

**(Submitted by the New York State Law Revision Commission)**

AN ACT to amend the lien law, in relation to streamlining the process by which a bond is posted to discharge a mechanics' lien on a public or private improvement.

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1                   Section 1. Subsection (4) of section 19 of the lien law is REPEALED.

2                   Section 2. New subsection (4) to be added as follows:

3                   (4) Either before or after the beginning of an action by the owner or contractor executing  
4                   a bond or undertaking in an amount equal to one hundred ten percent of such lien  
5                   conditioned for the payment of any judgment which may be rendered against the property  
6                   for the enforcement of the lien.

7                   a. The execution of any such bond or undertaking by any fidelity or surety company  
8                   authorized by the laws of this state to transact business, shall be sufficient; and where a  
9                   certificate of qualification has been issued by the superintendent of insurance under the  
10                   provisions of section one thousand one hundred eleven of the insurance law, and has not  
11                   been revoked, no justification or notice thereof shall be necessary. Any such company  
12                   may execute any such bond or undertaking as surety by the hand of its officers, or  
13                   attorney, duly authorized thereto by resolution of its board of directors, a certified copy  
14                   of which resolution, under seal of said company, shall be filed with each bond or  
15                   undertaking. Any such bond or undertaking shall be filed with the clerk of the county in  
16                   which the notice of lien is filed, and a copy shall be served upon the adverse party. The  
17                   undertaking is effective when so served and filed. If a certificate of qualification issued

1 pursuant to subsections (b), (c) and (d) of section one thousand one hundred eleven of the  
2 insurance law is not filed with the undertaking, a party may except to the sufficiency of a  
3 surety by a written notice of exception served upon the adverse party within ten days  
4 after receipt of a copy of the undertaking. Exceptions deemed by the court to have been  
5 taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.  
6 Where no exception to sureties is taken within ten days or where exceptions taken are set  
7 aside the undertaking is allowed.

8 b. Bonds or undertakings not executed pursuant to subdivision (a). The owner or  
9 contractor shall execute an undertaking with two or more sufficient sureties, who shall be  
10 free holders, to the clerk of the county where the premises are situated. The sureties must  
11 together justify in at least double the sum named in the undertaking. A copy of the  
12 undertaking, with notice that the sureties will justify before the court, or a judge or justice  
13 thereof, at the time and place therein mentioned, must be served upon the lienor or his  
14 attorney, not less than five days before such time. Upon the approval of the undertaking  
15 by the court, judge or justice an order shall be made by such court, judge or justice  
16 discharging such lien.

17 c. If the lienor cannot be found, or does not appear by attorney, service under this  
18 subsection may be made by leaving a copy of said undertaking and notice at the lienor's  
19 place of residence, or if a corporation at its principal place of business within the state as  
20 stated in the notice of lien, with a person of suitable age and discretion therein, or if the  
21 house of his abode or its place of business is not stated in said notice of lien and is not  
22 known, then in such manner as the court may direct. The premises, if any, described in

the notice of lien as the lienor's residence or place of business shall be deemed to be his  
said residence or its place of business for the purposes of said service at the time thereof,  
unless it is shown affirmatively that the person serving the papers or directing the service  
had knowledge to the contrary. Notwithstanding the other provisions of this subsection  
relating to service of notice, in any case where the mailing address of the lienor is outside  
the state such service may be made by registered or certified mail, return receipt  
requested, to such lienor at the mailing address contained in the notice of lien.

d. Except as otherwise provided herein, the provisions of article twenty-five of the civil practice law and rules regulating undertakings is applicable to a bond or undertaking given for the discharge of a lien on account of private improvements.

Section 3. Subsection (5) of section 21 of the lien law is REPEALED.

Section 4. New subsection (5) is added as follows:

(5) Either before or after the beginning of an action by a contractor or subcontractor executing a bond or undertaking in an amount equal to one hundred ten percent of such lien conditioned for the payment of any judgment which may be recovered in an action to enforce the lien.

a. The execution of any such bond or undertaking by any fidelity or surety company authorized by the laws of this state to transact business, shall be sufficient; and where a certificate of qualification has been issued by the superintendent of insurance under the provisions of section one thousand one hundred eleven of the insurance law, and has not

1       been revoked, no justification or notice thereof shall be necessary. Any such company  
2       may execute any such bond or undertaking as surety by the hand of its officers, or  
3       attorney, duly authorized thereto by resolution of its board of directors, a certified copy  
4       of which resolution, under seal of said company, shall be filed with each bond or  
5       undertaking. Any such bond or undertaking shall be filed with the State or the public  
6       corporation with which the notice of lien is filed and a copy shall be served upon the  
7       adverse party. The undertaking is effective when so served and filed. If a certificate of  
8       qualification issued pursuant to subsections (b), (c) and (d) of section one thousand one  
9       hundred eleven of the insurance law is not filed with the undertaking, a party may except  
10       to the sufficiency of a surety by a written notice of exception served upon the adverse  
11       party within ten days after receipt of a copy of the undertaking. Exceptions deemed by  
12       the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be  
13       set aside, with costs. Where no exception to sureties is taken within ten days or where  
14       exceptions taken are set aside the undertaking is allowed.

15       b. Bonds or undertakings not executed pursuant to subdivision (a). The owner or  
16       contractor shall execute an undertaking with two or more sufficient sureties, who shall be  
17       free holders, to the state or public corporation with which the notice of lien is filed. The  
18       sureties must together justify in at least double the sum named in the undertaking. A copy  
19       of the undertaking, with notice that the sureties will justify before the court, or a judge or  
20       justice thereof at the time and place therein mentioned, must be served upon the lienor or  
21       his attorney, not less than five days before such time. Upon the approval of the  
22       undertaking by the court, judge or justice an order shall be made by such court, judge or

justice discharging such lien.

c. If the lienor cannot be found, or does not appear by attorney, then service under this subsection may be made as prescribed in subdivision (c) of subsection four of section nineteen of this chapter for the service of an undertaking with notice of justification of sureties. Notwithstanding the other provisions of this subdivision relating to service of notice, in any case where the mailing address of the lienor is outside the state such service may be made by registered or certified mail, return receipt requested, to such lienor at the mailing address contained in the notice of lien.

d. Except as otherwise provided herein, the provisions of article twenty-five of the civil practice law and rules regulating undertakings is applicable to a bond or undertaking given for the discharge of a lien on account of public improvements.

Section 5. This bill shall take effect January 1, 2003.