



Sen. Carole Pankau

**Filed: 3/9/2007**

09500SB0330sam003

LRB095 09738 AJ0 33199 a

1 AMENDMENT TO SENATE BILL 330

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 330 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Mechanics Lien Act is amended by changing  
5 Section 23 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.

1        (a-5) For the purpose of this Section, "unit of local  
2 government" includes any unit of local government as defined in  
3 the Illinois Constitution of 1970, and any entity, other than  
4 the State, organized for the purpose of conducting public  
5 business pursuant to the Intergovernmental Cooperation Act or  
6 the General Not For Profit Corporation Act of 1986, or where a  
7 not-for-profit corporation is owned, operated, or controlled  
8 by one or more units of local government for the purpose of  
9 conducting public business.

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

1           (1) No person shall have a lien as provided in this  
2           subsection (b) unless ~~Provided,~~ such person shall, before  
3           payment or delivery thereof is made to such contractor,  
4           notify the clerk or secretary, as the case may be, of the  
5           county, township, school district, city, municipality, ~~or~~  
6           municipal corporation, or any other unit of local  
7           government ~~his claim~~ by a written notice of the claim for  
8           lien containing a sworn statement identifying the  
9           claimant's contract, describing the work done by the  
10           claimant, and stating the total amount due and unpaid as of  
11           the date of the notice for the work and furnish a copy of  
12           said notice at once to said contractor. The person claiming  
13           such lien may cause notification and written notice thereof  
14           to be given either by sending the written notice (by  
15           registered or certified mail, return receipt requested,  
16           with delivery limited to addressee only) to, or by  
17           delivering the written notice to the clerk or secretary, as  
18           the case may be, of the county, township, school district,  
19           city, municipality, ~~or~~ municipal corporation, or any other  
20           unit of local government; and the copy of the written  
21           notice which the person claiming the lien is to furnish to  
22           the contractor may be sent to, or delivered to such  
23           contractor in like manner. The notice shall be effective  
24           when received or refused by the clerk or secretary, as the  
25           case may be, And, provided further, that such lien shall  
26           ~~attach only to that portion of such money, bonds, or~~

1 ~~warrants against which no voucher or other evidence of~~  
2 ~~indebtedness has been issued and delivered to the~~  
3 ~~contractor by or on behalf~~ of the county, township, school  
4 district, city, municipality, ~~or~~ municipal corporation, or  
5 any other unit of local government ~~as the case may be at~~  
6 ~~the time of such notice.~~

7 (2) Provided further, that where such person has not so  
8 notified the clerk or secretary, as the case may be, of the  
9 county, township, school district, city, municipality, ~~or~~  
10 municipal corporation, or any other unit of local  
11 government of his claim for a lien, upon written demand of  
12 the contractor with service by certified mail (return  
13 receipt requested) and with a copy filed with the clerk or  
14 secretary, as the case may be, that person shall, within 30  
15 days, notify the clerk or secretary, as the case may be, of  
16 the county, township, school district, city, municipality, ~~or~~  
17 municipal corporation, or any other unit of local  
18 government of his claim for a lien by either sending or  
19 delivering written notice in like manner as above provided  
20 for causing notification and written notice of a claim for  
21 lien to be given to such clerk or secretary, as the case  
22 may be, or the lien shall be forfeited.

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

26 (4) The person so claiming a lien shall, within 90 days

1 after serving ~~giving~~ such notice, commence proceedings by  
2 complaint for an accounting, making the contractor having a  
3 contract with the county, township, school district, city,  
4 municipality, ~~or~~ municipal corporation, or any other unit  
5 of local government and the contractor to whom such labor,  
6 services, material, ~~apparatus,~~ fixtures, apparatus or  
7 machinery, forms or form work ~~labor~~ was furnished, parties  
8 defendant, and shall within 10 days after filing the  
9 complaint ~~the same period~~ notify the clerk or secretary, as  
10 the case may be, of the county, township, school district,  
11 city, municipality, ~~or~~ municipal corporation, or any other  
12 unit of local government of the commencement of such suit  
13 by delivering to him or them a copy of the complaint filed.

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

24 (6) It shall be the duty of any such clerk or  
25 secretary, as the case may be, upon receipt of the first  
26 notice herein provided for to cause to be withheld a

1 sufficient amount to pay such claim for the period limited  
2 for the filing of suit plus the period for notice to the  
3 clerk or secretary of the suit, unless otherwise notified  
4 by the person claiming the lien. Upon the expiration of  
5 this period the money, bonds or warrants so withheld shall  
6 be released for payment to the contractor unless the person  
7 claiming the lien shall have instituted proceedings and  
8 delivered to the clerk or secretary, as the case may be, of  
9 the county, township, school district, city, municipality,  
10 ~~or~~ municipal corporation, or any other unit of local  
11 government 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. Provided, that the  
14 clerk or secretary, as the case may be, to whom a copy of  
15 the complaint is delivered as herein provided may pay over  
16 to the clerk of the court in which such suit is pending a  
17 sum sufficient to pay the amount claimed to abide the  
18 result of such suit and be distributed by the clerk  
19 according to the judgment rendered or other court order.  
20 Any payment so made to such claimant or to the clerk of the  
21 court shall be a credit on the contract price to be paid to  
22 such contractor.

