

BILL ANALYSIS

Senate Research Center

S.B. 1269
By: Wentworth
Economic Development
4/26/1999
As Filed

DIGEST

Currently, Texas has one of the most complex lien law procedures in the nation. Due to this complexity, a multitude of problems occur between subcontractors, suppliers, and owners. Under the current law, subcontractors and suppliers may inadvertently miss filing requirements and owners may discover liens placed on their property due to payments they made to the contractor not being passed to the subcontractor or supplier. Under the current statute, there is often an inadequate information flow so that each party involved on a project knows exactly which other parties are also working on that project. This bill would simplify the lien procedure for commercial construction projects, provide protections for the property owner and lien claimants, and provide a better information flow between the various parties.

PURPOSE

As proposed, S.B. 1269 simplifies the lien procedure for commercial construction projects, provides protections for the property owner and lien claimants, and provides better information flow between the various parties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1(c), Article 7.19-1, Insurance Code, to authorize a bond that is made, given, tendered, or filed under Chapter 53 or 62, Property Code, or Chapter 2253, Government Code, to be executed only by a surety company that is authorized and admitted to write surety bonds in this state.

SECTION 2. Amends Section 28.007(b), Property Code, to make a conforming change.

SECTION 3. Amends the heading of Chapter 53, Property Code, as follows:

CHAPTER 53. New heading: MECHANIC'S, CONTRACTOR'S OR MATERIALMAN'S LIEN
ON RESIDENTIAL PROPERTY

SECTION 4. Amends Sections 53.001(8) and (9), Property Code, to redefine "residence" and "residential construction contract."

SECTION 5. Amends Chapter 53A, Property Code, by adding Section 53.004, as follows:

Sec. 53.004. APPLICABILITY. Provides that this chapter applies only to real property on which a residence is located.

SECTION 6. Amends Section 53.021(a), Property Code, to provide that a person has a lien if the person labors, specifically fabricates material, or furnishes labor or materials for construction or repair in this state of a residence or any improvement appurtenant to a residence, rather than certain other buildings or improvements, and the person labors, specifically fabricates material, or furnishes labor or materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor.

SECTION 7. Amends Sections 53.022(a), (c), and (d), to make conforming and nonsubstantive changes.

SECTION 8. Amends Section 53.052(a), Property Code, to make a conforming change.

SECTION 9. Amends Section 53.123(a), Property Code, to make conforming changes.

SECTION 10. Amends Section 53.155, Property Code, to make a conforming change.

SECTION 11. Amends Title 5B, Property Code, by adding Chapter 62, as follows:

CHAPTER 62. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN ON
NONRESIDENTIAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. DEFINITIONS. Defines "construction lender," "contract price," "improvement," "labor," "material," "mechanic's lien," "original contract," "original contractor," "owner," "professional services," "residence," "specially fabricated material," "subcontractor," and "work."

Sec. 62.002. APPLICABILITY. Provides that this chapter applies to all real property that is not residential property covered by Chapter 53.

Sec. 62.003. SUBSTANTIAL COMPLIANCE SUFFICIENT. Requires this chapter to be liberally construed to promote the beneficial interests and purposes of this chapter. Provides that substantial compliance with this chapter is sufficient to establish the validity of a lien and to confer jurisdiction on the courts to enforce this chapter.

Sec. 62.004. NOTICES. Provides that this section applies to notices required by this chapter. Authorizes any notice or other written communication to be delivered in person to the party entitled to receive the notice or to that party's agent. Provides that if notice is sent by registered or certified mail, addressed to the person entitled to receive the notice at the person's residence or business address, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. Authorizes the notice to be delivered by a private delivery company, if notice is personally delivered to the person entitled to receive the notice. Provides that delivery under this subsection is complete at the time the person receives the notice. Provides that if a written notice is received by the person entitled to receive it, the method by which the notice is delivered is immaterial. Requires all notices to be mailed or delivered prepaid.

Sec. 62.005. MORE THAN ONE ORIGINAL CONTRACTOR; ORIGINAL CONTRACT. Provides that on any work there may be more than one original contractor for purposes of this chapter. Provides that this chapter does not affect the terms of a contract between the owner and the original contractor relating to the amount, manner, or time of payment of the contract price.

