



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5035

Introduced 1/27/2022, by Rep. William Davis

SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that 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 specified bond requirements on contracts under \$500,000. Provides that projects selected by the Department of Transportation for the pilot program must be classified by the Department as low-risk scope of work contracts. Provides for the adoption of rules concerning the criteria for pilot project selection and implementation of the pilot program.

LRB102 25035 RJF 34293 b

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 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
5 the 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
10 or not:

11 "The principal and sureties on this bond agree that all
12 the undertakings, covenants, terms, conditions and agreements
13 of the contract or contracts entered into between the
14 principal and the State or any political subdivision thereof
15 will be performed and fulfilled and to pay all persons, firms
16 and 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
19 in the performance of the contract on account of which this
20 bond 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
8 the State or any political subdivision to the surety
9 ("Notice"), the surety shall promptly remedy the default by
10 taking one of 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
21 intends to take or advising that it requires more time to
22 investigate the default and select a course of action. If the
23 surety requires more than 15 working days to investigate the
24 default and select a course of action or if the surety elects
25 to 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
5 completing contractor is prepared to commence performance.
6 Unless otherwise agreed to by the procuring agency, in no case
7 may the surety take longer than 30 working days to advise the
8 State or political subdivision on the course of action it
9 intends to take. The surety shall be liable for reasonable
10 costs incurred by the State or any political subdivision to
11 maintain the progress to the extent the costs exceed the
12 unpaid balance of the contract sum, subject to the penal sum of
13 the bond.".

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

23 When other than motor fuel tax funds, federal-aid funds,
24 or other funds received from the State are used, a political
25 subdivision may allow the contractor to provide a
26 non-diminishing irrevocable bank letter of credit, in lieu of

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

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

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

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