23 (c) Any person who shall furnish labor, services, material,  
24 ~~apparatus,~~ fixtures, apparatus or machinery, forms or form work  
25 ~~labor~~ to any contractor having a contract for public  
26 improvement for the State, may have a lien for the value

1 thereof on the money, bonds or warrants due or about to become  
2 due the contractor having a contract with the State under the  
3 contract. The lien shall attach to only that portion of the  
4 money, bonds or warrants against which no voucher has been  
5 issued and delivered by the State.

6 (1) No person or party shall have a lien as  
7 provided in this subsection (c) unless such person  
8 shall, before payment or delivery thereof is made to  
9 the contractor, notify ~~, by giving to~~ the Director or  
10 other official, whose duty it is to let such contract,  
11 written notice of a ~~his~~ claim for lien containing a  
12 sworn statement identifying the claimants contract,  
13 describing the work done by the claimant and stating  
14 the total amount due and unpaid as of the date of the  
15 notice for the work ~~of the claim showing with~~  
16 particularity the several items and the amount claimed  
17 to be due on each. The claimant shall furnish a copy of  
18 said notice at once to the contractor. The person  
19 claiming such lien may cause such written notice with  
20 sworn statement of the claim to be given either by  
21 sending such notice (by registered or certified mail,  
22 return receipt requested, with delivery limited to  
23 addressee only) to, or by delivering such notice to the  
24 Director or other official of the State whose duty it  
25 is to let such contract; and the copy of such notice  
26 which the person claiming the lien is to furnish to the

1 contractor may be sent to, or delivered to such  
2 contractor in like manner. The notice shall be  
3 effective when received or refused by the Director or  
4 other official whose duty it is to let the contract

5 ~~However, the lien shall attach to only that portion of~~  
6 ~~the money, bonds or warrants against which no voucher~~  
7 ~~has been issued and delivered by the State.~~

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

20 (3) No public official shall withhold from the  
21 contractor money, bonds, warrants or funds on the basis of  
22 a lien forfeited as provided herein.

23 (4) The person so claiming a lien shall, within 90 days  
24 after serving ~~giving~~ such notice, commence proceedings by  
25 complaint for an accounting, making the contractor having a  
26 contract with the State and the contractor to whom such



1        labor, services, material, apparatus, fixtures, apparatus  
2        or machinery, forms or form work labor was furnished,  
3        parties defendant, and shall, within 10 days after filing  
4        the suit ~~the same period~~ notify the Director of the  
5        commencement of such suit by delivering to him a copy of  
6        the complaint filed; provided, if money appropriated by the  
7        General Assembly is to be used in connection with the  
8        construction of such public improvement, that suit shall be  
9        commenced and a copy of the complaint delivered to the  
10       Director not less than 15 days before the date when the  
11       appropriation from which such money is to be paid, will  
12       lapse.

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

23        (6) It shall be the duty of the Director, upon receipt  
24        of the written notice with sworn statement as herein  
25        provided, to withhold payment of a sum sufficient to pay  
26        the amount of such claim, for the period limited for the

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

17 (d) Any officer of the State, county, township, school  
18 district, city, municipality, ~~or~~ municipal corporation, or any  
19 other unit of local government violating the duty hereby  
20 imposed upon him shall be liable on his official bond to the  
21 claimant giving notice as provided in this Section for the  
22 damages resulting from such violation, which may be recovered  
23 in a civil action in the circuit court. There shall be no  
24 preference between the persons giving such notice, but all  
25 shall be paid pro rata in proportion to the amount due under  
26 their respective contracts.

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

12       (f) Unless the contract with the State, county, township,  
13 school district, city, municipality, municipal corporation, or  
14 any other unit of local government otherwise provides, no lien  
15 for material shall be defeated because of lack of proof that  
16 the material after the delivery thereof, actually entered into  
17 the construction of the building or improvement, even if it be  
18 shown that the material was not actually used in the  
19 construction of the building or improvement so long as it is  
20 shown that the material was delivered either (i) to the owner  
21 or its agent for that building or improvement, to be used in  
22 that building or improvement or (ii) pursuant to the contract,  
23 at the place where the building or improvement was being  
24 constructed or some other designated place, for the purpose of  
25 being used in construction or for the purpose of being employed  
26 in the process of construction as a means for assisting in the

1 erection of the building or improvement in what is commonly  
2 termed forms or form work where concrete, cement, or like  
3 material is used, in whole or in part.

4 (Source: P.A. 87-329.)".