning of substantial excavation for the foundations, footings or base of

SENATE BILL 45

1 the new construction, except where the new construction is to be added to a
2 substantial existing structure, in which case the commencement is the time of the
3 beginning of substantial excavation or the time of the beginning of substantial
4 preparation of the existing structure to receive the added new construction,
5 whichever is earlier. The lien also shall be prior to any unrecorded mortgage given
6 prior to the commencement of the work of improvement, if the lien claimant has no
7 actual notice of the mortgage before the commencement. Lien claimants who
8 perform work or procure its performance or furnish any labor or materials or surveys,
9 appraisals, plans or specifications for an improvement prior to the visible
10 commencement of the work of improvement shall have lien rights, but shall have
11 only the priority accorded to other lien claimants.

12 **SECTION 5.** 779.035 (1) of the statutes is amended to read:

13 779.035 (1) To eliminate lien rights as provided in s. 779.03 (2), the contract
14 between the owner and the prime contractor for the construction of the improvement
15 shall contain a provision for the payment by the prime contractor of all claims for
16 labor performed and materials or plans or specifications furnished, used or
17 consumed, except surveys, appraisals, plans or specifications furnished by the
18 architect, professional engineer, appraiser or surveyor employed by the owner, in
19 making such improvement and performing the work of improvement. The contract
20 shall not be effective to eliminate lien rights unless the prime contractor gives a bond
21 issued by a surety company licensed to do business in this state. The bond shall carry
22 a penalty for unpaid claims of not less than the contract price, and shall be
23 conditioned for the payment to every person entitled thereto of all the claims for labor
24 performed, and materials furnished under the contract and subsequent
25 amendments thereto, to be used or consumed in making the improvement or

SENATE BILL 45

1 performing the work of improvement as provided in the contract and subsequent
2 amendments thereto. The bond shall be approved by the owner and by any mortgage
3 lender furnishing funds for the construction of the improvement. No assignment,
4 modification or change in the contract, or change in the work covered thereby, or any
5 extension of time for completion of the contract shall release the sureties on the bond.

6 **SECTION 6. Initial applicability.**

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

9 **SECTION 7. Effective date.**

10 (1) This act takes effect on the first day of the 4th month beginning after
11 publication.

12 (END)