



Rep. Ron Sandack

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LRB099 03902 KTG 34482 a

1 AMENDMENT TO HOUSE BILL 2635

2 AMENDMENT NO. _____. Amend House Bill 2635 by replacing
3 everything after the enacting clause with the following:

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

1 a lien claim, including an owner, former owner,
2 association representing owners organized under any
3 statute or to which the Common Interest Community
4 Association Act applies, or the contractor or
5 subcontractor.

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

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

21 (B) it continues in effect until the complete
22 satisfaction of the adjudicated amount due under the
23 lien claim or the payment of the full amount of the
24 bond or to a final determination, and the expiration of
25 all appeal periods, that the lien claim is invalid,
26 void, has been released by the lien claimant, or the

1 time to enforce the lien claim has expired without the
2 required action by the lien claimant;

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

5 (D) it has as its surety a company that has a
6 certificate of authority from the Department of
7 Insurance specifically authorizing the company to
8 execute surety bonds;

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

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

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

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

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

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 file a petition to substitute a bond
15 for the property subject to a lien claim with the clerk of the
16 circuit court of the county in which the property against which
17 the lien claim is asserted is located, or if there is a pending
18 action to enforce the lien claim, an applicant may at any time
19 prior to 5 months after the filing of a complaint or
20 counterclaim by a mechanics lien claimant to enforce its
21 mechanics lien claim, and thereafter for good cause shown,
22 apply to become a party to the pending action at any time
23 before a final judgment is rendered and file a petition to
24 substitute a bond for the property subject to the lien claim in
25 the pending action. The petition shall be verified and shall
26 include:

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

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

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

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

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

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

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

25 (8) a certified copy of the surety's certificate of
26 authority from the Department of Insurance or other State

1 agency charged with the duty to issue such a certificate;

2 and

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

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

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

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

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

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

15 (1) substituting the eligible surety bond for the
16 property securing the lien claim; and

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

21 (f) If an objection is filed within 30 days of service of
22 notice required by this Section, the petitioner may, upon
23 notice to all parties to whom the notice was required to be
24 served, move for a hearing as to the adequacy of the proposed
25 eligible surety bond. The burden shall be upon the petitioner
26 to establish prima facie that the proposed surety bond is an

1 eligible surety bond. If it is established prima facie that the
2 bond is an eligible surety bond, the burden is on the objector
3 to prove that a proposed surety bond is not an eligible surety
4 bond. If at the conclusion of the hearing the court finds that
5 the proposed bond is in fact an eligible surety bond, it shall
6 enter an order:

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

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

13 (g) If the court enters an order discharging as security
14 for the lien claim the real estate and claims under Sections 1,
15 9, 21, 27, and 28 of this Act, and substitutes the eligible
16 surety bond as security for the lien claim, the petitioner
17 shall:

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

22 (2) record a copy of the order, together with an
23 executed copy of the approved eligible surety bond, with
24 the recorder of deeds of any county where the property is
25 located.

26 (h) If the eligible surety bond is approved either before

1 or after any suit is brought to enforce the lien claim, the
2 action on the bond shall be in equity against the principal and
3 surety of the bond. If the eligible surety bond is approved and
4 a proceeding to enforce the lien claim is pending, the bond
5 principals and sureties shall, by approval of the bond, ipso
6 facto become parties to the proceeding. All other parties to
7 the proceedings may be dismissed.

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

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

1 attorney's fees awarded to a bond principal shall be limited to
2 50% of the amount of the lien claim. Judgment in favor of the
3 lien claimant and against the principal and surety shall be
4 entered for the amount of their liability to the lien claimant.

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

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

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