



**Senate Committee on Judiciary and Labor**  
**Senate Bill 595**  
March 5, 2014

Senator Grothman and members of the committee, thank you for hearing Senate Bill 595, pertaining to lien law. I am the Assembly author of this bill.

Senator Olsen and I want to make sure all parties on construction projects are clear about expectations and can more quickly settle claims regarding liens. This bill makes three changes to lien laws in Wisconsin.

1. Currently, general contractors often don't know sub-tier subcontractors are working on the project until the end, when they get a lien notice. This bill requires only those sub-tier subcontractors who have been hired by first-tier subcontractors to give notice to the general contractor they have lien rights within 45 days of working on this project.
2. Currently, only the person or business who files a lien can start the court process. This bill allows the general contractor to notice that the claimant has 90 days to bring their lien to court. Right now, liens last for two years.
3. Finally, the bill says that until a disputed amount is settled, a municipality can hold the amount until it's settled or withhold the amount that the general contractor and subcontractor disagree on.

Thank you again for your attention.

**Testimony Presented to the Senate Committee on Judiciary and Labor  
Senate Bill 595  
March 5, 2014**

**Introduction**

Chairman Grothman, Committee Members, I appreciate the opportunity to comment on SB 595 and appear today on behalf of the Aggregate Producers of Wisconsin (APW) in opposition to the bill.

My name is Pat Osborne and I am the Executive Director of APW, which is a statewide trade association of over 100 aggregate producing companies and associate member companies who provide goods and services to the aggregate industry in Wisconsin.

APW membership is comprised of large, medium and small producer companies; with roughly half of the membership in the small producer category. Our member companies may variably be the prime contractor on a given project, but more often we are in the sub-contractor or material supplier position.

**Comments on SB 595**

Construction lien rights inevitably involve any company or individual that works on or supplies materials to a project. Prime contractors, subcontractors who have a contract with the prime, subs-to-subs, primary material suppliers, secondary material suppliers, may all be engaged. In the chain of rights and payments — what protects or benefits one category of contractor may impact the protection and benefits of others.

Construction lien rights may also have a significant bearing on whether and/or when you get paid. For a small business contractor, getting timely paid is a big deal and I think it is fair to say their general sense is that the lien laws are already stacked against them.

Our general concern with SB 595 is that it appears to only benefit prime contractors at the potential expense and loss of lien rights for sub-contractors and/or material suppliers.

**Specific concerns include the following:**

**Notice of Furnishings:** The bill requires any subcontractor or material supplier who does not have a direct contract with the prime contractor to provide a "Notice of Furnishings" to the prime within 45 days of providing material, labor or services to a construction project. If a non-contracted sub or material supplier fails to provide the notice, they forfeit the lien protection they have under current law. Under current law, no notice of furnishing is required and sub tier contractors have automatic rights to ensure they have a mechanism to get paid.

Is it a big deal to provide a piece of paper? You can debate that point, but my experience suggests that most contractors, like other businesses, are not looking for additional government dictated paperwork. I think the more pertinent question is: Is it a big deal to completely lose your lien rights because you got busy and failed to get that piece of paper submitted in the first 45 days following your work on a project? Yes, it is.

The bill proposes to encourage notice of furnishing by providing a serious disincentive in the form of loss of lien rights. A similar objective could be achieved by offering, for example, a prompt payment incentive if you supplied the notice of furnishing.

**Demand to Foreclose:** Currently, a lien has to be filed with the clerk of circuit court within 6 months from the date that goods or services were last provided. A claimant then has two years from the date of filing to commence a court action. Under the proposed legislation, after a lien claimant files, a prime contractor (any interested party) may force the lien claimant to commence court action within 90 days or forfeit the lien.

Under the bill, resolution of even minor amounts is subjected to this 90 day demand. For a small business owner, for any owner for that matter, it would hardly be worth hiring an attorney to pursue a small dollar claim in court but the bill as drafted would force a contractor to either bring the claim or forfeit lien protection. Such a provision could be abused and should at least be modified to apply only in cases of larger dollar amount disputes.

**Stop Notice on Public Improvement Liens:** Under current law, with regard to public work projects and public improvements, if notice requirements are met and the prime contractor does not dispute the claim within 30 days, the public agency is required to pay the sub and charge that amount to the prime contractor.

If the prime disputes the claim, current law requires that either the prime or the sub commence an action to determine the validity of the claim. Also under current law if an action is not brought within 3 months of filing the claim, lien rights are forfeited.