Sec. 62.006. OWNER'S LIABILITY. Provides that an owner is liable for payment in full for all labor, materials, or professional services furnished or to be furnished for the owner's property. Authorizes a claimant to establish and foreclose a lien under this chapter for unpaid labor, materials, or professional services as provide by this chapter.

Sec. 62.007. AGENT. Provides that a person who is, in whole or in part, in charge or control of contracting for the construction, alteration, or repair, of any building, structure, or improvement is the agent of the owner for the purposes of this chapter, and the owner is liable for the reasonable value of labor or materials furnished to the owner's agent.

Sec. 62.008. ATTORNEY'S FEES. Requires the court to award costs, any interest provided by law, and reasonable attorney's fees in any action brought under this chapter.

SUBCHAPTER B. NOTICE OF COMMENCEMENT

Sec. 62.021. NOTICE OF COMMENCEMENT. Sets forth certain requirements for notice of commencement by the owner or the owner's authorized agent, except for an original contract for the construction of a house, building, structure, or improvement that exceeds \$5,000. Requires the notice of commencement to be recorded and posted as required by Subsection (a) before work

commences or before work commences to complete any improvement after a default, termination, abandonment, or cessation of work. Provides that this requirement applies regardless of whether a project is covered by a payment bond that complies with this chapter. Sets forth certain information required in the notice of commencement. Provides that if the owner designates another person on whom notices or other documents may be served, the failure by a claimant to serve notice or document on the person designated does not invalidate an otherwise valid notice or lien. Requires the notice of commencement to state that the notice is effective for the applicable period, if the contract between the owner and a contractor named in the notice of commencement provides for a period for completion of the construction of the improvement that is longer than one year. Sets forth the form for the notice of commencement. Requires a copy of any bond provided to be attached at the time the notice of commencement is filed. Provides that the notice of commencement is effective on the date the notice is filed in the county clerk's office as provided by this section. Requires the owner to sign the notice of commencement. Prohibits the owner from authorizing another person to sign on the owner's behalf.

Sec. 62.022. FAILURE TO BEGIN WORK. Provides that if the construction, alteration, or repair, of the improvement described in the notice of commencement does not begin within 90 days after the date the notice is recorded, the notice is void.

Sec. 62.023. NOTICE OF COMMENCEMENT NOT A LIEN. Provides that the recording or posting of a notice of commencement does not constitute a lien or encumbrance on real property. Provides that the notice of commencement provides constructive notice that a claim for a lien under this chapter may be recorded and may take priority over other liens as provided by this chapter.

Sec. 62.024. EXPIRATION. Provides that a notice of commencement is not effective after the first anniversary of the date the notice of commencement is recorded against certain conveyances, transfers, mortgages, liens, and certain individuals, unless otherwise provided in the notice of commencement.

Sec. 62.025. LENDER'S OBLIGATION. Requires a construction lender to record the notice of commencement in the office of the county clerk of the county in which the property is located if the owner has not filed the notice of commencement as required by Section 62.021, before disbursing any construction funds to an owner or contractor. Provides that the construction lender is not required to post a certified copy of the notice at the construction site. Provides that if a construction lender fails to record the notice of commencement as required by this section, the lender is liable to the owner for all damages sustained by the owner as a result of the failure to record the notice. Requires a construction lender who records a notice of commencement to designate itself, in addition to others, as a party entitled to receive copies of notices required to be provided to the owner. Provides that this section does not give any person other than the owner a claim or right of action against a construction lender for failure to record a notice of commencement.

SUBCHAPTER C. PRELIMINARY 45-DAY NOTICE

Sec. 62.051. PRELIMINARY 45-DAY NOTICE. Requires each person who furnishes labor, materials, or professional services for which a lien may be claimed under this chapter, except for a person performing labor for wages, to provide the owner or reputed owner, the original contractor or reputed contractor, the construction lender or reputed construction lender, and the person with whom the claimant has contracted for the purchase of the labor, materials, or professional service with a written preliminary 45-day notice as prescribed by this section. Provides that a lien is not valid unless the notice prescribed by this section is provided. Requires a person claiming a lien under this chapter to provide the preliminary 45-day notice by a certain date. Authorizes the notice to be provided before a certain date. Sets forth certain information the notice must contain. Sets forth the form for the preliminary 45-day notice.

