



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1564

Introduced 2/9/2011, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

See Index

Amends the Mechanics Lien Act. Provides that if questions arise between incumbrancers and lien creditors, all previous incumbrances shall be preferred to the extent of the value of the land at the time of making of the contract plus (instead of at the time of making of the contract, and the lien creditor shall be preferred to the value of the improvements erected on the premises) the value of the improvements paid for pursuant to the Act by said incumbrancer for the building erected, or materials furnished, and the lien creditor shall be preferred to the value of its share of the unpaid improvements erected on said premises. Adds provisions pertaining to surety bonds over: a recorded mechanics lien claim; a claim on funds in the hands of the owner; and on public construction funds. Provides procedures and requirements for filing surety bonds. Provides that a corporate surety bond for the purposes of these provisions shall meet specified requirements. Provides that a surety bond shall be in an amount equal to 1 1/2 times the amount of the mechanics lien or claim, plus costs, and include additional documents and information. Provides that for a condominium, the current owners and lenders of the condominium may be represented by the condominium association. Includes other provisions.

LRB097 08347 AJ0 48474 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 16 and by adding Section 38.5 as follows:

6 (770 ILCS 60/16) (from Ch. 82, par. 16)

7 Sec. 16. No incumbrance upon land, created before or after
8 the making of the contract under the provisions of this act,
9 shall operate upon the building erected, or materials furnished
10 until a lien in favor of the persons having done work or
11 furnished material shall have been satisfied, and upon
12 questions arising between incumbrancers and lien creditors,
13 all previous incumbrances shall be preferred to the extent of
14 the value of the land at the time of making of the contract
15 plus ~~, and the lien creditor shall be preferred to~~ the value of
16 the improvements paid for pursuant to the requirements of this
17 Act by said incumbrancer for the building erected, or materials
18 furnished, and the lien creditor shall be preferred to the
19 value of its share of the unpaid improvements erected on said
20 premises, and the court shall ascertain by jury or otherwise,
21 as the case may require, what proportion of the proceeds of any
22 sale shall be paid to the several parties in interest. All
23 incumbrances, whether by mortgage, judgment or otherwise,

1 charged and shown to be fraudulent, in respect to creditors,
2 may be set aside by the court, and the premises freed and
3 discharged from such fraudulent incumbrance.

4 (Source: Laws 1903, p. 230.)

5 (770 ILCS 60/38.5 new)

6 Sec. 38.5. Bonds.

7 (a) Surety bond.

8 (i) Whenever a mechanic's lien has been filed in
9 accordance with this Act, the owner or former owner,
10 whether legal or beneficial, of any interest in the
11 property subject to the lien or the lender having a lien on
12 said property or a contractor or subcontractor through whom
13 the mechanics lien claimant is claiming, may, at any time,
14 file with the circuit clerk of the county wherein the
15 property is situated a corporate surety bond as provided in
16 subsection (b).

17 (ii) Whenever an owner, whether legal or beneficial, of
18 any interest in property, has received notice from a
19 subcontractor or material supplier pursuant to Section 24
20 that constitutes a lien on funds in the hands of the owner
21 due the contractor, the contractor or a subcontractor
22 through whom the claimant is claiming may, at any time,
23 file with the circuit clerk of the county wherein the
24 property is situated a corporate surety bond as set forth
25 in subsection (b).

1 (iii) Whenever an official of a public body has
2 received a notice from a subcontractor or material supplier
3 that constitutes a lien on public funds pursuant to Section
4 23, the contractor or a subcontractor through whom the
5 claimant is claiming may, at any time, file with the
6 circuit clerk of the county wherein the public improvement
7 being constructed is situated a corporate surety bond as
8 provided in subsection (b).

9 (b) Bond requirements.

10 (i) The bond shall be from a surety (a) authorized to
11 do business in this State (b) having at least an A rating
12 from A.M. Best, (c) authorized to issue bonds per the
13 United States Department of the Treasury's Listing of
14 Approved Sureties, and (d) authorized in the Treasury's
15 Listing of Approved Sureties to issue a bond to federal
16 agencies in an amount equal to or in excess of the amount
17 of the specific bond issued pursuant to this Section. The
18 bond shall be in an amount equal to 1 1/2 times the amount
19 of the mechanics lien or claim plus costs allowed to date.
20 The bond shall have a copy of the filed mechanics lien
21 claim or notice to the owner of a private project or to the
22 clerk or secretary of the public body described in Section
23 23(b) attached and set forth the names and addresses of the
24 record owner or the name and address of the clerk or
25 secretary of the public body described in Section 23(b) who
26 is disbursing the funds, the construction lender, if any,

1 and any other parties who are to be protected by the bond.
2 If a condominium is involved, for the purposes of this
3 Section, the current owners and lenders of the condominium
4 may be represented by the condominium association, whose
5 address shall also be furnished. A single bond may cover
6 both a mechanics lien claim and a claim of funds in the
7 hands of the owner due the subcontractor or material
8 supplier if said mechanics lien claim and claim on funds in
9 the hands of the owner are based upon the same claim by the
10 subcontractor or material supplier. The bond shall be
11 conditioned that, if the lien claimant shall be finally
12 adjudged to be entitled to recover upon the claim upon
13 which his or her lien or claim for funds is based, the
14 principal or his or her sureties shall pay to such claimant
15 the amount of his or her judgment, together with any
16 interest, costs, and other sums which such claimant would
17 be entitled to recover upon the foreclosure of the
18 mechanics lien claim or upon any claim that it may have as
19 to funds in the hands of the owner or any public official,
20 or upon any other bond posted by any other party.

21 (ii) Upon receipt of a bond complying with the
22 requirements of subsection (b)(i), the circuit clerk shall
23 (1) send a copy of said bond by certified mail to the
24 claimant at the claimant's address set forth on the lien
25 claim or notice together with the parties whose names and
26 addresses are set forth on the bond by certified mail,

1 return receipt requested. The claimant and the parties
2 listed on the bond may contest either the form or amount of
3 the bond or the sufficiency of the surety by requesting a
4 hearing on the sufficiency of the bond before a judge of
5 the circuit court. (2) If no hearing is requested within 15
6 days after the mailing by the clerk or if the judge
7 confirms the sufficiency of the bond, the clerk shall
8 record a Certificate of Release of Lien of any filed
9 mechanic's lien claim with a copy of said bond attached,
10 whereupon the mechanics lien claimant shall have no rights
11 or remedies against the property, and (3) mail a copy of
12 said Certificate of Release by certified mail to the owner
13 holding funds due the contractor or to the public official
14 set forth in any claim for funds pursuant to Section 23,
15 which mailing shall constitute a release of the claim of
16 the lien claimant to funds in the possession of the owner
17 or the public official. If the bond does not comply with
18 the requirements of subsection (b)(i), the clerk shall
19 return the bond to the party posting the bond indicating
20 the deficiencies of the bond.

21 (c) Priorities. The bond shall not modify any aspect of (1)
22 the priority of the claimant's interest at the time of the
23 filing of the bond, (2) any requirements to perfect or prove up
24 the claimant's claim, or (3) any defenses or priorities that
25 the owner, the lender, or the contractor may have at the time
26 of the filing of the bond.

1 INDEX

2 Statutes amended in order of appearance

3 770 ILCS 60/16 from Ch. 82, par. 16

4 770 ILCS 60/38.5 new