The bill takes the onus off of a prime contractor to promptly pay its subs within 30 days. The bill provides that if the prime does not accept the claim within the first 30 days then the sub, or the prime (but why would they) has to commence a court action. In addition, the bill provides that while a dispute is pending, the prime contractor can continue to get paid but not the sub-contractor. It removes any incentive a prime would have to timely resolve a dispute and allows them to string out payments to subs until the end of the process — or until a sub-contractor is forced to go to court to get paid.

### **Conclusion**

In closing, we request that you consider balancing the rights of all parties in the treatment of lien rights. If you are going to entertain changes to current lien laws, we encourage you to address reforms in a way that takes into account the legitimate interests that all contractors have in getting paid, and timely paid, for their work.



# AGC of Wisconsin

S K I L L      R E S P O N S I B I L I T Y      I N T E G R I T Y

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To: Senate Judiciary and Labor Committee  
From: Jim Boullion, Director of Government Affairs  
Date: March 5, 2014  
Re: **Support SB 595 - Lien Law Reform Proposal**

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Mr. Chairman and Committee, thank you for holding this hearing on SB 595. The proposal would make three changes to Wisconsin's lien laws:

- a. Notice of Furnishing: Require only sub-tier subcontractors hired by first-tier subcontractors to provide a notice to the general contractors (GCs) that they have lien rights within 45 days of working on a project. Under current law GC's often don't know these entities are even on the job until the end of a project when they get a lien notice. Subcontractors who have a direct contract with the GC are exempt from the notice requirement. Residential construction already requires its own notice of furnishing, which this bill does not affect.
- b. Demand to Foreclose: Liens in Wisconsin last for 2 years unless they are settled through negotiation or the courts. Under current law, only the entity who filed the lien can start the court process. This bill would allow the owner or GC to speed up the process by serving a notice that the claimant has 90 days to bring their lien to court to be settled.
- c. Stop Notice: Clarify that a municipality can either withhold a disputed amount between a GC and subcontractor on the GC's next payment(s), or hold it until the issue is settled.

Attached is a more in-depth description of the legislation that may be helpful in understanding the specifics of the bill.

The goal of this legislation is to increase communication between all parties on a construction project and allows lien claims to be settled quickly. It is not in anyone's interest for legitimate payment disputes to drag on and disrupt the closing or sale of buildings.

**AGC of Wisconsin and our members strongly support this proposal and urge you to support it as well!**

Please contact me at (608) 221-3821 or [jboullion@agcwi.org](mailto:jboullion@agcwi.org) if you have any questions.

Thank you for your consideration and support!



# AGC of Wisconsin

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## Lien Law Reform

Construction projects are complicated and require a large amount of coordination and communication between the various contractors who must work together to build a successful project. Building owners want to insure that when their construction projects are finished they are done on time, on budget and without any lingering issues over the labor, materials and assorted services that went into the project. General contractors, subcontractors and material suppliers want to insure that they are paid according to the contract they signed for the work and materials they put into the projects.

Unfortunately, even on the best of projects there can be questions and differences of opinions that lead to disputes. Those disputes are resolved using a number of documents and legal tools such as plans, specifications, contracts and liens.

Wisconsin's lien laws help insure that contractors, subcontractors and material suppliers are paid what is legally owed to them. A lien filed by one of these entities is a form of security interest granted over the property to secure the payment of the debt. The property title is encumbered and it can not be sold or transferred until the lien claim is settled. Liens are settled through negotiation or through a legal proceeding in the court system.

It is important to retain the ability to file legitimate liens, but a number of problems with this law have become apparent. To address those problems this proposal would do the following:

- a. **Notice of Furnishing** - Prime contractors have a constant unknown risk due to the lien rights that accrue to lower tier subcontractors and suppliers who are hired by first tier subcontractors without the knowledge of the general contractor;
  - i. The most common problem is with sub-tier subcontractors and material suppliers who are not paid by a subcontractor who is having financial difficulties or is involved in a dispute over quality of work or materials. General contractors pay subcontractors for their work when they get a lien waiver from that subcontractor. But without knowing what liens that subcontractor may have exposed the project to, the general contractor may not be able to protect themselves or the owners from paying twice for services.
  - ii. **To preserve their lien rights, the bill would require anyone that does not have a direct contract with the prime contractor on a non-residential project to provide a notice of furnishing to the prime contractor within 45 days of providing material, labor or services to a construction project. Currently, they have 150 days.**
  - iii. This proposal not only provides critical information to the owner and general contractor, but helps protect the sub-tier subcontractors and material suppliers as well because general contractors will require their first tier subcontractors to secure lien waivers indicating that everyone the subcontractors hired have been paid for their work.
  - iv. Residential projects already have lien notification rules in Wisconsin. This bill does not change those rules, but simply creates notifications to all projects.

