

# SB0157



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0157

Introduced 1/31/2023, by Sen. Ram Villivalam

### SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that public construction bonds are required only for those public work construction contracts that are valued over \$5,000,000. Authorizes any official, board, commission, agent of the State, or any political subdivision of the State to create a self-insured risk pool for contracts of \$5,000,000 or less. Defines "self insured risk pool".

LRB103 25392 DTM 51738 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 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 \$5,000,000 ~~\$50,000~~ to be  
11 performed for the State, or of any political subdivision  
12 thereof, shall require every contractor for the work to  
13 furnish, supply and deliver a bond to the State, or to the  
14 political subdivision thereof entering into the contract, as  
15 the case may be, with good and sufficient sureties. The surety  
16 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 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. Except  
20 as otherwise provided in this Section, in the case of State  
21 construction contracts, a contractor shall not be required to  
22 post a cash bond or letter of credit in addition to or as a  
23 substitute for the surety bond required by this 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 In order to reduce barriers to entry for diverse and small  
7 businesses, the Department of Transportation may implement a  
8 5-year pilot program to allow a contractor to provide a  
9 non-diminishing irrevocable bank letter of credit in lieu of  
10 the bond required by this Section on contracts under \$500,000.  
11 Projects selected by the Department of Transportation for this  
12 pilot program must be classified by the Department as low-risk  
13 scope of work contracts. The Department shall adopt rules to  
14 define the criteria for pilot project selection and  
15 implementation of the pilot program.

16 Beginning on the effective date of this amendatory Act of  
17 the 103rd General Assembly, any official, board, commission,  
18 agent of this State, or any political subdivision of this  
19 State may create a self-insured risk pool to cover any claims  
20 or damages arising under a public works construction contract  
21 valued at \$5,000,000 or less as a consequence of a  
22 contractor's failure to perform for the State, or of any  
23 political subdivision thereof, work in accordance with the  
24 terms of that contract.

25 In ~~For the purposes of~~ this Section:

26 "Material", ~~, the terms "material",~~ "labor",

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

6 "Self-insured risk pool" means a legal entity through  
7 which officials, boards, commissions, agents of this  
8 State, or political subdivisions of the State can  
9 collectively purchase claims administration services and  
10 excess insurance to provide coverage for claims and  
11 damages arising as a consequence of a contractor's failure  
12 to perform for the State, or of any political subdivision  
13 thereof, work in accordance with the terms of a public  
14 works construction contract valued at \$5,000,000 or less.

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