



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0456

Introduced 2/16/2005, by Sen. Antonio Munoz

SYNOPSIS AS INTRODUCED:

770 ILCS 60/23

from Ch. 82, par. 23

Amends the Mechanics Lien Act. Provides that for purposes of the Section concerning liens against public funds, "person" means a subcontractor or materialman, but does not include union benefits funds. Provides that the written notice contain a sworn statement of the claim showing with particularity the several items and the amount claimed to be due on each. Effective immediately.

LRB094 08324 LCB 38517 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 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; and "person"
17 means a subcontractor or materialman, but does not include
18 union benefits funds.

19 (b) Any person who shall furnish material, apparatus,
20 fixtures, machinery or labor to any contractor having a
21 contract for public improvement for any county, township,
22 school district, city, municipality or municipal corporation
23 in this State, shall have a lien for the value thereof on the
24 money, bonds, or warrants due or to become due the contractor
25 having a contract with such county, township, school district,
26 municipality or municipal corporation in this State under such
27 contract. Provided, such person shall, before payment or
28 delivery thereof is made to such contractor, notify the clerk
29 or secretary, as the case may be, of the county, township,
30 school district, city, municipality or municipal corporation
31 of his claim by a written notice containing a sworn statement
32 of the claim showing with particularity the several items and

1 the amount claimed to be due on each and furnish a copy of said
2 notice at once to said contractor. The person claiming such
3 lien may cause notification and written notice thereof to be
4 given either by sending the written notice (by registered or
5 certified mail, return receipt requested, with delivery
6 limited to addressee only) to, or by delivering the written
7 notice to the clerk or secretary, as the case may be, of the
8 county, township, school district, city, municipality, or
9 municipal corporation; and the copy of the written notice which
10 the person claiming the lien is to furnish to the contractor
11 may be sent to, or delivered to such contractor in like manner.
12 And, provided further, that such lien shall attach only to that
13 portion of such money, bonds, or warrants against which no
14 voucher or other evidence of indebtedness has been issued and
15 delivered to the contractor by or on behalf of the county,
16 township, school district, city, municipality or municipal
17 corporation as the case may be at the time of such notice.
18 Provided further, that where such person has not so notified
19 the clerk or secretary, as the case may be, of the county,
20 township, school district, city, municipality or municipal
21 corporation of his claim for a lien, upon written demand of the
22 contractor with service by certified mail (return receipt
23 requested) and with a copy filed with the clerk or secretary,
24 as the case may be, that person shall, within 30 days, notify
25 the clerk or secretary, as the case may be, of the county,
26 township, school district, city, municipality or municipal
27 corporation of his claim for a lien by either sending or
28 delivering written notice in like manner as above provided for
29 causing notification and written notice of a claim for lien to
30 be given to such clerk or secretary, as the case may be, or the
31 lien shall be forfeited. No official shall withhold from the
32 contractor money, bonds, warrants, or funds on the basis of a
33 lien forfeited as provided herein. The person so claiming a
34 lien shall, within 90 days after giving such notice, commence
35 proceedings by complaint for an accounting, making the
36 contractor having a contract with the county, township, school

1 district, city, municipality or municipal corporation and the
2 contractor to whom such material, apparatus, fixtures,
3 machinery or labor was furnished, parties defendant, and shall
4 within the same period notify the clerk or secretary, as the
5 case may be, of the county, township, school district, city,
6 municipality or municipal corporation of the commencement of
7 such suit by delivering to him or them a copy of the complaint
8 filed. Failure to commence proceedings within 90 days after
9 giving notice of lien pursuant to this subsection shall
10 terminate the lien and no subsequent notice of lien may be
11 given for the same claim nor may that claim be asserted in any
12 proceedings pursuant to this Act. It shall be the duty of any
13 such clerk or secretary, as the case may be, upon receipt of
14 the first notice herein provided for to cause to be withheld a
15 sufficient amount to pay such claim for the period limited for
16 the filing of suit, unless otherwise notified by the person
17 claiming the lien. Upon the expiration of this period the
18 money, bonds or warrants so withheld shall be released for
19 payment to the contractor unless the person claiming the lien
20 shall have instituted proceedings and delivered to the clerk or
21 secretary, as the case may be, of the county, township, school
22 district, city, municipality or municipal corporation a copy of
23 the complaint as herein provided, in which case, the amount
24 claimed shall be withheld until the final adjudication of the
25 suit is had. Provided, that the clerk or secretary, as the case
26 may be, to whom a copy of the complaint is delivered as herein
27 provided may pay over to the clerk of the court in which such
28 suit is pending a sum sufficient to pay the amount claimed to
29 abide the result of such suit and be distributed by the clerk
30 according to the judgment rendered or other court order. Any
31 payment so made to such claimant or to the clerk of the court
32 shall be a credit on the contract price to be paid to such
33 contractor.

