

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;

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

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

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

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

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

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

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

23 (5) "Prevailing party" means a lien claimant that is
24 awarded a judgment equal to at least 75% of the amount of
25 its lien claim, or the principal of the bond if the lien
26 claimant is awarded a judgment equal to less than 25% of

1 the amount of its lien claim; otherwise, no party is the
2 prevailing party. For purposes of determining the
3 prevailing party, the amount of the lien claim shall be
4 reduced by any payments received by the lien claimant from
5 any source before the entry of judgment or otherwise upon
6 petition by the lien claimant, but only for good cause
7 shown. If any party makes a payment to the lien claimant
8 within 5 months of the filing of a complaint under this
9 Section, the principal on the bond may petition the court
10 for a reduction of the bond equal to the amount of the
11 payment made.

12 Except as otherwise expressly provided in this Section, the
13 terms not expressly defined in this Section have the same
14 meaning as they have under other provisions of this Act.

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

18 (c) An applicant may file a petition to substitute a bond
19 for the property subject to a lien claim with the clerk of the
20 circuit court of the county in which the property against which
21 the lien claim is asserted is located, or if there is a pending
22 action to enforce the lien claim, an applicant may at any time
23 prior to 5 months after the filing of a complaint or
24 counterclaim by a mechanics lien claimant to enforce its
25 mechanics lien claim. 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 and his or her attorney of record in a pending
11 action on the lien claim, a copy of the petition attached
12 together with the 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 lien claim count or counts may be dismissed. An action
8 under this Section does not preclude a claimant from bringing
9 any other actions that do not arise under this Act.

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

26 (j) The principal and surety of the bond may assert only

1 those defenses that could have been asserted against the lien
2 claim by the principal of the eligible surety bond or the owner
3 of record of the real estate at the time the contractor's
4 contract under which the lien claimant is claiming was let as
5 if no surety bond had been issued.

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

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