

AN ACT concerning government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Public Construction Bond Act is amended by changing Section 1 as follows:

(30 ILCS 550/1) (from Ch. 29, par. 15)

Sec. 1. Except as otherwise provided by this Act, until January 1, 2029, all officials, boards, commissions, or agents of this State, or of any political subdivision thereof, in making contracts for public work of any kind costing over \$150,000 to be performed for the State, or of any political subdivision thereof, shall require every contractor for the work to furnish, supply and deliver a bond to the State, or to the political subdivision thereof entering into the contract, as the case may be, with good and sufficient sureties. The surety on the bond shall be a company that is licensed by the Department of Insurance authorizing it to execute surety bonds and the company shall have a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency. The amount of the bond shall be fixed by the officials, boards, commissions, commissioners or agents, and the bond, among other conditions, shall be conditioned for the

completion of the contract, for the payment of material, apparatus, fixtures, and machinery used in the work and for all labor performed in the work, whether by subcontractor or otherwise.

Until January 1, 2029, when making contracts for public works to be constructed, the Department of Transportation and the Illinois State Toll Highway Authority shall require every contractor for those works to furnish, supply, and deliver a bond to the Department or the Authority, as the case may be, with good and sufficient sureties only if the public works contract will cost more than \$500,000. The Department of Transportation and the Illinois State Toll Highway Authority shall publicly display the following information by website or annual report and shall provide that information to interested parties upon request:

- (1) a list of each of its defaulted public works contracts, including the value of the award, the adjusted contract value, and the amount remaining unpaid by the Department or Authority, as applicable;

- (2) the number and the aggregate amount of payment claims made under the Mechanics Lien Act along with the number of contracts in which payment claims are made under the Mechanics Lien Act;

- (3) for each of its public improvement contracts, regardless of the contract value, the aggregate annual revenue of the contractor derived from contracts with the

State;

(4) for each of its public works contracts, regardless of contract value, the identity of the surety providing the contract bond, payment and performance bond, or both; and

(5) for each of its public works contracts, regardless of the bond threshold, a list of bidders for each public works contract, and the amount bid by each bidder.

Until January 1, 2029, local governmental units may require a bond, by ordinance or resolution, for public works contracts valued at \$150,000 or less.

On and after January 1, 2029, all officials, boards, commissions, or agents of this State, or of any political subdivision thereof, in making contracts for public work of any kind costing over \$50,000 to be performed for the State, or of any political subdivision thereof, shall require every contractor for the work to furnish, supply and deliver a bond to the State, or to the political subdivision thereof entering into the contract, as the case may be, with good and sufficient sureties. The surety on the bond shall be a company that is licensed by the Department of Insurance authorizing it to execute surety bonds and the company shall have a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency. The amount of the bond shall be fixed by the officials, boards, commissions,

commissioners or agents, and the bond, among other conditions, shall be conditioned for the completion of the contract, for the payment of material, apparatus, fixtures, and machinery used in the work and for all labor performed in the work, whether by subcontractor or otherwise.

If the contract is for emergency repairs as provided in the Illinois Procurement Code, proof of payment for all labor, materials, apparatus, fixtures, and machinery may be furnished in lieu of the bond required by this Section.

Each such bond is deemed to contain the following provisions whether such provisions are inserted in such bond or not:

"The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract or contracts entered into between the principal and the State or any political subdivision thereof will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made.".

Each bond securing contracts between the Capital Development Board or any board of a public institution of higher education and a contractor shall contain the following provisions, whether the provisions are inserted in the bond or not:

"Upon the default of the principal with respect to undertakings, covenants, terms, conditions, and agreements, the termination of the contractor's right to proceed with the work, and written notice of that default and termination by the State or any political subdivision to the surety ("Notice"), the surety shall promptly remedy the default by taking one of the following actions:

(1) The surety shall complete the work pursuant to a written takeover agreement, using a completing contractor jointly selected by the surety and the State or any political subdivision; or

(2) The surety shall pay a sum of money to the obligee, up to the penal sum of the bond, that represents the reasonable cost to complete the work that exceeds the unpaid balance of the contract sum.

The surety shall respond to the Notice within 15 working days of receipt indicating the course of action that it intends to take or advising that it requires more time to investigate the default and select a course of action. If the surety requires more than 15 working days to investigate the default and select a course of action or if the surety elects

to complete the work with a completing contractor that is not prepared to commence performance within 15 working days after receipt of Notice, and if the State or any political subdivision determines it is in the best interest of the State to maintain the progress of the work, the State or any political subdivision may continue to work until the completing contractor is prepared to commence performance. Unless otherwise agreed to by the procuring agency, in no case may the surety take longer than 30 working days to advise the State or political subdivision on the course of action it intends to take. The surety shall be liable for reasonable costs incurred by the State or any political subdivision to maintain the progress to the extent the costs exceed the unpaid balance of the contract sum, subject to the penal sum of the bond.".

