



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4657

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

770 ILCS 60/23 from Ch. 82, par. 23
770 ILCS 60/23.5 new
770 ILCS 60/38.1 new

Amends the Mechanics Lien Act. Provides that an applicant may at any time file a petition to substitute a bond for the property subject to a lien claim under the Act with the clerk of the circuit court of the county in which the property against which the lien claim is asserted is located, or, if there is a pending action to enforce the lien claim, an applicant may timely apply to become a party to the pending action at any time before a final judgment is rendered and file a petition to substitute a bond for the property subject to the lien claim in the pending action. Defines terms. Contains notice and procedural requirements; a statement of legislative intent; and language limiting the applicability of the new provisions.

LRB098 12653 HEP 48000 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mechanics Lien Act is amended by changing
5 Section 23 and by adding Sections 23.5 and 38.1 as follows:

6 (770 ILCS 60/23) (from Ch. 82, par. 23)

7 Sec. 23. Liens against public funds.

8 (a) For the purpose of this Section "contractor" includes
9 any sub-contractor; "State" includes any department, board or
10 commission thereof, or other person financing and constructing
11 any public improvements for the benefit of the State or any
12 department, board or commission thereof; and "director"
13 includes any chairman or president of any State department,
14 board or commission, or the president or chief executive
15 officer or such other person financing and constructing a
16 public improvement for the benefit of the State.

17 (a-5) For the purpose of this Section, "unit of local
18 government" includes any unit of local government as defined in
19 the Illinois Constitution of 1970, and any entity, other than
20 the State, organized for the purpose of conducting public
21 business pursuant to the Intergovernmental Cooperation Act or
22 the General Not For Profit Corporation Act of 1986, or where a
23 not-for-profit corporation is owned, operated, or controlled

1 by one or more units of local government for the purpose of
2 conducting public business.

3 (b) Any person who shall furnish labor, services, material,
4 fixtures, apparatus or machinery, forms or form work to any
5 contractor having a contract for public improvement for any
6 county, township, school district, city, municipality,
7 municipal corporation, or any other unit of local government in
8 this State, shall have a lien for the value thereof on the
9 money, bonds, or warrants due or to become due the contractor
10 having a contract with such county, township, school district,
11 municipality, municipal corporation, or any other unit of local
12 government in this State under such contract. The lien shall
13 attach only to that portion of the money, bonds, or warrants
14 against which no voucher or other evidence of indebtedness has
15 been issued and delivered to the contractor by or on behalf of
16 the county, township, school district, city, municipality,
17 municipal corporation, or any other unit of local government as
18 the case may be at the time of the notice.

19 (1) No person shall have a lien as provided in this
20 subsection (b) unless such person shall, before payment or
21 delivery thereof is made to such contractor, notify the
22 clerk or secretary, as the case may be, of the county,
23 township, school district, city, municipality, municipal
24 corporation, or any other unit of local government by
25 written notice of the claim for lien containing a sworn
26 statement identifying the claimant's contract, describing

1 the work done by the claimant, and stating the total amount
2 due and unpaid as of the date of the notice for the work
3 and furnish a copy of said notice at once to said
4 contractor. The person claiming such lien may cause
5 notification and written notice thereof to be given either
6 by sending the written notice (by registered or certified
7 mail, return receipt requested, with delivery limited to
8 addressee only) to, or by delivering the written notice to
9 the clerk or secretary, as the case may be, of the county,
10 township, school district, city, municipality, municipal
11 corporation, or any other unit of local government; and the
12 copy of the written notice which the person claiming the
13 lien is to furnish to the contractor may be sent to, or
14 delivered to such contractor in like manner. The notice
15 shall be effective when received or refused by the clerk or
16 secretary, as the case may be, of the county, township,
17 school district, city, municipality, municipal
18 corporation, or any other unit of local government.

