



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2722

by Rep. Jennifer Gong-Gershowitz

#### SYNOPSIS AS INTRODUCED:

30 ILCS 550/1  
30 ILCS 550/2

from Ch. 29, par. 15  
from Ch. 29, par. 16

Amends the Public Construction Bond Act. Provides for bonds issued under the Act to be used for, among other conditions, the payment of apparatus, fixtures, and machinery used in the completion of a contract. Provides that 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. Makes conforming changes.

LRB101 06801 RJF 51828 b

FISCAL NOTE ACT  
MAY APPLY

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.)