

SB0133



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0133

Introduced 1/24/2023, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that a local governmental unit may not withhold retainage of more than 5% from any payment to a contractor who furnishes the bond or bond substitute required by the Act and that the contractor and its subcontractors may not withhold retainage of more than 5% from their subcontractors. Defines "local governmental unit". Effective Immediately.

LRB103 03446 DTM 48452 b

A BILL FOR

1 AN ACT concerning finance.

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 (Text of Section before amendment by P.A. 102-968)

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

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

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

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

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

26 Each bond securing contracts between the Capital

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

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

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

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

20 The surety shall respond to the Notice within 15 working
21 days of receipt indicating the course of action that it
22 intends to take or advising that it requires more time to
23 investigate the default and select a course of action. If the
24 surety requires more than 15 working days to investigate the
25 default and select a course of action or if the surety elects
26 to complete the work with a completing contractor that is not

1 prepared to commence performance within 15 working days after
2 receipt of Notice, and if the State or any political
3 subdivision determines it is in the best interest of the State
4 to maintain the progress of the work, the State or any
5 political subdivision may continue to work until the
6 completing contractor is prepared to commence performance.
7 Unless otherwise agreed to by the procuring agency, in no case
8 may the surety take longer than 30 working days to advise the
9 State or political subdivision on the course of action it
10 intends to take. The surety shall be liable for reasonable
11 costs incurred by the State or any political subdivision to
12 maintain the progress to the extent the costs exceed the
13 unpaid balance of the contract sum, subject to the penal sum of
14 the bond.".

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

24 When other than motor fuel tax funds, federal-aid funds,
25 or other funds received from the State are used, a political
26 subdivision may allow the contractor to provide a

1 non-diminishing irrevocable bank letter of credit, in lieu of
2 the bond required by this Section, on contracts under \$100,000
3 to comply with the requirements of this Section. Any such bank
4 letter of credit shall contain all provisions required for
5 bonds by this Section.

6 For the purposes of this Section, the terms "material",
7 "labor", "apparatus", "fixtures", and "machinery" include
8 those rented items that are on the construction site and those
9 rented tools that are used or consumed on the construction
10 site in the performance of the contract on account of which the
11 bond is given.

12 (Source: P.A. 101-65, eff. 1-1-20.)

13 (Text of Section after amendment by P.A. 102-968)

14 Sec. 1. Except as otherwise provided by this Act, all
15 officials, boards, commissions, or agents of this State, or of
16 any political subdivision thereof, in making contracts for
17 public work of any kind costing over \$50,000 to be performed
18 for the State, or of any political subdivision thereof, shall
19 require every contractor for the work to furnish, supply and
20 deliver a bond to the State, or to the political subdivision
21 thereof entering into the contract, as the case may be, with
22 good and sufficient sureties. The surety on the bond shall be a
23 company that is licensed by the Department of Insurance
24 authorizing it to execute surety bonds and the company shall
25 have a financial strength rating of at least A- as rated by

1 A.M. Best Company, Inc., Moody's Investors Service, Standard &
2 Poor's Corporation, or a similar rating agency. The amount of
3 the bond shall be fixed by the officials, boards, commissions,
4 commissioners or agents, and the bond, among other conditions,
5 shall be conditioned for the completion of the contract, for
6 the payment of material, apparatus, fixtures, and machinery
7 used in the work and for all labor performed in the work,
8 whether by subcontractor or otherwise.

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

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

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

1 given, after final settlement between the officer, board,
2 commission or agent of the State or of any political
3 subdivision thereof and the principal has been made.".

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

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

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

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

24 The surety shall respond to the Notice within 15 working
25 days of receipt indicating the course of action that it
26 intends to take or advising that it requires more time to

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

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

1 substitute for the surety bond required by this Section.

2 A local governmental unit may not withhold retainage of
3 more than 5% from any payment to a contractor who furnishes the
4 bond or bond substitute required by this Act, and the
5 contractor and its subcontractors may not withhold retainage
6 of more than 5% from their subcontractors.

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

15 In order to reduce barriers to entry for diverse and small
16 businesses, the Department of Transportation may implement a
17 5-year pilot program to allow a contractor to provide a
18 non-diminishing irrevocable bank letter of credit in lieu of
19 the bond required by this Section on contracts under \$500,000.
20 Projects selected by the Department of Transportation for this
21 pilot program must be classified by the Department as low-risk
22 scope of work contracts. The Department shall adopt rules to
23 define the criteria for pilot project selection and
24 implementation of the pilot program.

25 In ~~For the purposes of this Section: , the terms~~
26 "material"

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

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

8 (Source: P.A. 101-65, eff. 1-1-20; 102-968, eff. 1-1-23.)

9 Section 95. No acceleration or delay. Where this Act makes
10 changes in a statute that is represented in this Act by text
11 that is not yet or no longer in effect (for example, a Section
12 represented by multiple versions), the use of that text does
13 not accelerate or delay the taking effect of (i) the changes
14 made by this Act or (ii) provisions derived from any other
15 Public Act.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.