34 (c) Any person who shall furnish material, apparatus,
35 fixtures, machinery or labor to any contractor having a
36 contract for public improvement for the State, may have a lien

1 for the value thereof on the money, bonds or warrants due or
2 about to become due the contractor having a contract with the
3 State under the contract, by giving to the Director or other
4 official, whose duty it is to let such contract, written notice
5 of his claim for lien containing a sworn statement of the claim
6 showing with particularity the several items and the amount
7 claimed to be due on each. The claimant shall furnish a copy of
8 said notice at once to the contractor. The person claiming such
9 lien may cause such written notice with sworn statement of
10 claim to be given either by sending such notice (by registered
11 or certified mail, return receipt requested, with delivery
12 limited to addressee only) to, or by delivering such notice to
13 the Director or other official of the State whose duty it is to
14 let such contract; and the copy of such notice which the person
15 claiming the lien is to furnish to the contractor may be sent
16 to, or delivered to such contractor in like manner. However,
17 the lien shall attach to only that portion of the money, bonds
18 or warrants against which no voucher has been issued and
19 delivered by the State. Provided, that where such person has
20 not so notified the Director or other official of the State,
21 whose duty it is to let such contract, of his claim for a lien,
22 upon written demand of the contractor, with service by
23 certified mail (return receipt requested) and with a copy filed
24 with such Director or other official of the State, that person
25 shall, within 30 days, notify the Director or other official of
26 the State, whose duty it is to let such contract, of his claim
27 for a lien by either sending or delivering written notice in
28 like manner as above provided for giving written notice with
29 sworn statement of claim to such Director or official, or the
30 lien shall be forfeited. No public official shall withhold from
31 the contractor money, bonds, warrants or funds on the basis of
32 a lien forfeited as provided herein. The person so claiming a
33 lien shall, within 90 days after giving such notice, commence
34 proceedings by complaint for an accounting, making the
35 contractor having a contract with the State and the contractor
36 to whom such material, apparatus, fixtures, machinery or labor

1 was furnished, parties defendant, and shall, within the same
2 period notify the Director of the commencement of such suit by
3 delivering to him a copy of the complaint filed; provided, if
4 money appropriated by the General Assembly is to be used in
5 connection with the construction of such public improvement,
6 that suit shall be commenced and a copy of the complaint
7 delivered to the Director not less than 15 days before the date
8 when the appropriation from which such money is to be paid,
9 will lapse. Failure to commence proceedings within 90 days
10 after giving notice of lien pursuant to this subsection shall
11 terminate the lien and no subsequent notice of lien may be
12 given for the same claim nor may that claim be asserted in any
13 proceedings pursuant to this Act. It shall be the duty of the
14 Director, upon receipt of the written notice with sworn
15 statement as herein provided, to withhold payment of a sum
16 sufficient to pay the amount of such claim, for the period
17 limited for the filing of suit, unless otherwise notified by
18 the person claiming the lien. Upon the expiration of this
19 period the money, bonds, or warrants so withheld shall be
20 released for payment to the contractor unless the person
21 claiming the lien shall have instituted proceedings and
22 delivered to the Director a copy of the complaint as herein
23 provided, in which case, the amount claimed shall be withheld
24 until the final adjudication of the suit is had. Provided, the
25 Director or other official may pay over to the clerk of the
26 court in which such suit is pending, a sum sufficient to pay
27 the amount claimed to abide the result of such suit and be
28 distributed by the clerk according to the judgment rendered or
29 other court order. Any payment so made to such claimant or to
30 the clerk of the court shall be a credit on the contract price
31 to be paid to such contractor.

32 (d) Any officer of the State, county, township, school
33 district, city, municipality or municipal corporation
34 violating the duty hereby imposed upon him shall be liable on
35 his official bond to the claimant giving notice as provided in
36 this Section for the damages resulting from such violation,

1 which may be recovered in a civil action in the circuit court.
2 There shall be no preference between the persons giving such
3 notice, but all shall be paid pro rata in proportion to the
4 amount due under their respective contracts.

5 (Source: P.A. 87-329.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.