- b. **Demand to Foreclose** - A lien claimant has two years from the date a claim for lien is filed to commence a lawsuit to foreclose on the lien. Currently only the lien claimant has the ability to force the action to be commenced in court. Until the claim is settled in court owners or general contractors have a limited scope of responses to remove the lien in that two year period;
- i. If a filed lien is legitimate, both parties have an interest in settling the claim quickly. The financial liability of having an unsettled lien can be significant in the sale or transfer of the property.
  - ii. **This bill would allow an owner or general contractor to demand that an action to foreclose upon the filed claim for lien be commenced. If the lien claimant does not respond by bringing an action within 90 days of receiving a demand to foreclose, the claim for lien shall be forfeited.**
- c. **Public Improvement Liens** – Because a lien can not be filed on public property, when disputes arise on a public construction project subcontractors may file what is often called a “Stop Notice” on payments that a public entity is scheduled to be made to the prime contractor on a public project.
- i. Current law is unspecific as to when the disputed money should be withheld. Here is the current law: “*The debtor shall withhold a sufficient amount to pay the claim...*” Some municipalities have interpreted the law to say that they must withhold the entire disputed amount from the next payments/draws to a general contractor if a stop notice is filed.
  - ii. If the entire amount of the lien is withheld immediately on the next payment(s) to the GC this can cause significant disruption in the cash flow of the GC which affects their ability to pay the claim or any of the other subcontractors and material suppliers on the job.
  - iii. **The proposal clarifies current law that the public owner may continue making scheduled payments to the general contractor or hold the money on the next payment, but in all cases they must still retain the disputed amount until the matter is settled.**
  - iv. Current law already requires a Stop Notice claim to go to court within 3 months, so the delay is relatively short and the dispute will be resolved quickly whether the money is held on the next payment or until the issue is settled.

## Background and Perspective on Lien Laws in the USA

The attached spreadsheet and maps show the timelines for the major steps required to file and foreclose a lien on a construction project in the US States.\*

### **Map 1 – Notice of Furnishing or Lien Rights**

1. All states require that a subcontractor file either a notice of furnishing or file their lien claim within a specified period of time of performing their work. This is the amount of time allowed before the general contractor will know for certain which sub-tier subcontractors or material suppliers are on their job and have lien rights.
2. As you can see from this map, in Wisconsin, commercial projects allow up to 150 days, about 5 months, before a notice must be given. This is among the longest time frames in the entire country.
3. 9 states require a notice of furnishing in 21 days or less!
4. In Wisconsin residential subcontractors must already provide a notice to the owner within 60 days of providing service. They also must provide the notice of furnishing within 60 days for public projects to protect their lien rights on the payment bonds. Only on commercial projects does it take 5 months to know who has lien rights.

### **Map 2 – Deadline to Commence Lien Action**

1. This map shows how long a lien claimant has to bring their lien claim to court.
2. At 2 years, Wisconsin has one of the longest time spans that a lien can be left on a project without having to go to court to be settled.

### **Map 3 – Demand to Commence Lien Action**

1. On the Lien Law Summary spreadsheet, notice that of the 11 states that allow a lien to stay on a project for 2 years or more before it must be brought to court, 6 of them allow the filing of a demand to foreclose, reducing the time that a lien can stay on a project to 30 or 60 days.
2. When you take those states out, Wisconsin is one of only 5 states that let liens go unsettled for the full two years, the longest in the country.
3. The proposed legislation allows this to be reduced to 90 days. That would be the longest of any state that allows a demand to commence a lien action.

Wisconsin has one of the longest time frames in the country to allow a lien to be filed, and one of the longest to settle. If a lien claim is legitimate, it is in the best interest of everyone involved to get the matter resolved quickly. SB 595 would help achieve that goal.

\*= The various lien laws across the country often have specific details that are not reflected on these maps.

