



## 2013 SENATE BILL 595

February 13, 2014 - Introduced by Senators OLSEN, GROTHMAN and GUDEx, cosponsored by Representatives MURPHY, KNUDSON, JACQUE, WEATHERSTON, KULP, KAUFERT, KAHL and STRACHOTA. Referred to Committee on Judiciary and Labor.

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.

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### *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.

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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 or 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.

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

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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,

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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

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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  
13 interested party may serve upon the lien claimant a written demand that the  
14 claimant commence an action to determine the validity of the lien. If the lien  
15 claimant fails to commence an action to determine the validity of the lien within 90  
16 days after being served the written demand, the lien 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

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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)