

1 AN ACT concerning government.

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

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

6 (30 ILCS 550/1) (from Ch. 29, par. 15)

7 Sec. 1. Except as otherwise provided by this Act, until
8 January 1, 2029, all officials, boards, commissions, or agents
9 of this State, or of any political subdivision thereof, in
10 making contracts for public work of any kind costing over
11 \$150,000 to be performed for the State, or of any political
12 subdivision thereof, shall require every contractor for the
13 work to furnish, supply and deliver a bond to the State, or to
14 the political subdivision thereof entering into the contract,
15 as the case may be, with good and sufficient sureties. The
16 surety on the bond shall be a company that is licensed by the
17 Department of Insurance authorizing it to execute surety bonds
18 and the company shall have a financial strength rating of at
19 least A- as rated by A.M. Best Company, Inc., Moody's
20 Investors Service, Standard & Poor's Corporation, or a similar
21 rating agency. The amount of the bond shall be fixed by the
22 officials, boards, commissions, commissioners or agents, and
23 the bond, among other conditions, shall be conditioned for the

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

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

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

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

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

1 State;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 In order to reduce barriers to entry for diverse and small
2 businesses, the Department of Transportation may implement a
3 5-year pilot program to allow a contractor to provide a
4 non-diminishing irrevocable bank letter of credit in lieu of
5 the bond required by this Section on contracts under \$500,000.
6 Projects selected by the Department of Transportation for this
7 pilot program must be classified by the Department as low-risk
8 scope of work contracts. The Department shall adopt rules to
9 define the criteria for pilot project selection and
10 implementation of the pilot program.

11 In this Section:

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

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

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

1 entities for capital improvements to non-State property.

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

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

6 Section 99. Effective date. This Act takes effect June 1,
7 2027.