## USA Lien Law Summary

Notice of Furnishing or Lien	
STATE	VALUE <i>stied</i>
MISSISSIPPI	No Sub Liens
OREGON	8 Days
ALASKA	15 Days
NORTH_CAROLINA	15 Days
ARIZONA	20 days
CALIFORNIA	20 days
MICHIGAN	20 days
MONTANA	20 days
UTAH	20 days
OHIO	21 days
GEORGIA	30 days
IOWA	30 days
MASSACHUSETTS	30 days
NEW_HAMPSHIRE	30 days
WYOMING	30 days
NEVADA	40 days
FLORIDA	45 days
HAWAII	45 days
MINNESOTA	45 days
LOUISIANA	60 days
NEW_MEXICO	60 days
SOUTH_DAKOTA	60 days
TEXAS	60 days
WASHINGTON	60 days
CONNECTICUT	90 days
IDAHO	90 days
ILLINOIS	90 days
INDIANA	90 days
KANSAS	90 days
MAINE	90 days
NEW_JERSEY	90 days
NORTH_DAKOTA	90 days
OKLAHOMA	90 days
SOUTH_CAROLINA	90 days
TENNESSEE	90 days
VIRGINIA	90 days
WEST_VIRGINA	100 days
ALABAMA	120 Days
ARKANSAS	120 Days
COLORADO	120 Days
DELAWARE	120 Days
KENTUCKY	120 Days
MARYLAND	120 Days
NEBRASKA	120 Days
<b>WISCONSIN</b>	<b>150 Days</b>
MISSOURI	170 Days
PENNSYLVANIA	180 Days
VERMONT	180 Days
RHODE_ISLAND	200 Days
NEW_YORK	8 Months

Deadline to Commence Lien Action	
STATE	
CALIFORNIA	90 days
MASSACHUSETTS	90 days
RHODE_ISLAND	90 days
<b>TENNESSEE#</b>	<b>90 days</b>
ALABAMA	6 mo
ALASKA	6 mo
ARIZONA	6 mo
COLORADO	6 mo
IDAHO	6 mo
MISSOURI	6 mo
NEVADA	6 mo
SOUTH_CAROLINA	6 mo
VIRGINIA	6 mo
WASHINGTON	6 mo
WEST_VIRGINA	6 mo
DELAWARE	120 days
HAWAII	120 days
MAINE	120 days
NEW_HAMPSHIRE	120 days
OREGON	120 days
NORTH_CAROLINA	180 days
UTAH	180 days
VERMONT	180 days
WYOMING	180 days
ARKANSAS	15 months
CONNECTICUT	1 year
FLORIDA	1 year
<b>GEORGIA#</b>	<b>1 year</b>
<b>INDIANA*</b>	<b>1 year</b>
KANSAS	1 year
KENTUCKY	1 year
LOUISIANA	1 year
MARYLAND	1 year
MICHIGAN	1 year
MINNESOTA	1 year
MISSISSIPPI	1 year
<b>NEW_JERSEY*</b>	<b>1 year</b>
NEW_YORK	1 year
OKLAHOMA	1 year
1 ILLINOIS*	2 years
2 IOWA*	2 years
3 MONTANA	2 years
4 NEBRASKA*	2 years
5 NEW_MEXICO	2 years
6 PENNSYLVANIA	2 years
7 TEXAS	2 years
8 <b>WISCONSIN</b>	<b>2 years</b>
9 NORTH_DAKOTA*	3 years
10 OHIO#	6 years
11 SOUTH_DAKOTA*	6 years