19 (2) Provided further, that where such person has not so
20 notified the clerk or secretary, as the case may be, of the
21 county, township, school district, city, municipality,
22 municipal corporation, or any other unit of local
23 government of his claim for a lien, upon written demand of
24 the contractor with service by certified mail (return
25 receipt requested) and with a copy filed with the clerk or
26 secretary, as the case may be, that person shall, within 30

1 days, notify the clerk or secretary, as the case may be, of
2 the county, township, school district, city, municipality,
3 municipal corporation, or any other unit of local
4 government of his claim for a lien by either sending or
5 delivering written notice in like manner as above provided
6 for causing notification and written notice of a claim for
7 lien to be given to such clerk or secretary, as the case
8 may be, or the lien shall be forfeited.

9 (3) No official shall withhold from the contractor
10 money, bonds, warrants, or funds on the basis of a lien
11 forfeited as provided herein.

12 (4) The person so claiming a lien shall, within 90 days
13 after serving such notice commence proceedings by
14 complaint for an accounting, making the contractor having a
15 contract with the county, township, school district, city,
16 municipality, municipal corporation, or any other unit of
17 local government and the contractor to whom such labor,
18 services, material, fixtures, apparatus or machinery,
19 forms or form work was furnished, parties defendant, and
20 shall within 10 days after filing the complaint notify the
21 clerk or secretary, as the case may be, of the county,
22 township, school district, city, municipality, municipal
23 corporation, or any other unit of local government of the
24 commencement of such suit by delivering to him or them a
25 copy of the complaint filed.

26 (5) Failure to commence proceedings by complaint for

1 accounting within 90 days after serving notice of lien
2 shall terminate the lien and no subsequent notice of lien
3 may be given for the same claim nor may that claim be
4 asserted in any proceedings pursuant to this Act, provided,
5 however, that failure to file the complaint after notice of
6 the claim for lien shall not preclude a subsequent notice
7 or action for an amount or amounts becoming due to the lien
8 claimant on a date after the prior notice or notices.

9 (6) It shall be the duty of any such clerk or
10 secretary, as the case may be, upon receipt of the first
11 notice herein provided for to cause to be withheld a
12 sufficient amount to pay such claim for the period limited
13 for the filing of suit plus the period for notice to the
14 clerk or secretary of the suit, unless otherwise notified
15 by the person claiming the lien. Upon the expiration of
16 this period the money, bonds or warrants so withheld shall
17 be released for payment to the contractor unless the person
18 claiming the lien shall have instituted proceedings and
19 delivered to the clerk or secretary, as the case may be, of
20 the county, township, school district, city, municipality,
21 municipal corporation, or any other unit of local
22 government a copy of the complaint as herein provided, in
23 which case, the amount claimed shall be withheld until the
24 final adjudication of the suit is had or until a bond is
25 substituted under Section 23.5 of this Act. Provided, that
26 the clerk or secretary, as the case may be, to whom a copy

1 of the complaint is delivered as herein provided may pay
2 over to the clerk of the court in which such suit is
3 pending a sum sufficient to pay the amount claimed to abide
4 the result of such suit and be distributed by the clerk
5 according to the judgment rendered or other court order.
6 Any payment so made to such claimant or to the clerk of the
7 court shall be a credit on the contract price to be paid to
8 such contractor.

9 (c) Any person who shall furnish labor, services, material,
10 fixtures, apparatus or machinery, forms or form work to any
11 contractor having a contract for public improvement for the
12 State, may have a lien for the value thereof on the money,
13 bonds or warrants due or about to become due the contractor
14 having a contract with the State under the contract. The lien
15 shall attach to only that portion of the money, bonds or
16 warrants against which no voucher has been issued and delivered
17 by the State.

18 (1) No person or party shall have a lien as provided in
19 this subsection (c) unless such person shall, before
20 payment or delivery thereof is made to the contractor,
21 notify the Director or other official, whose duty it is to
22 let such contract, written notice of a claim for lien
23 containing a sworn statement identifying the claimant's
24 contract, describing the work done by the claimant and
25 stating the total amount due and unpaid as of the date of
26 the notice for the work. The claimant shall furnish a copy

1 of said notice at once to the contractor. The person
2 claiming such lien may cause such written notice with sworn
3 statement of the claim to be given either by sending such
4 notice (by registered or certified mail, return receipt
5 requested, with delivery limited to addressee only) to, or
6 by delivering such notice to the Director or other official
7 of the State whose duty it is to let such contract; and the
8 copy of such notice which the person claiming the lien is
9 to furnish to the contractor may be sent to, or delivered
10 to such contractor in like manner. The notice shall be
11 effective when received or refused by the Director or other
12 official whose duty it is to let the contract.