The surety bond required by this Section may be acquired from the company, agent or broker of the contractor's choice. The bond and sureties shall be subject to the right of reasonable approval or disapproval, including suspension, by the State or political subdivision thereof concerned. Except as otherwise provided in this Section, in the case of State construction contracts, a contractor shall not be required to post a cash bond or letter of credit in addition to or as a substitute for the surety bond required by this Section.

Prior to the completion of 50% of the contract for public works, the State or a local governmental unit, except for the

Department of Transportation, may not withhold retainage from any payment to a contractor who furnishes the bond or bond substitute required by this Act in an amount in excess of 10% of any payment made prior to the date of completion of 50% of the contract for public works. When a contract for public works is 50% complete, the State or the local governmental unit, except for the Department of Transportation, shall reduce the retainage so that no more than 5% is held. After the contract is 50% complete, no more than 5% of the amount of any subsequent payments made under the contract for public works may be withheld as retainage.

Subject to the limitations in this Section, a State agency may withhold as retainage a portion of the moneys from the payment of a contract that is entered into on or after the effective date of this amendatory Act of the 104th General Assembly if and only if the State agency determines that satisfactory progress has not been achieved by a contractor or subcontractor during any period for which a payment is to be made. Satisfactory progress shall be clearly provided for in the contract between the State agency and the contractor or subcontractor. Retainage may not be used as a substitute for good contract management, and the State agency may not withhold funds without cause. Determinations to retain and the specific amount to be withheld must be made by the State agency on a case-by-case basis based on the performance of milestones under the current contract as provided for in the contract

between the State agency and the contractor. A contractor may not withhold retainage from a subcontractor except to the extent a State agency has withheld retainage from the contractor which is attributable to that subcontractor's subcontract. This paragraph does not apply to the Illinois State Toll Highway Authority.

Prior to the completion of 50% of the contract for public works, the contractor and their respective subcontractors shall not withhold from their subcontractors retainage in excess of 10% of any payment made prior to the date of completion of 50% of the contract for public works. When the contract for public works is 50% complete, the contractor and its subcontractors shall reduce the retainage so that no more than 5% is withheld from their respective subcontractors. After the contract is 50% complete, the contractor and its subcontractors shall not withhold more than 5% of the amount of any subsequent payments made under the contract to their respective subcontractors.

When other than motor fuel tax funds, federal-aid funds, or other funds received from the State are used, a political subdivision may allow the contractor to provide a non-diminishing irrevocable bank letter of credit, in lieu of the bond required by this Section, on contracts under \$100,000 to comply with the requirements of this Section. Any such bank letter of credit shall contain all provisions required for bonds by this Section.

In order to reduce barriers to entry for diverse and small businesses, the Department of Transportation may implement a 5-year pilot program to allow a contractor to provide a non-diminishing irrevocable bank letter of credit in lieu of the bond required by this Section on contracts under \$500,000. Projects selected by the Department of Transportation for this pilot program must be classified by the Department as low-risk scope of work contracts. The Department shall adopt rules to define the criteria for pilot project selection and implementation of the pilot program.

In this Section:

"Local governmental unit" has the meaning ascribed to it in Section 2 of the Local Government Prompt Payment Act.

"Material", "labor", "apparatus", "fixtures", and "machinery" include those rented items that are on the construction site and those rented tools that are used or consumed on the construction site in the performance of the contract on account of which the bond is given.

"Retainage" means a portion of money withheld from a payment, including, but not limited to, a payment as defined in the Local Government Prompt Payment Act or the State Prompt Payment Act, made to a contractor or subcontractor intended to ensure that the contractor or subcontractor completes the requirements of the contract or subcontract. "Retainage" does not include (i) moneys withheld due to violations of local, State, or federal laws or (ii) moneys withheld from grants to

entities for capital improvements to non-State property.

Nothing in this amendatory Act of the 104th General Assembly may be construed to modify any provision of the State Prompt Payment Act or the Local Government Prompt Payment Act.

(Source: P.A. 102-968, eff. 1-1-23; 103-570, eff. 1-1-24.)

Section 99. Effective date. This Act takes effect June 1, 2027.