# = 30 Day Demand to Foreclose

\* = 60 Day Demand to Foreclose

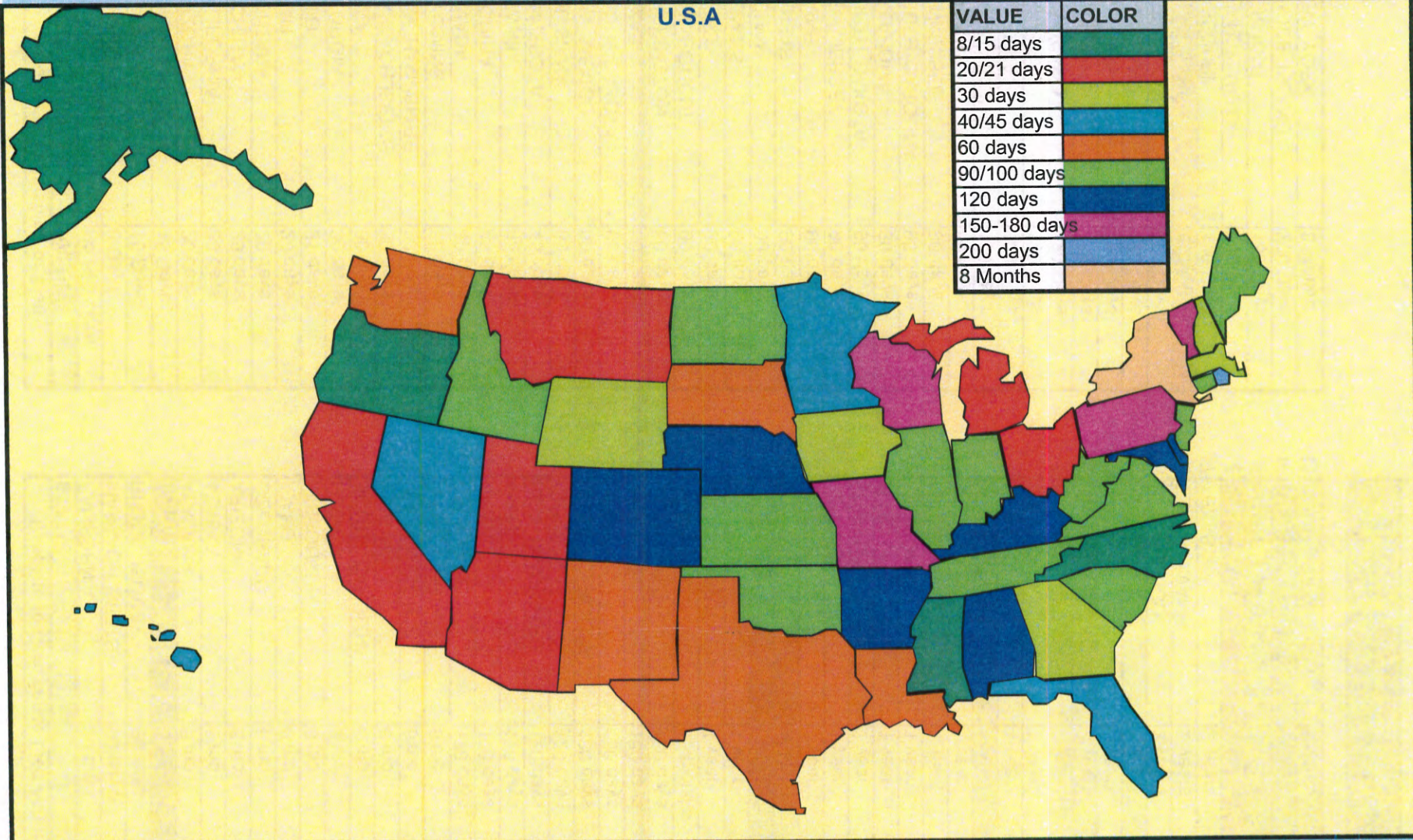


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# 1 - Notice of Furnishing or Lien Rights

U.S.A

VALUE	COLOR
8/15 days	Dark Green
20/21 days	Red
30 days	Light Green
40/45 days	Blue
60 days	Orange
90/100 days	Medium Green
120 days	Dark Blue
150-180 days	Pink
200 days	Light Blue
8 Months	Light Orange