13 (2) Provided, that where such person has not so
14 notified the Director or other official of the State, whose
15 duty it is to let such contract, of his claim for a lien,
16 upon written demand of the contractor, with service by
17 certified mail (return receipt requested) and with a copy
18 filed with such Director or other official of the State,
19 that person shall, within 30 days, notify the Director or
20 other official of the State, whose duty it is to let such
21 contract, of his claim for a lien by either sending or
22 delivering written notice in like manner as above provided
23 for giving written notice with sworn statement of claim to
24 such Director or official, or the lien shall be forfeited.

25 (3) No public official shall withhold from the
26 contractor money, bonds, warrants or funds on the basis of

1 a lien forfeited as provided herein.

2 (4) The person so claiming a lien shall, within 90 days
3 after serving such notice, commence proceedings by
4 complaint for an accounting, making the contractor having a
5 contract with the State and the contractor to whom such
6 labor, services, material, fixtures, apparatus or
7 machinery, forms or form work was furnished, parties
8 defendant, and shall, within 10 days after filing the suit
9 notify the Director of the commencement of such suit by
10 delivering to him a copy of the complaint filed; provided,
11 if money appropriated by the General Assembly is to be used
12 in connection with the construction of such public
13 improvement, that suit shall be commenced and a copy of the
14 complaint delivered to the Director not less than 15 days
15 before the date when the appropriation from which such
16 money is to be paid, will lapse.

17 (5) Failure to commence proceedings by complaint for
18 accounting within 90 days after serving notice of lien
19 pursuant to this subsection shall terminate the lien and no
20 subsequent notice of lien may be given for the same claim
21 nor may that claim be asserted in any proceedings pursuant
22 to this Act, provided, however, that failure to file suit
23 after notice of a claim for lien shall not preclude a
24 subsequent notice or action for an amount or amounts
25 becoming due to the lien claimant on a date after the prior
26 notice or notices.

1 (6) It shall be the duty of the Director, upon receipt
2 of the written notice with sworn statement as herein
3 provided, to withhold payment of a sum sufficient to pay
4 the amount of such claim, for the period limited for the
5 filing of suit plus the period for the notice to the
6 Director, unless otherwise notified by the person claiming
7 the lien. Upon the expiration of this period the money,
8 bonds, or warrants so withheld shall be released for
9 payment to the contractor unless the person claiming the
10 lien shall have instituted proceedings and delivered to the
11 Director a copy of the complaint as herein provided, in
12 which case, the amount claimed shall be withheld until the
13 final adjudication of the suit is had or until a bond is
14 substituted under Section 23.5 of this Act. Provided, the
15 Director or other official may pay over to the clerk of the
16 court in which such suit is pending, a sum sufficient to
17 pay the amount claimed to abide the result of such suit and
18 be distributed by the clerk according to the judgment
19 rendered or other court order. Any payment so made to such
20 claimant or to the clerk of the court shall be a credit on
21 the contract price to be paid to such contractor.

22 (d) Any officer of the State, county, township, school
23 district, city, municipality, municipal corporation, or any
24 other unit of local government violating the duty hereby
25 imposed upon him shall be liable on his official bond to the
26 claimant giving notice as provided in this Section for the

1 damages resulting from such violation, which may be recovered
2 in a civil action in the circuit court. There shall be no
3 preference between the persons giving such notice, but all
4 shall be paid pro rata in proportion to the amount due under
5 their respective contracts.

