

**Senate Bill No. 85**

(By Senators Sypolt and Barnes)

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[Introduced February 13, 2013; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

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A BILL to amend and reenact §38-2-36 of the Code of West Virginia,  
1931, as amended, relating to permitting a person to file a  
bond in escrow with a court in an amount sufficient to cover  
a mechanic's lien.

*Be it enacted by the Legislature of West Virginia:*

That §38-2-36 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 2. MECHANICS' LIENS.**

**§38-2-36. Discharge or release of lien; recordation; escrow;  
disbursement of escrow.**

(a) When a debt secured by any lien mentioned in this article  
is fully paid at any time after the lien creditor shall have filed

1 his or her notice of ~~such~~ the lien in the office of the clerk of  
2 the county commission, ~~such~~ the creditor assignee shall cause the  
3 clerk to enter a discharge of ~~such~~ the lien in the margin of the  
4 book in which ~~such~~ the account is entered and immediately opposite  
5 thereto, or shall execute a release thereof, which shall be  
6 recorded in the book in which ~~such~~ the notice is entered and noted  
7 on the margin of ~~such~~ the notice.

8       (b) (1) At any time after a lien creditor has given notice of  
9 lien as required by ~~the provisions of~~ this article and has  
10 subsequently duly filed ~~such~~ the notice of lien with the clerk of  
11 the county commission as provided ~~for~~ in this article, the owner or  
12 any person against whom the lien is claimed may apply to the  
13 circuit court having jurisdiction to enforce ~~such~~ the lien, by  
14 petition, for an order authorizing ~~such~~ the owner or other person  
15 against whom the lien is claimed to deposit, in escrow, with the  
16 clerk of the circuit court, an amount equal to the sum set out as  
17 due in the notice of lien, and directing the circuit clerk to  
18 execute a release of the lien. Previous to the filing of ~~such~~ the  
19 petition, the petitioner shall cause to be served upon the lien  
20 creditor a notice of the time and place that ~~such~~ the application  
21 will be made, which notice shall be served by registered mail,  
22 return receipt requested, addressed to the lien creditor or his or  
23 her authorized agent at the address set forth in the notice of

1 lien: *Provided*, That if no such address is set forth in the notice  
2 of lien, the petitioner shall serve the notice, setting forth the  
3 time and place that his or her application will be made, in the  
4 same manner as original process is served for the commencement of  
5 civil actions.

6       (2) At the hearing upon the petition, the court shall  
7 ascertain what interest, if any, might reasonably be expected to  
8 accrue on the sum claimed to be due, either by contract or by  
9 operation of law, and subsequently be payable to the lien creditor,  
10 should he or she prevail upon his or her claim. The court shall  
11 also determine the current rate of return upon investments made by  
12 the general receiver of the court at the time of the hearing, and  
13 ascertain what rate of interest might reasonably be earned upon the  
14 petitioner's escrow deposit when paid into the court. To the  
15 extent that the anticipated interest due to the lien creditor  
16 exceeds the anticipated return upon the investment of the escrow  
17 deposit, the court may require an additional deposit beyond the sum  
18 set forth in the notice of lien, as the interests of the parties  
19 may require. The order authorizing the deposit and directing the  
20 execution of the release shall, if the court anticipates that  
21 complex or extended litigation may arise in resolving the issue of  
22 the validity of liens or claims in the case, require that the  
23 petitioner or other parties give security before the court, or the

1 clerk thereof, for payment of the costs which may be awarded in the  
2 court, and of the fees due, or to become due, in any action to  
3 determine such issue.

4       (3) If an escrow deposit is authorized by the court, ~~such the~~  
5 deposit shall be made by cash, or good and sufficient bond or  
6 security, and when paid into court, shall be received by the  
7 general receiver of the court, who shall take charge of and invest  
8 the money deposited in the manner provided ~~for~~ in section one,  
9 article six, chapter fifty-one of this code until otherwise ordered  
10 to pay out or dispose of the same by the circuit court. Upon  
11 presentation to the clerk of the county commission wherein the  
12 notice of lien is filed of an order of the court and a receipt  
13 executed by the clerk of the circuit court for the amount required  
14 to be deposited by the terms of the order, the clerk of the county  
15 commission shall file the order and shall enter a discharge of the  
16 lien in the margin of the book in which ~~such the~~ account is entered  
17 and immediately opposite thereto, or shall execute a release  
18 thereof, which shall be recorded in the book in which ~~such the~~  
19 notice is entered and noted on the margin of ~~such the~~ notice.

20       (4) Unless an action to determine the validity of the  
21 creditor's claim is commenced within six months after the creditor  
22 shall have filed his or her notice of lien in the office of the  
23 clerk of the county commission as provided ~~for~~ in this article, the

1 court shall, upon motion of the depositor, order the general  
2 receiver to pay out to the depositor the sum deposited, together  
3 with any dividends and interest, if any, earned upon the investment  
4 of the deposit, less any compensation for the services of the  
5 general receiver as the court may direct in accordance with ~~the~~  
6 ~~provisions of~~ section seven, article six, chapter fifty-one of this  
7 code. If the claim is satisfied or settled and compromised at any  
8 time while secured by the deposit made with the general receiver  
9 but before an action is commenced, the court shall, upon proof of  
10 satisfaction or settlement and compromise, order the general  
11 receiver to pay out the deposit to the depositor in the same manner  
12 as though suit was not commenced within the requisite period of six  
13 months as described above. If an action is commenced, the general  
14 receiver shall thereafter pay out the money deposited and the  
15 dividends and interest, if any, earned upon the investment of the  
16 deposit, as the court may order or decree, less any compensation  
17 for the services of the general receiver as the court may direct in  
18 accordance with ~~the provisions of said~~ section seven, article six,  
19 chapter fifty-one of this code.

NOTE: The purpose of this bill is to permit a person to file a bond, instead of cash, in escrow with a court in an amount sufficient to cover a mechanics' lien.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.