



1995 ASSEMBLY BILL 945

February 26, 1996 - Introduced by Representatives AINSWORTH, JOHNSRUD, SERATTI, MUSSER, GUNDERSON, ALBERS, OLSEN, SILBAUGH, OTTE, ZUKOWSKI and OWENS, cosponsored by Senator BUETTNER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 779.02 (4), 779.03 (2) and 779.06 (3); and **to create** 779.065
2 of the statutes; **relating to:** requirements for a subcontractor to file a
3 construction lien.

Analysis by the Legislative Reference Bureau

Under current law, a person who performs work or procures its performance or furnishes any labor or materials or plans or specifications for the improvement of land and who complies with certain notice and filing requirements has a lien on the land. This type of lien is commonly referred to as a construction lien. A person claiming a construction lien is required to file a lien claim in the office of the clerk of circuit court of the county in which the lands affected by the lien are located. The claim for a lien is required to contain a statement of the contract or demand upon which the lien is founded, the name of the owner, the name of the person claiming the lien, the last date of the performance of any work on the improvement, a legal description of the property against which the lien is claimed, a statement of the amount claimed and all other material facts related to the lien claim. In addition, the lien claimant must attach to the lien claim copies of certain required notices.

This bill requires subcontractors to include certain supplemental materials with any construction lien claim. If the subcontractor is to be paid for the work by the prime contractor for the work giving rise to the lien claim, the subcontractor must file a copy of the contract under which the subcontractor was to have been paid and an affidavit by the prime contractor stating that the subcontractor has not been paid by the prime contractor because the owner is delinquent in making a payment due the prime contractor under a contract between the owner and the prime contractor. The prime contractor is required to provide the subcontractor with the affidavit, unless the information required to be in the affidavit is false. If the subcontractor is to be paid for the work directly by the owner, the subcontractor must file a copy of

the contract under which the subcontractor was to have been paid by the owner and must file an affidavit stating that the subcontractor has not been paid.

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

1 **SECTION 1.** 779.02 (4) of the statutes is amended to read:

2 779.02 (4) (title) NOTICE AND FILING REQUIREMENTS IN S. ~~779.06~~ UNAFFECTED.

3 Nothing in this section shall be construed to relieve any lien claimant of the notice
4 and filing requirements under s. ss. 779.06 and 779.065.

5 **SECTION 2.** 779.03 (2) of the statutes is amended to read:

6 779.03 (2) PAYMENT BOND MAY ELIMINATE LIEN RIGHTS. In any case where the
7 prime contractor, pursuant to agreement with the owner, has furnished a payment
8 bond under s. 779.035, all liens provided by s. 779.01 except those of any prime
9 contractor do not exist, ss. 779.02 (1) to (4) and (6) ~~and~~, 779.06 and 779.065 do not
10 apply and all claimants who have no lien shall follow the requirements and
11 procedures specified in ss. 779.035 and 779.036.

12 **SECTION 3.** 779.06 (3) of the statutes is amended to read:

13 779.06 (3) Such a claim for lien shall have attached thereto a copy of any notice
14 given in compliance with s. 779.02 ~~and~~, a copy of the notice given in compliance with
15 sub. (2), and any supplemental materials required to be filed by a subcontractor
16 under s. 779.065. The claim for lien shall contain a statement of the contract or
17 demand upon which it is founded, the name of the person against whom the demand
18 is claimed, the name of the claimant and any assignee, the last date of the
19 performance of any labor or the furnishing of any materials, a legal description of the
20 property against which the lien is claimed, a statement of the amount claimed and
21 all other material facts in relation thereto. ~~Such~~ The claim document shall be signed

1 by the claimant or attorney, need not be verified, and in case of action brought, may
2 be amended, as pleadings are.

3 **SECTION 4.** 779.065 of the statutes is created to read:

4 **779.065 Supplemental materials required to be filed by**
5 **subcontractors. (1) IN GENERAL.** A subcontractor may not file a lien claim under
6 s. 779.06 (1) unless the subcontractor files the supplemental materials required
7 under this section with the lien claim.

8 **(2) IF SUBCONTRACTOR IS TO BE PAID BY PRIME CONTRACTOR.** If a contract regarding
9 the improvement giving rise to the lien claim requires a prime contractor, who is not
10 the owner, to pay the subcontractor for the work done by the subcontractor on the
11 improvement, the subcontractor shall file all of the following materials with the lien
12 claim filed under s. 779.06 (1):

13 (a) A copy of the contract, or if the contract is oral, an affidavit by the
14 subcontractor stating the terms of the oral contract under which the subcontractor
15 was to have been paid for work done on the improvement.

16 (b) An affidavit by the prime contractor stating that the subcontractor has not
17 received a payment required under the contract under par. (a) because the owner has
18 not made a payment due the prime contractor under a contract between the owner
19 and the prime contractor regarding the improvement.

20 **(3) IF SUBCONTRACTOR IS TO BE PAID BY OWNER.** If a contract regarding the
21 improvement giving rise to the lien claim requires the owner to pay the subcontractor
22 directly for the work done by the subcontractor on the improvement, the
23 subcontractor shall file all of the following materials with the lien claim filed under
24 s. 779.06 (1):

