

AN ACT concerning finance.

**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 Sections 1 and 2 as follows:

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

Sec. 1. Except as otherwise provided by this Act, 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. 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.

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.

For the purposes of this Section, the terms "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.

(Source: P.A. 98-216, eff. 8-9-13; 98-1018, eff. 8-22-14.)

(30 ILCS 550/2) (from Ch. 29, par. 16)

Sec. 2. Every person furnishing material, apparatus, fixtures, machinery, or performing labor, either as an individual or as a sub-contractor, hereinafter referred to as Claimant, for any contractor, with the State, or a political subdivision thereof where bond or letter of credit shall be executed as provided in this Act, shall have the right to sue on such bond or letter of credit in the name of the State, or the political subdivision thereof entering into such contract, as the case may be, for his use and benefit, and in such suit the plaintiff shall file a copy of such bond or letter of credit, certified by the party or parties in whose charge such bond or letter of credit shall be, which copy shall, unless execution thereof be denied under oath, be prima facie evidence of the execution and delivery of the original; provided,

however, that this Act shall not be taken to in any way make the State, or the political subdivision thereof entering into such contract, as the case may be, liable to such sub-contractor, materialman or laborer to any greater extent than it was liable under the law as it stood before the adoption of this Act.

Provided, however, that any Claimant having a claim for labor, ~~and~~ material, apparatus, fixtures, and machinery furnished to the State shall have no such right of action unless it shall have filed a verified notice of said claim with the officer, board, bureau or department awarding the contract, within 180 days after the date of the last item of work or the furnishing of the last item of materials, apparatus, fixtures, and machinery, and shall have furnished a copy of such verified notice to the contractor within 10 days of the filing of the notice with the agency awarding the contract.

When any Claimant has a claim for labor, ~~and~~ material, apparatus, fixtures, and machinery furnished to a political subdivision, the Claimant shall have no right of action unless it shall have filed a verified notice of that claim with the Clerk or Secretary of the political subdivision within 180 days after the date of the last item of work or furnishing of the last item of materials, apparatus, fixtures, and machinery, and shall have filed a copy of that verified notice upon the contractor in a like manner as provided herein within 10 days after the filing of the notice with the Clerk or Secretary.

The Claimant may file said verified notice by using personal service or by depositing the verified notice in the United States Mail, postage prepaid, certified or restricted delivery return receipt requested limited to addressee only. The verified notice shall be deemed filed on the date personal service occurs or the date when the verified notice is mailed in the form and manner provided in this Section.

The claim shall be verified and shall contain (1) the name and address of the claimant; the business address of the Claimant within this State and if the Claimant shall be a foreign corporation having no place of business within the State, the notice shall state the principal place of business of said corporation and in the case of a partnership, the notice shall state the names and residences of each of the partners; (2) the name of the contractor for the government; (3) the name of the person, firm or corporation by whom the Claimant was employed or to whom he or it furnished materials, apparatus, fixtures, or machinery; (4) a brief description of the public improvement; (5) a description of the Claimant's contract as it pertains to the public improvement, describing the work done by the Claimant and stating the total amount due and unpaid as of the date of verified notice.

No defect in the notice herein provided for shall deprive the Claimant of his right of action under this article unless it shall affirmatively appear that such defect has prejudiced the rights of an interested party asserting the same.

Provided, further, that no action shall be brought later than one year after the date of the furnishing of the last item of work, ~~or materials,~~ apparatus, fixtures, or machinery by the Claimant. Such action shall be brought only in the circuit court of this State in the judicial circuit in which the contract is to be performed.

The remedy provided in this Section is in addition to and independent of any other rights and remedies provided at law or in equity. A waiver of rights under the Mechanics Lien Act shall not constitute a waiver of rights under this Section unless specifically stated in the waiver.

For the purposes of this Section, the terms "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.

(Source: P.A. 99-673, eff. 1-1-17.)