Sec. 62.052. ADDITIONAL OR AMENDED PRELIMINARY 45-DAY NOTICE. Provides that if labor, materials, or professional services are furnished to property by a person who does not provide a preliminary 45-day notice as required by Section 62.051, the person is not precluded from giving a preliminary 45-day notice as prescribed by this subchapter after furnishing additional labor, materials, or professional services to the property. Authorizes the person to claim a lien only

for the labor, materials, or professional services furnished during the 45 days before the date the notice is provided. Provides that a person required by this subchapter to give notice to the owner, to an original contractor, to the construction lender, and to the person with whom the claimant has contracted is required to provide the notice only once with respect to all labor, materials, or professional services furnished or to be furnished, unless the total price exceeds by 30 percent or more the estimated total price in the notice. Provides that the person required to give a preliminary 45-day notice is not required to provide additional notice, if the total price for the labor, materials, or professional services exceeds by 30 percent or more the estimated total price in the notice and the labor, materials, or professional services are furnished under multiple contracts with multiple subcontractors. Provides that if a notice contains a general description of the labor, materials, or professional services furnished up to the date of the notice as required by Section 62.051(c), the notice is not defective because, after the date of the notice, the person giving notice furnishes labor, materials, or professional services that are not within the scope of the general description or the total price of which exceeds by no more than 30 percent the estimated total price in the notice. Requires the person to give an additional or amended notice for the labor, materials, or professional services furnished or to be furnished, if a person giving the notice furnishes or expects to furnish labor, materials, or professional services the total price of which exceeds by more than 30 percent the total estimated price in the original notice. Provides that the failure to give an additional or amended notice does not invalidate any previous notice.

Sec. 62.053. OBLIGATION TO PROVIDE INFORMATION. Authorizes a person or a person's agent who intends to file a preliminary 45-day notice to request information relating to the property from the owner, contractor, construction lender, or other interested party. Requires the request to identify the person requesting the information, the person's address, the property, and the general nature of the person's labor, materials, or professional services to which the preliminary 45-day notice applies. Requires the recipient of a request to furnish the person requesting the information or providing the notice a written statement containing certain information by a certain date. Provides that the failure of the owner, contractor, construction lender, or other interested party to furnish the required information does not excuse any claimant from timely providing a preliminary 45-day notice. Prohibits an owner, contractor, construction lender, or other interested party who fails to provide the required information from raising a defense to a claim any inaccuracy of the information in a preliminary 45-day notice that would have been accurate if the information had been provided.

Sec. 62.054. OBLIGATION TO CORRECT INFORMATION. Requires the claimant to provide an amended preliminary 45-day notice by a certain date, if the information is received by the claimant after the claimant has given a preliminary 45-day notice and the information in the notice is inaccurate. Provides that the amended preliminary 45-day notice is considered to be provided on the date the original preliminary 45-day notice is effective only for work performed, materials supplied, or professional services rendered 45 days before the date of the amended preliminary 45-day notice or the date the original preliminary 45-day notice was provided to the owner, whichever occurs first. Requires a claimant to retain any rights that the claimant would be precluded or prejudiced from asserting in a claim against the bond, if a payment bond has been recorded under this chapter and the owner or other interested party fails to furnish a copy of the bond and the other required information, if the loss of a right is a direct result of the owner's or other interested party's failure to provide the bond or other information.

Sec. 62.055. PROOF OF SERVICE OF NOTICE. Sets forth the form of the acknowledgment of receipt of preliminary 45-day notice that a person required to provide a preliminary 45-day notice is required to provide as proof that the notice was provided. Authorizes proof of service to be provided by an affidavit of the person sending the notice, showing the time, place, and manner of mailing and stating the facts demonstrating that the service was made as prescribed by this subchapter, if a person to whom the notice is served fails to complete the acknowledgment or fails to complete and return the acknowledgment within a certain date. Requires the affidavit to state certain information. Requires the receipt of certification or registration to be attached to the affidavit, if the mailing was by certified or registered mail. Requires the receipt supplied by the person making personal service or the acknowledgment from the delivery company stating that the delivery was made must be attached to the affidavit, if the service was made by personal service or a private delivery company.

