

**SB0178**



**102ND GENERAL ASSEMBLY**

**State of Illinois**

**2021 and 2022**

**SB0178**

Introduced 2/9/2021, by Sen. Linda Holmes

**SYNOPSIS AS INTRODUCED:**

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that no retainage may be withheld by a unit of local government from a contractor who furnishes the bond or bond substitute required by the Act, nor may a contractor withhold retainage from its subcontractors.

LRB102 11407 RJF 16740 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 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. In the  
19 case of State construction contracts, a contractor shall not  
20 be required to post a cash bond or letter of credit in addition  
21 to or as a substitute for the surety bond required by this  
22 Section.

23 No retainage may be withheld by a unit of local  
24 government, as specified under Section 2 of the Local  
25 Government Prompt Payment Act, from a contractor who furnishes  
26 the bond or bond substitute required by this Act, nor may a

1 contractor withhold retainage from its subcontractors.

2       When other than motor fuel tax funds, federal-aid funds,  
3 or other funds received from the State are used, a political  
4 subdivision may allow the contractor to provide a  
5 non-diminishing irrevocable bank letter of credit, in lieu of  
6 the bond required by this Section, on contracts under \$100,000  
7 to comply with the requirements of this Section. Any such bank  
8 letter of credit shall contain all provisions required for  
9 bonds by this Section.

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

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