

HB4769



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4769

by Rep. Daniel V. Beiser

SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that the surety on a bond shall be a company with a certificate of authority from the Department of Insurance specifically authorizing it to execute surety bonds and a financial strength rating of at least A as rated by A.M. Best or a similar rating agency. Effective immediately.

LRB098 17614 JWD 52726 b

FISCAL NOTE ACT
MAY APPLY

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 \$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 has a certificate of authority from the Department
17 of Insurance specifically authorizing it to execute surety
18 bonds and the company shall have a financial strength rating of
19 at least A as rated by A.M. Best Company Inc. or a similar
20 rating agency. The amount of the bond shall be fixed by the
21 officials, boards, commissions, commissioners or agents, and
22 the bond, among other conditions, shall be conditioned for the
23 completion of the contract, for the payment of material used in

1 the work and for all labor performed in the work, whether by
2 subcontractor or otherwise.

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

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

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

24 Each bond securing contracts between the Capital
25 Development Board or any board of a public institution of
26 higher education and a contractor shall contain the following

1 provisions, whether the provisions are inserted in the bond or
2 not:

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

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

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

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

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

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

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

1 letter of credit shall contain all provisions required for
2 bonds by this Section.

3 (Source: P.A. 98-216, eff. 8-9-13.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.