SUBCHAPTER D. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

Sec. 62.081. PERSONS ENTITLED TO LIEN. Sets forth the conditions under which a person is entitled to a lien. Provides that a person who specially fabricates material has a lien even if the material is not delivered. Prohibits a person who provides professional services, but who does not hold a certificate of license or registration under Title 10A, 52A, or 86, V.T.C.S., from claiming a lien under this chapter.

Sec. 62.082. PROPERTY TO WHICH LIEN EXTENDS. Provides that the lien extends to the house, building, fixtures, or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed. Provides that the lien does not extend to abutting sidewalks, streets, and utilities that are public property. Provides that a lien against land in a municipality extends to each lot on which the house, building, or improvement is situated or on which the labor was performed. Provides that a lien against land not in a municipality extends to not more than 50 acres on which the house, building, or improvement is situated or on which the labor was performed.

Sec. 62.083. PAYMENT SECURED BY LIEN. Sets forth certain items for which the lien secures payment.

Sec. 62.084. SHAM CONTRACT. Sets forth the conditions under which a person who labors, specially fabricates materials, or furnishes labor, materials, or professional services under a direct contractual relationship with another person is considered to be indirect contractual relationship with the owner and has a lien as an original contractor. Defines "owner."

SUBCHAPTER E. WAIVER OF LIEN

Sec. 62.101. WAIVER OF LIEN. Prohibits an owner or contractor by any term of its contract, or otherwise, from waiving or impairing the claims or liens of other persons whether with or without notice except by written consent as prescribed by this subchapter. Provides that any term of the contract to that effect is void. Provides that any written consent to a waiver given by any person is unenforceable unless the person executes and delivers a waiver and release as prescribed by this subchapter. Sets forth conditions under which the waiver and release is effective to release the property for the benefit of the owner, the construction lender, the contractor, and the surety on a payment bond from claims and liens. Authorizes evidence of payment to be by the claimant's endorsement on a single or joint payee check that is paid by the bank on which it is drawn or by written acknowledgment of payment given by the claimant.

Sec. 62.102. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF CLAIM. Provides that an oral or written statement purporting to waive, release, or otherwise adversely affect a claim is not enforceable and does not create an estoppel or impairment of a claim unless the written waiver and release complies with this subchapter or the claimant has actually received payment in full for the claim.

Sec. 62.103. PRESCRIBED FORMS FOR WAIVER AND RELEASE OF CLAIM. Sets forth the forms for the waiver and release of a claim. Provides that the waiver and release given by any claimant is unenforceable unless it substantially follows the prescribed forms.

Sec. 62.104. PUBLIC POLICY. Provides that any contract, agreement, or understanding waiving the right to file or enforce any lien or claim created under this chapter is void as against public policy, notwithstanding any other law and except as provided by Section 62.103. Provides that this section does not apply to a written agreement to subordinate, release, or satisfy all or part of a lien claimed after a notice of lien has been filed.

SUBCHAPTER F. PROCEDURE TO PERFECT LIEN

Sec. 62.121. PROCEDURE TO PERFECT LIEN. Requires a person claiming a lien under this chapter to execute a notice and claim of lien as provided by this section in order to perfect a lien. Requires the person claiming a lien to make duplicate copies of the notice and claim of lien and record one copy with the county clerk of the county in which the property is located by a certain date. Requires the person claiming a lien to serve the remaining copy on the owner of the building, structure, or improvement if the owner can be found in the county, within a reasonable time after

recording the notice and claim of lien. Requires the notice and claim of lien to be made under oath by the claimant or a person with knowledge of the facts and requires the notice and claim of lien to contain certain information. Defines “completion.”

