

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 Sections 1 and 2 as follows:

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

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

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

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

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

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

25 Each bond securing contracts between the Capital
26 Development Board or any board of a public institution of

1 higher education and a contractor shall contain the following
2 provisions, whether the provisions are inserted in the bond or
3 not:

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

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

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

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

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

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

22 When other than motor fuel tax funds, federal-aid funds, or
23 other funds received from the State are used, a political
24 subdivision may allow the contractor to provide a
25 non-diminishing irrevocable bank letter of credit, in lieu of
26 the bond required by this Section, on contracts under \$100,000

1 to comply with the requirements of this Section. Any such bank
2 letter of credit shall contain all provisions required for
3 bonds by this Section.

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

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

11 (30 ILCS 550/2) (from Ch. 29, par. 16)

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

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

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

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

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

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

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

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

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

12 For the purposes of this Section, the terms "material",
13 "labor", "apparatus", "fixtures", and "machinery" include
14 those rented items that are on the construction site and those
15 rented tools that are used or consumed on the construction site
16 in the performance of the contract on account of which the bond
17 is given.

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