

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

LRB-4065/P1dnRJM

RJM:.....

There are several issues regarding the lien provision in proposed s. 229.852. Although this provision is similar to language currently in ch. 231, stats., you may want to draft this lien provision differently in order to ensure that the language accomplishes your intent. First, it is unclear under the proposed language whether the lien has priority over a valid security interest in the accounts of the district. If you intend to give the lien this priority, you may want to generally exempt the lien from ch. 409, stats., (see s. 409.104 (3), stats. (exemption of certain other statutory liens)) and specify the prioritization you intend in a provision similar to s. 409.310, stats.

Second, to the extent that this provision is intended to establish priority for bankruptcy purposes, the provision may not accomplish your intent. Let me know if you would like me to research federal law in order to determine the priority given to a lien of this type in a bankruptcy proceeding.

Third, the proposed language may unconstitutionally impair existing contracts because the lien is "valid and binding as against all parties having claims of any kind . . . in contract." In addition, an impairment issue may exist to the extent that the lien is given priority over existing perfected security interests. In order to avoid this issue, you may want to specify that the lien is valid and binding against any claim arising under a contract entered into after the date that the pledge was made and is valid against any claims against the district other than under a contract. You may also want to give the lien priority over any security interest perfected after the date that the pledge was made.

There are also two clarifications you may want to make. First, it may be helpful to specify who has the lien (for example, the person holding the instrument that evidences the pledge). Second, under the proposed language, it appears that filing is a prerequisite to perfection. However, the language could be interpreted to treat perfection and filing as separate issues. If you intend to require filing in order to perfect the lien, please let us know and we can clarify this point.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: Robert.Marchant@legis.state.wi.us