Sec. 62.122. NOTICE OF COMPLETION. Provides that a notice of completion is a written notice that the owner or the owner’s agent may record at any time after completing the construction. Provides that a notice of completion executed and delivered as prescribed by this section establishes the completion date for the purposes of this subchapter. Requires a notice of completion to be signed and verified by the owner or the owner’s agent and contain certain information. Sets forth the form of the notice of completion. Provides that, if the property is owned by more than one person, a notice of completion signed by fewer than all of the owners must include the name and address of each owner. Requires the notice to include the name and address of each person who transferred the property to the successor in interest, if the notice of completion is signed by a successor in interest. Requires the person executing the notice of completion to record the notice in the office of the county clerk of the county in which the property is located. Requires the county clerk to index the notice of completion under the index classification in which mechanic’s liens are recorded. Requires, if a notice of completion is recorded, the person recording the notice to serve a copy of the notice and a written statement of the date of recording of the notice and the county clerk’s record location information on the original contractor and all persons from whom the owner has previously received a preliminary 45-day notice, by a certain date. Authorizes the person, by a certain date, to perfect a lien, if the owner or owner’s agent fails to provide the information within the prescribed period.

Sec. 62.123. DUTY OF OWNER OF PROPERTY TO WITHHOLD PAYMENT TO ORIGINAL CONTRACTOR. Requires the owner to retain, out of the amount due or to become due the original contractor, the value of the labor or material furnished as shown by the notice and claim of lien, on service of the notice and claim of lien. Requires the owner to furnish to the original contractor a copy of the notice and claim of lien. Provides that if the contractor, within a certain period, does not give the owner a written notice that the contractor intends to dispute the claim, the contractor is presumed to assent to the demand, and the owner shall pay the claim when the claim becomes due.

SUBCHAPTER G. STOP NOTICES

Sec. 62.151. STOP NOTICE AND BONDED STOP NOTICE. Provides that the purpose of a stop notice or bonded stop notice is to give notice to an owner or construction lender that labor or materials have been furnished and the person providing the notice has not been paid for the labor or materials. Provides that the right to file a notice under this subchapter is independent and cumulative of other rights prescribed by this chapter. Requires a stop notice to be in writing, be signed and verified by the claimant or the claimant’s agent, and state certain information in general terms. Sets forth the description of a bonded stop notice. Provides that a stop notice or a bonded stop notice is not invalid by reason of any defect in form if the notice is sufficient to substantially inform the owner of the required information.

Sec. 62.152. PERSON ENTITLED TO PROVIDE STOP NOTICE; CONDITIONS FOR SERVICE. Authorizes any person, other than the original contractor, who labors, specifically fabricates material, or furnishes labor or materials for construction to provide a stop notice or a bonded stop notice to the construction lender. Sets forth the conditions under which service of a stop notice or bonded stop notice is effective. Provides that if a bonded stop notice is delivered or sent to an institution or organization with branch offices, the bonded stop notice is not effective unless the notice is delivered to the office or branch administering or holding the construction funds. Provides that any person described in Subsection (a) who fails to provide a stop notice after a written demand for a stop notice is received from the owner forfeits the right to a mechanic’s lien.

Sec. 62.153. EFFECT OF STOP NOTICE AND BONDED STOP NOTICE. Authorizes a construction lender, and on receipt of a bonded stop notice, requires the construction lender to withhold from the borrower or other person to whom the lender or the owner is obligated to make payments or advances out of the construction funds sufficient funds to pay the claim and any lien that is recorded. Sets forth certain actions to be taken by the construction lender on receipt of a stop notice or bonded stop notice. Sets forth the conditions under which a construction lender is

not liable for the failure to furnish a copy of the bond under Subsection (a)(4). Provides that if a stop notice or bonded stop notice is filed by the original contractor or by a subcontractor, the original contractor or subcontractor is entitled to recover on the stop notice or bonded stop notice only the net amount due the original contractor or subcontractor after deducting the stop notice claims of each subcontractor or material supplier who has filed a bonded stop notice based on work furnished on behalf of the original contractor or subcontractor. Provides that a construction lender is not required to withhold more than the net amount due under a bonded stop notice. Provides that a construction lender is not liable for the failure to withhold more than the net amount on receipt of a bonded stop notice. Requires the owner, on receipt of a stop notice, to withhold sufficient funds to pay a claim and any lien recorded from the original contractor or from any person acting under the original contractor's authority and to whom labor or materials have been furnished or agreed to be furnished, unless a payment bond has been recorded as provided by this chapter. Requires the owner, if the owner does not withhold funds because a payment bond has been previously recorded, to give a written notice by a certain date to the claimant at the address shown in the stop notice that states that the bond has been recorded and that is accompanied by a copy of the bond.