6 (e) In the event a suit to enforce a claim based on a
7 notice of claim for lien is commenced in accordance with this
8 Section, and the suit is subsequently dismissed, the lien for
9 the work claimed under the notice of claim for lien shall
10 terminate 30 days after the effective date of the order
11 dismissing the suit unless the lien claimant shall file a
12 motion to reinstate the suit, a motion to reconsider, or a
13 notice of appeal within the 30-day period. Notwithstanding the
14 foregoing, nothing contained in this Section shall prevent a
15 public body from paying a lien claim in less than 30 days after
16 dismissal.

17 (f) Unless the contract with the State, county, township,
18 school district, city, municipality, municipal corporation, or
19 any other unit of local government otherwise provides, no lien
20 for material shall be defeated because of lack of proof that
21 the material after the delivery thereof, actually entered into
22 the construction of the building or improvement, even if it be
23 shown that the material was not actually used in the
24 construction of the building or improvement so long as it is
25 shown that the material was delivered either (i) to the owner
26 or its agent for that building or improvement, to be used in

1 that building or improvement or (ii) pursuant to the contract,
2 at the place where the building or improvement was being
3 constructed or some other designated place, for the purpose of
4 being used in construction or for the purpose of being employed
5 in the process of construction as a means for assisting in the
6 erection of the building or improvement in what is commonly
7 termed forms or form work where concrete, cement, or like
8 material is used, in whole or in part.

9 (Source: P.A. 95-274, eff. 8-17-07.)

10 (770 ILCS 60/23.5 new)

11 Sec. 23.5. Substitution of bond for lien against public
12 funds.

13 (a) As used in this Section:

14 (1) "Applicant" means:

15 (A) a unit of local government within the meaning
16 of subsection (b) of Section 23 of this Act;

17 (B) the State, as that term is referred to in
18 subsection (c) of Section 23 of this Act;

19 (C) a lien claimant or other person having an
20 interest in the funds against which a lien claim is
21 asserted, including, without limitation, the
22 contractor or subcontractor who may be liable to the
23 lien claimant for the payment of the lien claim.

24 (2) "Eligible surety bond" means a surety bond that
25 meets all of the following requirements:

1 (A) it specifically states that the principal and
2 surety thereunder submit to the jurisdiction of the
3 circuit court of the county where the property being
4 improved is located and that any final non-appealable
5 judgment or decree entered in a proceeding in favor of
6 the lien claimant based on any lien claim that is the
7 subject of an eligible surety bond shall constitute a
8 judgment against the principal and surety of the bond
9 for the amount found due to the lien claimant,
10 including interest and fees, limited as to the surety
11 to the full amount of the bond, payable no later than
12 14 days after the expiration of all appeal periods;

13 (B) it continues in effect until the complete
14 satisfaction of the adjudicated amount due under the
15 lien claim or as to the surety to the payment of the
16 full amount of the bond or a final determination that
17 the lien claim is invalid, void, has been released by
18 the lien claimant, or the time to enforce the lien
19 claim has expired;

20 (C) it is in an amount equal to 150% of the amount
21 of the lien claim;

22 (D) it has as its surety a company that has a
23 certificate of authority from the Department of
24 Insurance specifically authorizing the company to
25 execute surety bonds;

26 (E) the surety has a current financial strength

1 rating of not less than A with no rating modifier, an
2 outlook which is either positive or stable, and a
3 financial size category of not less than IX, as rated
4 by A.M. Best Company, Inc.; and

5 (F) if property affected by a mechanics lien is in
6 a judicial circuit that has its own list of approved
7 sureties, the bond shall be issued by a surety company
8 specifically authorized to issue surety bonds for that
9 circuit court by order or rule.

10 (b) An applicant may, after a suit is filed by the lien
11 claimant under Section 23 of this Act, file a petition to
12 substitute a surety bond for the money, bonds, or warrants
13 subject to the lien claim in that pending action. An applicant,
14 if not already a party to the action, may intervene as a matter
15 of right in the pending action at any time before a final
16 judgment in order to file a petition under this subsection (b).

