



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB2635

by Rep. Ron Sandack

#### SYNOPSIS AS INTRODUCED:

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.

LRB099 03902 HEP 27327 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 adding  
5 Section 38.1 as follows:

6 (770 ILCS 60/38.1 new)

7 Sec. 38.1. Substitution of bond for lien.

8 (a) As used in this Section:

9 (1) "Applicant" means:

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

13 (B) an association representing owners organized  
14 under any statute or to which the Common Interest  
15 Community Association Act applies; or

16 (C) any person who may be liable for the payment of  
17 a lien claim, including an owner, former owner,  
18 association representing owners organized under any  
19 statute or to which the Common Interest Community  
20 Association Act applies, or the contractor or  
21 subcontractor.

22 (2) "Eligible surety bond" means a surety bond that  
23 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 (3) "Lien claim" means a claim on account of which (A)  
11 a notice of claim for lien under Section 24 of this Act has  
12 been served; (B) a claim for lien under Section 7 of this  
13 Act has been recorded; or (C) a suit to enforce a lien  
14 under this Act, including but not limited to a lien on  
15 funds action under Section 27 of this Act, has been filed.  
16 Unless otherwise indicated in this Section, "lien claim" is  
17 the lien claim to be affected by an eligible surety bond.

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

20 Except as otherwise expressly provided in this Section, the  
21 terms not expressly defined in this Section have the same  
22 meaning as they have under other provisions of this Act.

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

26 (c) An applicant may, at any time prior to 5 months after

1 the filing of a complaint or counterclaim by a mechanics lien  
2 claimant to enforce its mechanics lien claim, and with leave of  
3 court after 5 months after the filing of a complaint or  
4 counterclaim by a mechanics lien claimant to enforce its  
5 mechanics lien claim, file a petition to substitute a bond for  
6 the property subject to a lien claim with the clerk of the  
7 circuit court of the county in which the property against which  
8 the lien claim is asserted is located, or if there is a pending  
9 action to enforce the lien claim, an applicant may timely apply  
10 to become a party to the pending action at any time before a  
11 final judgment is rendered and file a petition to substitute a  
12 bond for the property subject to the lien claim in the pending  
13 action. The petition shall be verified and shall include:

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

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

17 (3) if there is a suit to enforce the lien claim, the  
18 name of the attorney of record for the lien claimant, or if  
19 no suit has been filed but a lien claim has been recorded  
20 by the lien claimant, the name of the preparer of the lien  
21 claim;

22 (4) the name and address of the owner of record of any  
23 real estate subject to the lien claim or the name and  
24 address of any condominium association or association to  
25 which the Common Interest Community Association Act  
26 applies representing owners of record if the association is

1 an obligor under the bond;

2 (5) a description of the property subject to the lien  
3 claim and, if the property includes real estate, both a  
4 common and legal description of the real estate, including  
5 the address, if any;

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

10 (7) an attached copy of the proposed eligible surety  
11 bond;

12 (8) a certified copy of the surety's certificate of  
13 authority from the Department of Insurance or other State  
14 agency charged with the duty to issue such a certificate;  
15 and

16 (9) an undertaking by the applicant to replace the bond  
17 with another eligible surety bond in the event that the  
18 proposed eligible surety bond at any time ceases to be an  
19 eligible surety bond.

20 (d) The person filing a petition under this Section shall  
21 personally serve or send via certified mail, return receipt  
22 requested, to each person whose name and address is stated in  
23 the petition, or his or her attorney of record in a pending  
24 action, a copy of the petition attached together with the  
25 following notice:

1       "PLEASE TAKE NOTICE that on .....(date), the  
2       undersigned, ....., filed a petition to substitute a  
3       bond for property subject to a lien claim, a copy of which is  
4       attached to this notice.

5       PLEASE TAKE FURTHER NOTICE that if you fail to file an  
6       objection to the substitution of a bond for the lien claim with  
7       the clerk of the circuit court of ..... County under  
8       general number ..... or case number ....., within 30  
9       days after you receive this notice or 33 days after this notice  
10      is mailed by certified mail, whichever date is earlier, you  
11      will have waived your right to object and an order will be  
12      entered substituting the security of the bond for the property  
13      securing the lien claim and discharging the property described  
14      in the petition as being subject to the lien, such as the real  
15      estate and the moneys or other considerations due or to become  
16      due from the owner to the contractor under the original  
17      contract giving rise to the lien claim."