Sec. 62.154. PRIORITIES. Provides that an assignment by the owner or contractor of construction loan funds does not take priority over the stop notice or bonded stop notice, and the assignment has no effect on the right of a claimant who provides the stop notice or bonded stop notice. Provides that if the funds withheld or required to be withheld under a stop notice or bonded stop notice are insufficient to pay in full the claims of each person providing the notices, the funds shall be distributed among the claimants in the same ratio that their respective claims bear to the aggregate of all claims. Requires this pro rata distribution to be made among the persons entitled to share in the funds without regard to the order of time in which the respective notices were provided or the respective actions were commenced. Provides that a person who intentionally provides a false stop notice or bonded stop notice or who intentionally includes in the notice labor, services, equipment, or materials not furnished for the property described in the notice forfeits all rights to participate in the pro rata distribution of the funds.

Sec. 62.155. RELEASE OF STOP NOTICE OR BONDED STOP NOTICE. Authorizes the owner, the construction lender, or any original contractor or subcontractor that disputes the accuracy or validity of a stop notice or bonded stop notice to file with the person on whom the notice was served a bond executed by a good and sufficient surety in a penal sum equal to 125 percent of the amount stated in the notice and conditioned for the payment of any sum not exceeding the penal obligation of the bond. Requires when the bond is filed, that the funds withheld under the stop notice or bonded stop notice be released.

Sec. 62.156. ENFORCEMENT OF RIGHTS ARISING FROM STOP NOTICE AND BONDED STOP NOTICE. Authorizes an action against the owner or construction lender to enforce payment of the claim stated in the stop notice or bonded stop notice to be commenced at any time after a certain date. Provides that if no action is taken to enforce payment of the claim by a certain date, the notice is no longer effective and the funds shall be paid or delivered to the contractor or other person to whom the funds are due. Requires the notice of any enforcement action to be provided by a certain date in a certain manner. Sets forth the conditions under which a stop notice or bonded stop notice is no longer effective and the funds withheld are required to be paid or delivered to the person to whom the funds are due. Authorizes each person who has provided a stop notice or bonded stop notice to join in the same action. Authorizes the court first acquiring jurisdiction, if separate actions are filed, to consolidate the actions. Requires the court, on the motion of the owner or construction lender, to require all claimants to the funds withheld under a stop notice or bonded stop notice to be interpleaded in one action.

SUBCHAPTER H. PRIORITY AND PREFERENCE

Sec. 62.181. PREFERENCE OVER OTHER CREDITORS. Provides that all subcontractors, laborers, materialmen, or professional service providers who have a mechanic's lien have preference over other creditors of the original contractor.

Sec. 62.182. EQUALITY OF LIENS. Provides that the liens provided under this chapter are on an equal footing without reference to the date of recording of the notice and claim of lien and without reference to the time of performance of the work or labor or the furnishing of materials

or professional services. Requires that if the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

Sec. 62.183. **PRIORITY OF MECHANIC'S LIENS OVER OTHER LIENS.** Provides that a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the property on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately. Provides that the mechanic's lien does not affect any lien, encumbrance, or mortgage on the property or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien. Provides that the time of inception of the mechanic's lien is the commencement of construction of improvements or delivery of materials to the property on which the improvements are to be located and on which the materials are to be used.