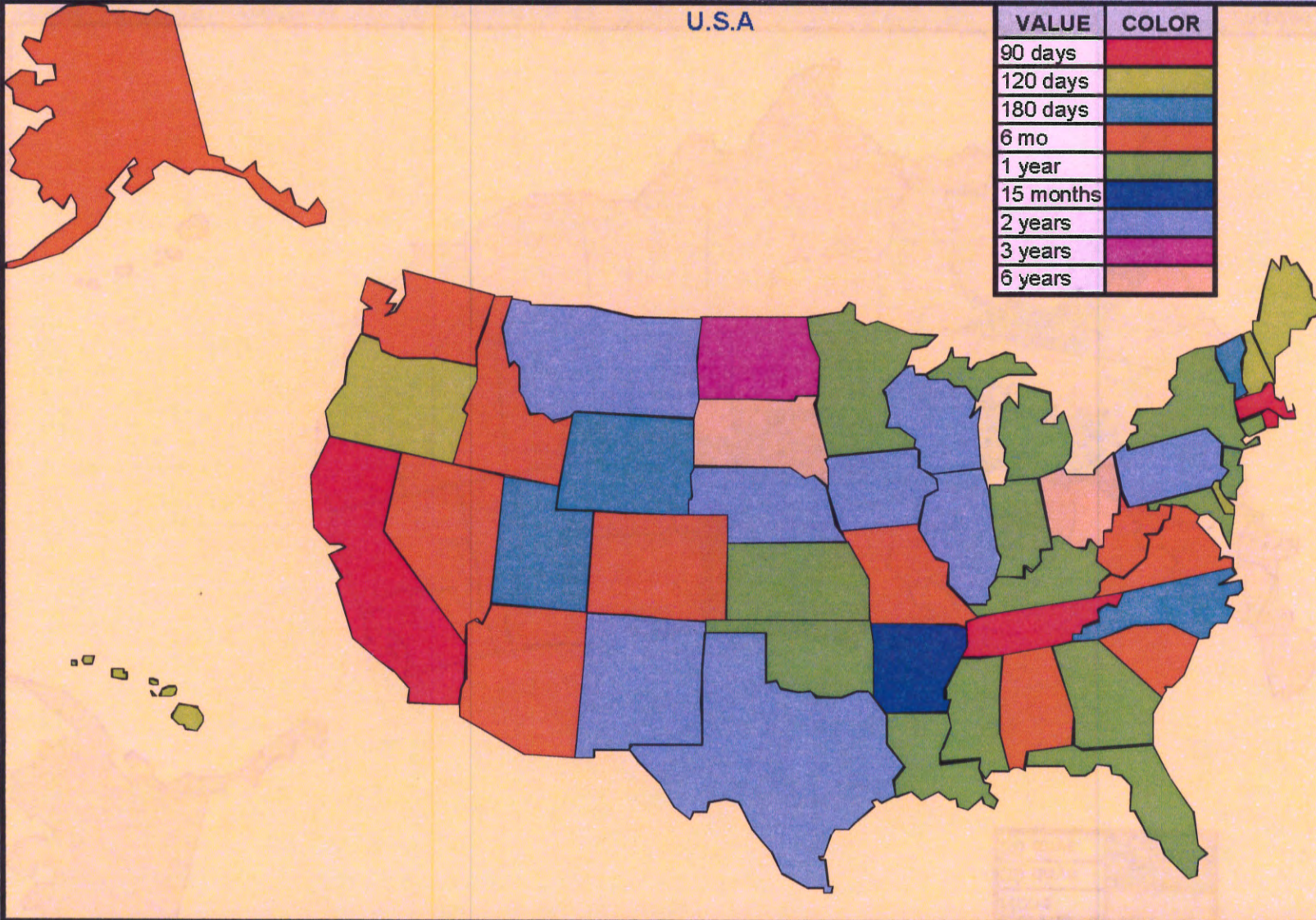


Updated: 2/20/2014

## 2 - Deadline to Commence Lien Action

U.S.A

VALUE	COLOR
90 days	Red
120 days	Light Green
180 days	Blue
6 mo	Orange
1 year	Dark Green
15 months	Dark Blue
2 years	Light Blue
3 years	Purple
6 years	Light Orange