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

21      (e) If no objection is filed to the substitution of the  
22      proposed eligible surety bond for the property securing the  
23      lien claim within 30 days after all persons entitled to notice  
24      under subsection (d) of this Section have either received the  
25      notice or have been served with the notice, or have waived any

1 objections to the substitution, if the petition complies with  
2 the requirements of this Section, the court, on ex parte motion  
3 of the petitioner, shall, if the court finds that the proposed  
4 bond is in fact an eligible surety bond, enter an order:

5 (1) substituting the eligible surety bond for the  
6 property securing the lien claim; and

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

11 (f) If an objection is filed within 30 days of service of  
12 notice required by this Section, the petitioner may, upon  
13 notice to all parties to whom the notice was required to be  
14 served, move for a hearing as to the adequacy of the proposed  
15 eligible surety bond. The burden shall be upon the petitioner  
16 to establish prima facie that the proposed surety bond is an  
17 eligible surety bond. If it is established prima facie that the  
18 bond is an eligible surety bond, the burden is on the objector  
19 to prove that a proposed surety bond is not an eligible surety  
20 bond. If at the conclusion of the hearing the court finds that  
21 the proposed bond is in fact an eligible surety bond, it shall  
22 enter an order:

23 (1) substituting the eligible surety bond for the  
24 property securing the lien claim; and

25 (2) substituting the lien claimant's right to recover  
26 on the bond for the lien claimant's causes of action that



1 could be asserted by the lien claimant under Section 9, 27,  
2 or 28 of this Act.

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

6 (g) If the court enters an order discharging as security  
7 for the lien claim the real estate and the moneys or other  
8 considerations due or to become due from the owner under the  
9 original contract and substituting the eligible surety bond as  
10 security for the lien claim, the petitioner shall:

11 (1) send copies of the order to the lien claimant and  
12 all persons who were to receive copies of the petition and,  
13 if there is a pending proceeding to enforce the lien claim,  
14 to all parties who have appeared in the proceeding; and

15 (2) record a copy of the order, together with an  
16 executed copy of the approved eligible surety bond, with  
17 the recorder of deeds of any county where the property is  
18 located.

19 (h) If the eligible surety bond is approved either before  
20 or after any suit is brought to enforce the lien claim, the  
21 action on the bond shall be in equity against the principal and  
22 surety of the bond. If the eligible surety bond is approved and  
23 a proceeding to enforce the lien claim is pending, the sureties  
24 shall, by approval of the bond, ipso facto become parties to  
25 the proceeding. All other parties to the proceedings may be  
26 dismissed.

1       (i) If a prior owner, an association representing owners  
2 organized under any statute or to which the Common Interest  
3 Community Association Act applies, or a contractor or  
4 subcontractor is the principal under the eligible surety bond,  
5 the principal or the lien claimant may petition the court to  
6 have the current owner or other party having an interest in the  
7 real estate who is not a principal or surety of the eligible  
8 surety bond dismissed from a pending proceeding to enforce the  
9 lien claim.

10       (j) If the bond ceases to be an eligible surety bond, the  
11 court may, after due notice and a hearing, order the surety to  
12 deposit the collateral for the bond posted by the principal  
13 with the surety with the clerk of the court or to assign the  
14 security to an alternative surety company that is ready,  
15 willing, and able to issue an eligible surety bond. Upon the  
16 deposit or assignment, the court shall release the original  
17 surety from its obligations under the original surety bond.

18       (k) Subject to the defenses allowable under subsection (l)  
19 of this Section, the principal and surety of a surety bond  
20 shall be jointly and severally liable to the lien claimant for  
21 the amount that the lien claimant would have been entitled to  
22 recover under this Act if no surety bond had been furnished,  
23 subject to the limitation of liability of the surety to the  
24 face amount of the bond. If the principal of the bond is the  
25 owner who let the construction contract under which the lien  
26 claimant is claiming, the bond shall also cover any attorney's

1 fees awarded under Section 17 of this Act. judgment in favor of  
2 the lien claimant and against the principal and surety shall be  
3 entered for the amount of their liability to the lien claimant.

4 (l) The principal and surety of the bond may assert  
5 defenses only against the lien claim that could have been  
6 asserted against the lien claim by the principal of the surety  
7 bond or the owner of record of the real estate at the time the  
8 contractor's contract under which the lien claimant is claiming  
9 was let as if no surety bond had been issued.

10 (m) Liability of the principal and surety on a bond that  
11 has ceased to be an eligible surety bond shall continue until a  
12 court order is entered replacing the bond with another eligible  
13 surety bond. Even if a bond ceases to be an eligible surety  
14 bond, the original bond remains in effect as substitute  
15 security until it is replaced.

16 (n) It is the express intent of the General Assembly in  
17 enacting this Section that the entry of an order under this  
18 Section does not release the lien claim or any remedies the  
19 lien claimant may have, but rather substitutes an eligible  
20 surety bond for the property subject to the lien claim and  
21 substitutes an action on the bond for the actions the lien  
22 claimant would otherwise have under Sections 9, 17, 27, and 28  
23 of this Act.