SUBCHAPTER I. RELEASE AND FORECLOSURE

Sec. 62.201. **ENFORCEMENT OF REMEDIES AGAINST MONEY DUE ORIGINAL CONTRACTOR OR SUBCONTRACTOR.** Prohibits a creditor of an original contractor from collecting, enforcing a security interest against, garnishing, or levying execution on the money due the original contractor or the contractor's surety from the owner, and prohibits a creditor of the subcontractor from collecting, enforcing a security interest against, garnishing, or levying execution on the money due the subcontractor, to the prejudice of the subcontractors, mechanics, laborers, materialmen, or their sureties. Provides that a surety issuing a payment bond or performance bond in connection with the improvements has a priority claim over other creditors of its principal to contract funds to the extent of any loss it suffers or incurs. Provides that a priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

Sec. 62.202. **RELEASE OF CLAIM OR LIEN.** Requires the person who furnished the labor, materials, or professional services, by a certain date, to furnish to the requesting person a release of the indebtedness and any lien claimed, to the extent of the indebtedness paid, when a debt for labor, materials, or professional services is satisfied or paid by collected funds. Authorizes an owner, the original contractor, or any person making the payment to request the release. Requires a release of lien to be in a form that would permit it to be filed of record.

Sec. 62.203. **DUTY OF CONTRACTOR TO DEFEND ACTION; RIGHTS OF OWNER AGAINST CONTRACTOR.** Requires the contractor to defend the action, when a lien is recorded or notice given by any person other than a contractor. Authorizes the owner to withhold the amount in dispute, during pendency of the action, and authorizes the owner to deduct from any amount due or to become due from the owner to the contractor, the amount of the judgment and costs, if judgment on the lien is rendered. Authorizes the owner to recover from the contractor the amount paid by the owner and for which the contractor is liable if the owner has settled with the contractor in full or if the amount is not due the contractor.

Sec. 62.204. **CONSOLIDATION OF ACTIONS; INTERVENTION.** Authorizes claimants who do not contest the claims of each other to join as plaintiffs, and when separate actions are commenced the court may consolidate the actions. Requires claimants who fail or refuse to join in the action to be made defendants. Authorizes claimants who are not involved in the action to intervene in the action, at any time before final hearing.

Sec. 62.205. **FORECLOSURE.** Authorizes a lien under this chapter to be foreclosed only on judgement of a court foreclosing the lien and ordering the sale of the property subject to the lien.

Sec. 62.206. **LIMITATION OF ACTION TO FORECLOSURE LIEN.** Provides that a lien under this chapter expires on the second anniversary of the date the lien is recorded, unless an action is brought within that period to foreclose the lien. Provides that if a claimant is made a defendant to an action brought by another claimant, the filing of an answer or cross-claim asserting the lien during the two-year period prescribed by this section is considered commencement of an action within the meaning of this section.

Sec. 62.207. RIGHT OF CLAIMANT TO HAVE LAND AND IMPROVEMENTS SOLD TOGETHER OR SEPARATELY. Authorizes a person enforcing a lien under this chapter to have the land and improvements sold together, or the person may have the improvements sold separately if the improvements can be removed without material injury to the remaining property. Requires the officer making the sale, if the improvements are sold separately, to place the purchaser in possession. Provides that the purchaser is entitled to a reasonable time after the date of the purchase within which to remove the purchased property.

Sec. 62.208. DISCHARGE OF LIEN. Sets forth the means by which a mechanic's lien or affidavit claiming a mechanic's lien filed under this chapter may be discharged of record.

SUBCHAPTER J. BOND TO INDEMNIFY AGAINST LIEN

Sec. 62.231. BOND. Authorizes any person to file a bond to indemnify against the lien, if a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter. Requires the bond to be filed with the county clerk of the county in which the property subject to the lien is located. Sets forth the conditions under which a mechanic's lien claim against an owner's property is discharged.

Sec. 62.232. BOND REQUIREMENTS. Sets forth the requirements for the bond.

Sec. 62.233. NOTICE OF BOND. Requires the county clerk to issue notice of the bond to all named obligees, after the bond is filed. Requires a copy of the bond to be attached to the notice. Requires the notice to be served in accordance with Section 62.004 on each obligee by sending a copy of the notice and the bond to the obligee, addressed to the claimant at the address stated in the lien affidavit for the obligee. Provides that if the claimant's lien affidavit does not state the claimant's address, the notice is not required to be sent to the claimant.