17 (c) A petition filed under this Section shall be verified
18 and shall include:

19 (1) the name and address of the applicant and the
20 applicant's attorney, if any;

21 (2) the name of the lien claimant;

22 (3) the name of the attorney of record for the lien
23 claimant;

24 (4) the name and address of the general contractor for
25 the construction;

26 (5) the name and address of the public body which let

1 the contract for the construction;

2 (6) a copy of the proposed surety bond identifying the
3 proposed surety, principal, and obligee;

4 (7) a certified copy of the surety's certificate of
5 authority from the Department of Insurance or other State
6 agency charged with the duty to issue such a certificate as
7 evidence that the surety is authorized to do business in
8 this State; and

9 (8) an undertaking by the applicant, if so ordered by
10 the court as provided in this Section, to replace the
11 surety bond with another surety bond meeting all of the
12 requirements set forth in this Section.

13 (d) If no objection is filed to the substitution of the
14 eligible surety bond for the funds securing the lien claim
15 within 30 days after the petition is filed and served, the
16 court, on motion of the applicant, shall approve the bond and
17 enter an order which:

18 (1) substitutes the eligible surety bond for the funds
19 securing the lien claim; and

20 (2) substitutes the lien claimant's right to recover on
21 the bond for the lien claimant's right to recover from the
22 moneys, bonds, and warrants of the public body.

23 (e) If an objection is filed within 30 days after service
24 of notice, the court shall set a hearing as to the adequacy of
25 the proposed surety bond. The petitioner shall establish prima
26 facie that the proposed surety bond meets the criteria set

1 forth in this Section. If it is established prima facie that
2 the proposed surety bond meets the criteria, the burden is on
3 the objector to prove that a proposed surety bond does not meet
4 the criteria of subdivision (a)(2) of this Section. The fact
5 that the proposed surety is also surety on other bonds on the
6 same project is not a sufficient reason to reject the surety.

7 (f) Upon entry of a court order substituting the surety
8 bond as security for the lien claim, the applicant shall file
9 the original bond with the court and shall serve copies of the
10 order and the approved surety bond on all parties to the case
11 and on the public body holding moneys, bonds, and warrants
12 subject to the lien claim.

13 (g) Upon entry of the order, the public body shall have no
14 further or other obligations under Section 23 of this Act with
15 respect to the lien claim and may pay any moneys, bond, and
16 warrants withheld pursuant to the lien claim to the person to
17 whom the moneys, bond, and warrants are due.

18 (h) Upon the granting of the petition and filing of the
19 surety bond, the surety shall become a party defendant to the
20 action and the public body, if a party to the action, may be
21 dismissed on motion of the public body.

22 (i) If the bond ceases to meet the criteria set forth in
23 this Section, the obligee on the approved surety bond may file
24 a petition with the court setting forth the reasons that the
25 approved surety bond fails to meet the criteria and the court
26 may, upon due notice and hearing, enter an order that does any

1 one or more of the following:

2 (1) require that the surety deposit the face amount of
3 the bond in cash with the clerk of the court;

4 (2) assign the security to an alternative surety
5 company that is ready, willing, and able to issue a bond
6 meeting the criteria specified in this Section;

7 (3) require all costs of the action to be borne by the
8 principals of the original bond;

9 (4) release the original surety from its obligations
10 under the original surety bond upon deposit or assignment;

11 (5) deny the petition.

12 (j) The principal and surety of a surety bond shall be
13 jointly and severally liable to the lien claimant for the
14 amount that the court determines the lien claimant would have
15 been entitled to recover under Section 23 of this Act if no
16 surety bond had been furnished, up to and not exceeding the
17 penal sum or face amount of the surety bond. The surety bond
18 shall be deemed conditioned upon payment to the lien claimant,
19 up to and not exceeding the penal sum or face amount of the
20 surety bond, the amount to which the court determines that the
21 lien claimant is entitled under Section 23 of this Act. A
22 judgment against the principal and surety shall be entered as
23 follows:

24 (1) in favor of the lien claimant in the amount, up to
25 and not exceeding the penal sum or face amount of the
26 surety bond, that the lien claimant is entitled under

1 Section 23 or this Act; or

2 (2) to fund a pro rata award by the court to multiple
3 claimants; or

4 (3) to make an award returning funds to the public
5 owner; or

6 (4) any combination of items (1) through (3) of this
7 subsection.

