

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 a final non-appealable
5 judgment or decree entered in a proceeding in favor of
6 the lien claimant based on the 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 attorney's fees, limited as to
11 the principal and surety to the full amount of the
12 bond, payable no later than 14 days after the
13 expiration of all appeal periods;

14 (B) it continues in effect until the complete
15 satisfaction of the adjudicated amount due under the
16 lien claim or the payment of the full amount of the
17 bond or to a final determination, and the expiration of
18 all appeal periods, that the lien claim is invalid,
19 void, has been released by the lien claimant, or the
20 time to enforce the lien claim has expired without the
21 required action by the lien claimant;

22 (C) it is in an amount equal to 175% of the amount
23 of the lien claim;

24 (D) it has as its surety a company that has a
25 certificate of authority from the Department of
26 Insurance specifically authorizing the company to

1 execute surety bonds;

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

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

12 (3) "Lien claim" means a claim on account of which (A)
13 a notice of claim for lien under Section 24 of this Act has
14 been served; (B) a claim for lien under Section 7 of this
15 Act has been recorded; or (C) a suit to enforce a lien
16 under this Act, including, but not limited to, an action
17 under Section 9, 27, or 28 of this Act, has been filed.
18 Unless otherwise indicated in this Section, "lien claim" is
19 the lien claim to be affected by an eligible surety bond.

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

22 (5) "Prevailing party" means a lien claimant that
23 recovers at least 75% of the amount of its lien claim, or
24 the principal of the bond if the lien claimant recovers
25 less than 25% of the amount of its lien claim; otherwise,
26 no party is the prevailing party.

1 Except as otherwise expressly provided in this Section, the
2 terms not expressly defined in this Section have the same
3 meaning as they have under other provisions of this Act.

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

7 (c) An applicant may file a petition to substitute a bond
8 for the property subject to a lien claim with the clerk of the
9 circuit court of the county in which the property against which
10 the lien claim is asserted is located, or if there is a pending
11 action to enforce the lien claim, an applicant may at any time
12 prior to 5 months after the filing of a complaint or
13 counterclaim by a mechanics lien claimant to enforce its
14 mechanics lien claim, and thereafter for good cause shown,
15 apply to become a party to the pending action at any time
16 before a final judgment is rendered and file a petition to
17 substitute a bond for the property subject to the lien claim in
18 the pending action. The petition shall be verified and shall
19 include:

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

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

23 (3) if there is a suit to enforce the lien claim, the
24 name of the attorney of record for the lien claimant, or if
25 no suit has been filed but a lien claim has been recorded
26 by the lien claimant, the name of the preparer of the lien

1 claim;

2 (4) the name and address of the owner of record of any
3 real estate subject to the lien claim or the name and
4 address of any condominium association or association to
5 which the Common Interest Community Association Act
6 applies representing owners of record if the association is
7 an obligor under the bond;

8 (5) a description of the property subject to the lien
9 claim and, if the property includes real estate, both a
10 common and legal description of the real estate, including
11 the address, if any;

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

16 (7) an attached copy of the proposed eligible surety
17 bond;

18 (8) a certified copy of the surety's certificate of
19 authority from the Department of Insurance or other State
20 agency charged with the duty to issue such a certificate;
21 and

22 (9) an undertaking by the applicant to replace the bond
23 with another eligible surety bond in the event that the
24 proposed eligible surety bond at any time ceases to be an
25 eligible surety bond.

26 (d) The person filing a petition under this Section shall

1 personally serve or send via certified mail, return receipt
2 requested, to each person whose name and address is stated in
3 the petition, or his or her attorney of record in a pending
4 action, a copy of the petition attached together with the
5 following notice:

6 "PLEASE TAKE NOTICE that on(date), the
7 undersigned,, filed a petition to substitute a
8 bond for property subject to a lien claim, a copy of which is
9 attached to this notice.

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

23 (e) If no objection is filed to the substitution of the
24 proposed eligible surety bond for the property securing the

1 lien claim within 30 days after all persons entitled to notice
2 under subsection (d) of this Section have either received the
3 notice or have been served with the notice, or have waived any
4 objections to the substitution, if the petition complies with
5 the requirements of this Section, the court, on ex parte motion
6 of the petitioner, shall, if the court finds that the proposed
7 bond is in fact an eligible surety bond, enter an order:

8 (1) substituting the eligible surety bond for the
9 property securing the lien claim; and

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

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

26 (1) substituting the eligible surety bond for the

1 property securing the lien claim; and

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

6 (g) If the court enters an order discharging as security
7 for the lien claim the real estate and claims under Sections 1,
8 9, 21, 27, and 28 of this Act, and substitutes the eligible
9 surety bond as security for the lien claim, the petitioner
10 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 bond
24 principals and sureties shall, by approval of the bond, ipso
25 facto become parties to the proceeding. All other parties to
26 the proceedings may be dismissed.

1 (i) If the bond ceases to be an eligible surety bond, the
2 court may, after due notice and a hearing, order the surety to
3 deposit the collateral for the bond posted by the principal
4 with the surety with the clerk of the court or to assign the
5 security to an alternative surety company that is ready,
6 willing, and able to issue an eligible surety bond. Upon the
7 deposit or assignment, the court shall release the original
8 surety from its obligations under the original surety bond.

9 (j) Subject to the defenses allowable under subsection (k)
10 of this Section, the principal and surety of a surety bond
11 shall be jointly and severally liable to the lien claimant for
12 the amount that the lien claimant would have been entitled to
13 recover under this Act if no surety bond had been furnished,
14 subject to the limitation of liability of the surety to the
15 face amount of the bond. The prevailing party in an action
16 brought under this Section shall be awarded its attorney's
17 fees, but the attorney's fees for a lien claimant that is a
18 prevailing party shall be limited to the amount remaining on
19 the bond after the payment of the claim and interest, and the
20 attorney's fees awarded to a bond principal shall be limited to
21 50% of the amount of the lien claim. Judgment in favor of the
22 lien claimant and against the principal and surety shall be
23 entered for the amount of their liability to the lien claimant.

24 (k) The principal and surety of the bond may assert only
25 those defenses that could have been asserted against the lien
26 claim by the principal of the eligible surety bond or the owner

1 of record of the real estate at the time the contractor's
2 contract under which the lien claimant is claiming was let as
3 if no surety bond had been issued.

4 (l) Liability of the principal and surety on a bond that
5 has ceased to be an eligible surety bond shall continue until a
6 court order is entered replacing the bond with another eligible
7 surety bond. Even if a bond ceases to be an eligible surety
8 bond, the original bond remains in effect as substitute
9 security until it is replaced.

10 (m) It is the express intent of the General Assembly in
11 enacting this Section that the entry of an order under this
12 Section substitutes an action on the bond for the actions the
13 lien claimant would otherwise have under Sections 9, 17, 27,
14 and 28 of this Act.