



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1321

Introduced 2/9/2011, by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Provides that all officials, boards, commissions, or agents of this State or any political subdivision of this State, in making contracts for work intended to be conveyed by a developer to the State or political subdivision pursuant to a development agreement, shall require every contractor for the work to furnish, supply, and deliver a bond to the State or the political subdivision. Effective immediately.

LRB097 05214 PJG 45263 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 in  
9 making contracts for public work of any kind costing over  
10 \$50,000 to be performed for the State, and all officials,  
11 boards, commissions, or agents of any political subdivision of  
12 this State in making contracts for public work of any kind  
13 costing over \$5,000 to be performed for the political  
14 subdivision, including work intended to be conveyed by a  
15 developer to the State or political subdivision pursuant to a  
16 development agreement, shall require every contractor for the  
17 work to furnish, supply and deliver a bond to the State, or to  
18 the political subdivision thereof entering into the contract,  
19 as the case may be, with good and sufficient sureties. The  
20 amount of the bond shall be fixed by the officials, boards,  
21 commissions, commissioners or agents, and the bond, among other  
22 conditions, shall be conditioned for the completion of the  
23 contract, for the payment of material used in the work and for

1 all labor performed in the work, whether by subcontractor or  
2 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. 95-1011, eff. 12-15-08; 96-1000, eff. 7-2-10.)

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