8 (k) Notwithstanding any provision in this Section or
9 Section 23 of this Act to the contrary, the surety's liability
10 under the bond shall be limited to the face amount of the bond.

11 (l) The principal and surety of the surety bond may assert
12 only defenses against the lien claim that could have been
13 asserted against the lien claim if no surety bond had been
14 issued. The limitation under this subsection shall be deemed
15 included in the language of the bond.

16 (m) Liability of the principal and surety on a bond that
17 has ceased to meet the criteria for a bond set forth in this
18 Section shall continue until a court order is entered replacing
19 the bond and relieving the liability.

20 (n) Nothing in this Section expands or modifies the rights
21 of any lien claimant under Section 23 of this Act.

22 (770 ILCS 60/38.1 new)

23 Sec. 38.1. Substitution of bond for lien.

24 (a) As used in this Section:

25 (1) "Applicant" means:

1 (A) an owner, other lien claimant, or other person
2 having an interest in the property against which a lien
3 claim under this Act is asserted;

4 (B) an association representing owners organized
5 under any statute or to which the Common Interest
6 Community Association Act applies; or

7 (C) any person who may be liable for the payment of
8 a lien claim, including an owner, former owner,
9 association representing owners organized under any
10 statute or to which the Common Interest Community
11 Association Act applies, or the contractor or
12 subcontractor.

13 (2) "Eligible surety bond" means a surety bond that
14 meets all of the following requirements:

15 (A) it specifically states that the principal and
16 surety thereunder submit to the jurisdiction of the
17 circuit court of the county where the property being
18 improved is located and that any final non-appealable
19 judgment or decree entered in a proceeding in favor of
20 the lien claimant based on any lien claim that is the
21 subject of an eligible surety bond shall constitute a
22 judgment against the principal and surety of the bond
23 for the amount found due to the lien claimant,
24 including interest and fees, limited as to the surety
25 to the full amount of the bond, payable no later than
26 14 days after the expiration of all appeal periods;

1 (B) it continues in effect until the complete
2 satisfaction of the adjudicated amount due under the
3 lien claim or as to the surety to the payment of the
4 full amount of the bond or a final determination that
5 the lien claim is invalid, void, has been released by
6 the lien claimant, or the time to enforce the lien
7 claim has expired;

8 (C) it is in an amount equal to 150% of the amount
9 of the lien claim;

10 (D) it has as its surety a company that has a
11 certificate of authority from the Department of
12 Insurance specifically authorizing the company to
13 execute surety bonds;

14 (E) the surety has a current financial strength
15 rating of not less than A with no rating modifier, an
16 outlook which is either positive or stable, and a
17 financial size category of not less than IX, as rated
18 by A.M. Best Company, Inc.; and

19 (F) if property affected by a mechanics lien is in
20 a judicial circuit that has its own list of approved
21 sureties, the bond shall be issued by a surety company
22 specifically authorized to issue surety bonds for that
23 circuit court by order or rule.

24 (3) "Lien claim" means a claim on account of which (A)
25 a notice of claim for lien under Section 24 of this Act has
26 been served; (B) a claim for lien under Section 7 of this

1 Act has been recorded; or (C) a suit to enforce a lien
2 under this Act, including but not limited to a lien on
3 funds action under Section 27 of this Act, has been filed.
4 Unless otherwise indicated in this Section, "lien claim" is
5 the lien claim to be affected by an eligible surety bond.

6 (4) "Lien claimant" means the party whose lien claim is
7 to be affected by an eligible surety bond.

8 Except as otherwise expressly provided in this Section, the
9 terms not expressly defined in this Section have the same
10 meaning as they have under other provisions of this Act.

11 (b) This Section applies to liens arising under Section 1
12 or 21 of this Act and to claims or actions arising under
13 Section 9, 27, or 28 of this Act.