Sec. 62.234. RECORDING OF BOND AND NOTICE. Requires the county clerk to record the bond, the notice, and a certificate of mailing in the real property records. Authorizes a purchaser, insurer of title, or lender, in acquiring an interest in or insuring title to real property, to rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Sec. 62.235. ACTION ON BOND. Prohibits a party making or holding a lien claim from suing on the bond later than two years after the date the notice is served. Provides that the bond is not exhausted by one action against it. Authorizes each named obligee or assignee of an obligee to maintain a separate suit on the bond in any court of jurisdiction in the county in which the real property is located.

SUBCHAPTER K. BOND TO PAY LIENS OR CLAIMS

Sec. 62.251. BOND. Authorizes an original contractor who has a written contract with the owner to furnish at any time a bond for the benefit of the claimants.

Sec. 62.252. BOND REQUIREMENTS. Sets forth the requirements for the bond.

Sec. 62.253. RECORDING OF BOND AND CONTRACT. Requires the bond and the contract between the original contractor and the owner to be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction, alteration, or repair is being performed or is to be performed. Authorizes a memorandum of the contract or a copy of the contract to be substituted for the original. Provides that the plans, specifications, and general conditions of the contract are not required to be filed. Requires the county clerk to record the bond and place the contract on file in the clerk's office and index and cross-index both in the names of the original contractor and the owner in records kept for that purpose. Requires the county clerk to furnish a copy of the bond and contract to any person, on request and payment of a reasonable fee. Provides that in any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of the contents, execution, delivery, and filing of the originals.

Sec. 62.254. ACTION ON BOND. Authorizes a claimant to sue the principal and surety on the

bond either jointly or severally. Authorizes the claimant to sue for the amount of the claim and court costs. Requires the suit to be brought in the county in which the property being improved is located by a certain date. Requires the claimant to sue on the bond by a certain date if the bond is recorded at the time the lien is filed. Requires the claimant to sue on the bond by a certain date if the bond is not recorded at the time the lien is filed.

Sec. 62.255. CLAIMS IN EXCESS OF BOND AMOUNT. Provides that if valid claims against the bond exceed the penal sum of the bond, each claimant is entitled to a pro rata share of the penal sum.

Sec. 62.256. ATTEMPTED COMPLIANCE. Sets forth the conditions under which a bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter. Requires any provision in any payment bond furnished or filed in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this chapter to be disregarded and the provisions of this subchapter shall be read into that bond.

SUBCHAPTER L. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

Sec. 62.281. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR. Provides that a person who furnishes material or labor to a contractor under an original contract that does not exceed \$25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

Sec. 62.282. PERSONS TO WHOM NOTICE GIVEN. Sets forth the person to whom the lien claimant is required to send written notice of the claim.

Sec. 62.283. CONTENTS OF NOTICE. Sets forth the contents of the notice. Requires the notice to be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and the credits known to the affiant have been allowed.

Sec. 62.284. PREREQUISITE; TIME FOR NOTICE. Requires a lien claimant to comply with the preliminary 45-day notice requirement prescribed by Subchapter C. Requires the lien claimant to give a lien notice by a certain date.

Sec. 62.285. OFFICIAL TO RETAIN FUNDS. Prohibits a public official who receives the notice from paying all of the money, bonds, or warrants due to the contractor, but is required to retain enough to pay the claim for which notice is given.

Sec. 62.286. BOND FOR RELEASE OF LIEN. Authorizes the contractor against whom the claim is made to file a bond with the officials of the state, county, municipality, school district, or other public entity whose duty it is to pay the money, bonds, or warrants to the contractor, if a claim is filed attempting to fix a lien under this subchapter. Provides that if the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee.

Sec. 62.287. BOND REQUIREMENTS. Sets forth certain requirements for the bond.

Sec. 62.288. NOTICE OF BOND. Requires the official with whom the bond is filed to send an exact copy of the bond to all claimants in accordance with Section 62.004.

Sec. 62.289. ACTION ON BOND. Requires a claimant to sue on the bond by a certain date. Provides that the bond is not exhausted by one action on it. Authorizes each obligee or obligee's assignee to maintain a separate suit on the bond in any court of jurisdiction.

SECTION 12. Effective date: January 1, 2000.

Makes application of this Act prospective.