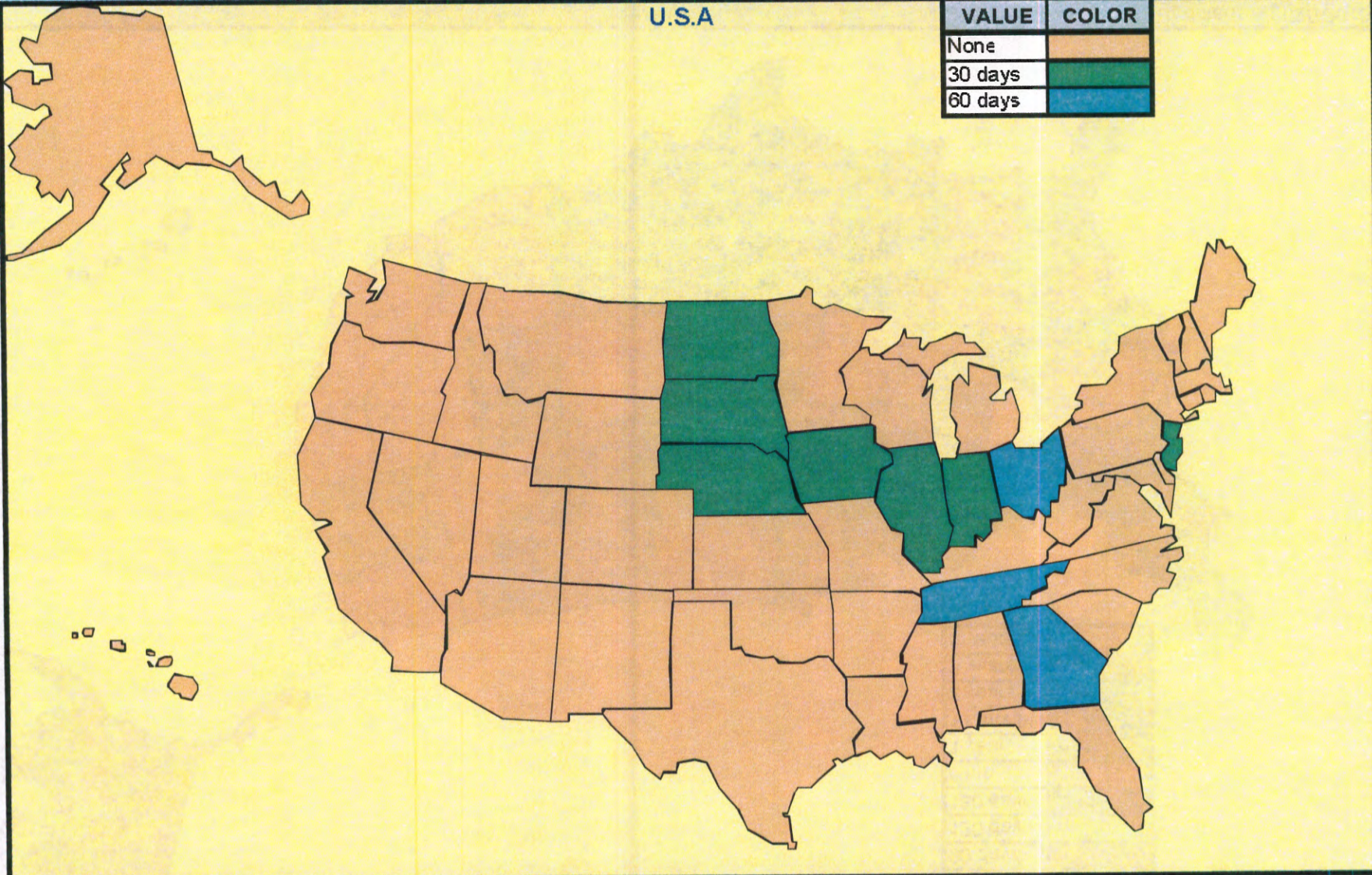
Updated: 11/25/2013

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### 3 - Demand to Commence Lien Action

U.S.A

VALUE	COLOR
None	Orange
30 days	Green
60 days	Blue



Updated: 11/25/2013



Testimony  
Senate Bill 595 (Liens)  
March 5, 2014

Jeffrey J. Beiriger  
Executive Director

Plumbing Heating Cooling Contractors – Wisconsin Association

Thank you for hearing my testimony this morning on Senate Bill 595.

My name is Jeff Beiriger and I am the Executive Director of the Plumbing Heating Cooling Contractors – Wisconsin Association and the Master Plumbers Association of Wisconsin. On behalf of PHCC-Wisconsin, I am testifying in opposition to Senate Bill 595, which proposes to change the State's lien law.

I think it's fairly safe to say that for most of the members of our group, lien law is one of those topics they would simply like to ignore. Having attended something like a dozen seminars on the topic in my work with this association and others in the construction industry, I wouldn't classify myself as an expert. Still, I will try to tell you a little about what I know and what's wrong with this particular bill.

Lien laws are essentially creditor laws. I want that to sink in for a second or two. Lien laws - even in the construction industry - are creditor laws.

It may not seem like it, given that there is more often than not a bank involved in most construction activity, but construction contractors are lenders. We don't get to look at the financial statements and business projections the way the bank might, but make no mistake, contractors are lenders.

What we are lending is the value of the materials and labor that goes into a project but remains unpaid. On a good project - and we hope they are all good projects - that credit may amount to several weeks worth of credit. It's a big number that we're talking about - maybe not millions and millions, but these receivables make up the greatest portion of the assets of most of the small businesses in our industry.

I noted above something about "a good project." In a presentation I attended on lien laws, an attorney shared with the group writings from throughout history documenting litigation on construction projects. It's unfortunate, but it happens. Mostly, there are "good" projects. But when one goes "bad," the protections provided under the State's lien laws become critical. And the further away you are from the source of the funding for the

project - and my members, who are more often subcontractors than not - are further away than those promoting this bill. Look at the supporters of this bill and look at the opponents and you'll see this. This is not a bill for the construction industry. It is a bill for one part of the construction industry.