14 (c) An applicant may, at any time prior to 5 months after
15 the filing of a complaint or counterclaim by a mechanics lien
16 claimant to enforce its mechanics lien claim, and with leave of
17 court after 5 months after the filing of a complaint or
18 counterclaim by a mechanics lien claimant to enforce its
19 mechanics lien claim, file a petition to substitute a bond for
20 the property subject to a lien claim with the clerk of the
21 circuit court of the county in which the property against which
22 the lien claim is asserted is located, or if there is a pending
23 action to enforce the lien claim, an applicant may timely apply
24 to become a party to the pending action at any time before a
25 final judgment is rendered and file a petition to substitute a
26 bond for the property subject to the lien claim in the pending

1 action. The petition shall be verified and shall include:

2 (1) the name and address of the applicant and the
3 applicant's attorney, if any;

4 (2) the name and address of the lien claimant;

5 (3) if there is a suit to enforce the lien claim, the
6 name of the attorney of record for the lien claimant, or if
7 no suit has been filed but a lien claim has been recorded
8 by the lien claimant, the name of the preparer of the lien
9 claim;

10 (4) the name and address of the owner of record of any
11 real estate subject to the lien claim or the name and
12 address of any condominium association or association to
13 which the Common Interest Community Association Act
14 applies representing owners of record if the association is
15 an obligor under the bond;

16 (5) a description of the property subject to the lien
17 claim and, if the property includes real estate, both a
18 common and legal description of the real estate, including
19 the address, if any;

20 (6) an attached copy of the lien claim which includes
21 the date of its recording, where it was recorded, and the
22 number under which it was recorded if there is no pending
23 proceeding to enforce the lien claim;

24 (7) an attached copy of the proposed eligible surety
25 bond;

26 (8) a certified copy of the surety's certificate of

1 authority from the Department of Insurance or other State
2 agency charged with the duty to issue such a certificate;
3 and

4 (9) an undertaking by the applicant to replace the bond
5 with another eligible surety bond in the event that the
6 proposed eligible surety bond at any time ceases to be an
7 eligible surety bond.

8 (d) The person filing a petition under this Section shall
9 personally serve or send via certified mail, return receipt
10 requested, to each person whose name and address is stated in
11 the petition, or his or her attorney of record in a pending
12 action, a copy of the petition attached together with the
13 following notice:

14 "PLEASE TAKE NOTICE that on(date), the
15 undersigned,, filed a petition to substitute a
16 bond for property subject to a lien claim, a copy of which is
17 attached to this notice.

18 PLEASE TAKE FURTHER NOTICE that if you fail to file an
19 objection to the substitution of a bond for the lien claim with
20 the clerk of the circuit court of County under
21 general number or case number, within 30
22 days after you receive this notice or 33 days after this notice
23 is mailed by certified mail, whichever date is earlier, you
24 will have waived your right to object and an order will be

1 entered substituting the security of the bond for the property
2 securing the lien claim and discharging the property described
3 in the petition as being subject to the lien, such as the real
4 estate and the moneys or other considerations due or to become
5 due from the owner to the contractor under the original
6 contract giving rise to the lien claim."

7 For purposes of this Section, notice by certified mail,
8 return receipt requested, shall be deemed served 3 business
9 days after mailing of the notice.

10 (e) If no objection is filed to the substitution of the
11 proposed eligible surety bond for the property securing the
12 lien claim within 30 days after all persons entitled to notice
13 under subsection (d) of this Section have either received the
14 notice or have been served with the notice, or have waived any
15 objections to the substitution, if the petition complies with
16 the requirements of this Section, the court, on ex parte motion
17 of the petitioner, shall, if the court finds that the proposed
18 bond is in fact an eligible surety bond, enter an order:

19 (1) substituting the eligible surety bond for the
20 property securing the lien claim; and

21 (2) substituting the lien claimant's right to recover
22 on the bond for the lien claimant's causes of action that
23 could be asserted by the lien claimant under Section 9, 27,
24 or 28 of this Act.

25 (f) If an objection is filed within 30 days of service of
26 notice required by this Section, the petitioner may, upon

1 notice to all parties to whom the notice was required to be
2 served, move for a hearing as to the adequacy of the proposed
3 eligible surety bond. The burden shall be upon the petitioner
4 to establish prima facie that the proposed surety bond is an
5 eligible surety bond. If it is established prima facie that the
6 bond is an eligible surety bond, the burden is on the objector
7 to prove that a proposed surety bond is not an eligible surety
8 bond. If at the conclusion of the hearing the court finds that
9 the proposed bond is in fact an eligible surety bond, it shall
10 enter an order:

11 (1) substituting the eligible surety bond for the
12 property securing the lien claim; and

13 (2) substituting the lien claimant's right to recover
14 on the bond for the lien claimant's causes of action that
15 could be asserted by the lien claimant under Section 9, 27,
16 or 28 of this Act.

17 The prevailing party under this subsection is entitled to
18 attorney's fees and costs and expenses of litigation to
19 determine if the proposed bond is an eligible surety bond.

20 (g) If the court enters an order discharging as security
21 for the lien claim the real estate and the moneys or other
22 considerations due or to become due from the owner under the
23 original contract and substituting the eligible surety bond as
24 security for the lien claim, the petitioner shall:

25 (1) send copies of the order to the lien claimant and
26 all persons who were to receive copies of the petition and,

1 if there is a pending proceeding to enforce the lien claim,
2 to all parties who have appeared in the proceeding; and

3 (2) record a copy of the order, together with an
4 executed copy of the approved eligible surety bond, with
5 the recorder of deeds of any county where the property is
6 located.

7 (h) If the eligible surety bond is approved either before
8 or after any suit is brought to enforce the lien claim, the
9 action on the bond shall be in equity against the principal and
10 surety of the bond. If the eligible surety bond is approved and
11 a proceeding to enforce the lien claim is pending, the sureties
12 shall, by approval of the bond, ipso facto become parties to
13 the proceeding. All other parties to the proceedings may be
14 dismissed.

15 (i) If a prior owner, an association representing owners
16 organized under any statute or to which the Common Interest
17 Community Association Act applies, or a contractor or
18 subcontractor is the principal under the eligible surety bond,
19 the principal or the lien claimant may petition the court to
20 have the current owner or other party having an interest in the
21 real estate who is not a principal or surety of the eligible
22 surety bond dismissed from a pending proceeding to enforce the
23 lien claim.

24 (j) If the bond ceases to be an eligible surety bond, the
25 court may, after due notice and a hearing, order the surety to
26 deposit the collateral for the bond posted by the principal

1 with the surety with the clerk of the court or to assign the
2 security to an alternative surety company that is ready,
3 willing, and able to issue an eligible surety bond. Upon the
4 deposit or assignment, the court shall release the original
5 surety from its obligations under the original surety bond.

6 (k) Subject to the defenses allowable under subsection (l)
7 of this Section, the principal and surety of a surety bond
8 shall be jointly and severally liable to the lien claimant for
9 the amount that the lien claimant would have been entitled to
10 recover under this Act if no surety bond had been furnished,
11 subject to the limitation of liability of the surety to the
12 face amount of the bond. A judgment in favor of the lien
13 claimant and against the principal and surety shall be entered
14 for the amount of their liability to the lien claimant.

15 (l) The principal and surety of the bond may assert
16 defenses only against the lien claim that could have been
17 asserted against the lien claim by the principal of the surety
18 bond or the owner of record of the real estate at the time the
19 petition to approve the bond is filed as if no surety bond had
20 been issued.

21 (m) Liability of the principal and surety on a bond that
22 has ceased to be an eligible surety bond shall continue until a
23 court order is entered replacing the bond with another eligible
24 surety bond. Even if a bond ceases to be an eligible surety
25 bond, the original bond remains in effect as substitute
26 security until it is replaced.

1 (n) It is the express intent of the General Assembly in
2 enacting this Section that the entry of an order under this
3 Section does not release the lien claim or any remedies the
4 lien claimant may have, but rather substitutes an eligible
5 surety bond for the property subject to the lien claim and
6 substitutes an action on the bond for the actions the lien
7 claimant would otherwise have under Sections 9, 27, and 28 of
8 this Act.