For what it's worth, it's important to note that the vast majority of contractors in our state are not general contractors. For every general contractor or construction manager, there are scores of plumbing contractors, electrical contractors, HVAC contractors, landscapers, flooring contractors, and more. By some estimates, upwards of 75 and 80 percent of the actual work and volume on a construction project is done by specialty contractors performing under subcontracts to general contractors and construction managers. And that means that 75 to 80 percent of the credit being extended in the industry is being extended by specialty contractors, including the plumbing and heating contractor I represent.

This bill is about the balance of power. It may be packaged as a way to reduce conflict and that may sound like the direction we want to go, we have to be careful about the manner in which we reduce conflict. Taking away some of the existing protections for one group - subcontractors - may result in less conflict. But it does nothing for those subcontractors except to make an already difficult business more difficult.

As subcontractors, the members of PHCC-WI already face an uphill battle in our negotiations with general contractors and construction managers. We are routinely asked to accept terms that are horribly one-sided, most notably, provisions that transfer all of the risk for accidents and injuries on a project to the subcontractor, even if the cause of the accident or injury was the general contractor.

We all want to do business on a hand-shake, but that's not the reality of our industry any longer. Should we work to reduce litigation? Absolutely. But this is not the way to do it.

For years, issues related to the State's lien laws were vetted by the Construction Section of the Wisconsin Bar Association. For groups like PHCC-WI, we didn't try to resolve things by asking all of you to decide who's right and who's wrong on this issue. We allowed the professionals who work with lien laws - the lawyers representing the stakeholders in the issue - to work through proposed changes to the law. By and large, that group did a credible job. Our lien laws are far from perfect, but this multi-faceted approach to revising them worked.

And it should continue to work. It is to that group that this issue should be presented. And that group should work toward consensus and a bill that could be embraced by the entirety of the industry.

Before closing, it's fair to ask us to be specific regarding one or two aspects of the bill before you. Let me give you two. There are others, of course, but let me address these two: paperwork and notices.

As for paperwork, this legislation would dramatically increase the paperwork necessary to protect subcontractor interests. For subcontractors who do not have a direct contract with the general contractor or owner, the provisions of this bill require that they provide notice to the owners. These could result in hundreds of documents being prepared and mailed in order to preserve lien rights that are already provided for under current law.

Who exactly is going to prepare all of this paperwork? These are small businesses. And if they fail to file, they lose their lien rights. So a contractor who is protected today is no longer protected by our lien laws because they didn't file a document. I guarantee the paperwork won't get filed. So who exactly benefits from the work that was performed by this unfortunate subcontractor who no longer has the right to be paid?

The second aspect is ugly to acknowledge, but there is no sense avoiding it. Lien laws provide leverage in negotiations.

When a subcontractor that is not paid files a lien against a project, it sends up red flags. It should. That's how the system is supposed to work. Admittedly, there are times when a subcontractor's lien could have been



avoided, but there are also times when the filing of that lien sends exactly the right message - that the subcontractor has not been paid for their work. When the owner finds out about this, the pressure the general contractor to make payment.

Perhaps there is a legitimate reason that they are not paying. Perhaps there is not. What we need it to allow the system to work. That tension - believe it or not - helps to resolve problems. Relieving tension in our system so that one side has given away its leverage is not a solution. It is a recipe for one-sided negotiations and for negative impacts on the more than 1,000 plumbing contractors and 1,200 HVAC contractors in our state who are but a fraction of the total number affected.

I'll conclude where I began - with a statement of opposition for the bill. If these are the changes one part of the industry proposes, let's bring them to the group that has negotiated such proposals in the past and brought to this legislature an agreed-upon package of changes that are fair - to the extent possible - to all parties.

More than that, let me remind you about the earlier comments about contractors being creditors. To the south of us, in Illinois, contractors are given priority in lien actions. That is, where there are liens filed - particularly in cases where project financing dries up or where the project

owner goes bankrupt - the contractors are paid for the value of their work first. They take priority over the bank so that they can pay their material suppliers and their labor. So that they can stay in business.

Our state doesn't operate that way, but it should. To us, that is the dialogue that should be taking place before you. That is the real policy question related to our state's lien law. Is it working? And if so, for whom?

This bill isn't ready and this bill misses the mark.

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