

MAINE STATE LEGISLATURE

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ROE

L.D. 2092

Date: *2/26/8*

(Filing No. H-*696*)

Majority
INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "*A*" to H.P. 1478, L.D. 2092, Bill, "An Act To Amend the Public Works Contractors' Surety Bond Law of 1971"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 14 MRSA §871, sub-§3, as amended by PL 1993, c. 436, §1, is further amended to read:

3. Surety bonds. Except as provided in Title 5, section 1745, before any contract exceeding ~~\$100,000~~ \$125,000 in amount for the construction, alteration or repair of any public building or other public improvement or public work, including highways, is awarded to any person by the State or by any political subdivision or quasi-municipal corporation, or by any public authority, that person must furnish to the State or to the other contracting body, as the case may be, the following surety bonds:

A. A performance bond in an amount equal to the full contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such a bond is solely for the protection of the State or the contracting body awarding the contract, as the case may be. A performance bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond; and

B. A payment bond in an amount equal to the full amount of the contract solely for the protection of claimants supplying labor or materials to the contractor or the contractor's subcontractor in the prosecution of the work provided for in the contract. The term "materials" includes rental of equipment. A payment bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond.

When required by the contracting authority, the contractor shall furnish bid security in an amount ~~which~~ the contracting authority considers sufficient to guarantee that if the work is awarded the contractor will contract with the contracting agency.

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "A" to H.P. 1478, L.D. 2092

1 The bid security may be in the form of United States postal money order, official bank
2 checks, cashiers' checks, certificates of deposit, certified checks, money in escrow, bonds
3 from parties other than bonding companies subject to an adequate financial standing
4 documented by a financial statement of the party giving the surety, bond or bonds from a
5 surety company or companies duly authorized to do business in the State.

6 The bid security may be required at the discretion of the contracting authority to ~~assure~~
7 ensure that the contractor is bondable.

8 The bid securities other than bid bonds must be returned to the respective unsuccessful
9 bidders. The bid security of the successful bidder must be returned to the contractor upon
10 the execution and delivery to the contracting agency of the contract and performance and
11 payment bonds, in terms satisfactory to the contracting agency for the due execution of
12 the work.

13 In the case of contracts on behalf of the State, the bonds must be payable to the State and
14 deposited with the contracting authority. In the case of all other contracts subject to this
15 section, the bonds must be payable to and deposited with the contracting body awarding
16 the contract.

17 **Sec. 2. 14 MRSA §871, sub-§3-A** is enacted to read:

18 **3-A. Letter of credit.** Notwithstanding the surety bond requirements of subsection
19 3, at the discretion of the State or other contracting authority, a person may provide an
20 irrevocable letter of credit in lieu of the performance bond required by subsection 3,
21 paragraph A or the payment bond required by subsection 3, paragraph B, or both, to the
22 State or the contracting authority, as the case may be. For purposes of this subsection,
23 "letter of credit" has the same meaning as in Title 11, section 5-1102, subsection (1),
24 paragraph (j).

25 **A. The letter of credit must be:**

26 (1) Issued in favor of the State or other contracting authority by a federally
27 insured financial institution;

28 (2) In a form satisfactory to the State or other contracting authority; and

29 (3) In an amount equal to the full amount of the contract.

30 **B. In order to issue an irrevocable letter of credit as an alternative to a surety bond**
31 **under this subsection, a financial institution or its parent company must:**

32 (1) Maintain a long-term unsecured debt rating of at least "A3" issued by
33 Moody's Investors Service, Inc. or "A-" issued by Standard and Poor's
34 Corporation;

35 (2) Maintain a short-term commercial paper rating within the 3 highest
36 categories established by Moody's Investors Service, Inc. or Standard and Poor's
37 Corporation; or

38 (3) Be certified in writing by the Superintendent of Financial Institutions that the
39 financial institution's capital ratios, as calculated in the most recent quarterly
40 consolidated report of condition and income, meet or exceed the requirements for
41 well-capitalized financial institutions.

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1 C. If the letter of credit has an expiration date that is earlier than the date of
2 acceptance of performance of the contract in accordance with the plans, specifications
3 and conditions of the contract, a replacement letter of credit that meets the
4 specifications of paragraph A must be delivered to the State or other contracting
5 authority not later than 30 days prior to that expiration date.

6 **Sec. 3. 14 MRSA §871, sub-§4**, as amended by PL 1973, c. 625, §82, is further
7 amended to read:

8 **4. Actions.** Any person who has furnished labor or material to the contractor or to a
9 subcontractor of the contractor in the prosecution of the work provided for in ~~such a~~
10 contract in respect to which a payment bond has been furnished under subsection 3,
11 paragraph B, and who has not been paid in full before the expiration of 90 days after the
12 day on which the last of the labor was performed by ~~him~~ that person or material was
13 furnished or supplied by ~~him~~ that person for which ~~such a~~ claim is made, ~~shall have the~~
14 ~~right to~~ may bring an action on ~~such the~~ payment bond in ~~his~~ that person's own name for
15 the amount, or the balance thereof, unpaid at the time of the institution of ~~such the~~ action.
16 Any such claimant having a direct contractual relationship with a subcontractor of the
17 contractor furnishing such a payment bond but no contractual relationship, express or
18 implied, with ~~such that~~ contractor ~~shall~~ does not have the right of action upon ~~such that~~
19 payment bond unless ~~he shall have the~~ claimant has given written notice to ~~such the~~
20 contractor within 90 days from the date on which ~~such the~~ claimant performed the last of
21 the labor, or furnished or supplied the last of the material for which ~~such the~~ claim is
22 made, stating with substantial accuracy the amount claimed and the name of the party to
23 whom the material was furnished or supplied or for whom the labor was done or
24 performed. Such a notice ~~shall~~ must be served by registered or certified mail, postage
25 prepaid, in an envelope addressed to the contractor at any place ~~he~~ the contractor
26 maintains an office or conducts ~~his~~ the contractor's business, or at ~~his~~ the contractor's residence.

27 ~~Every action on said payment bond shall be brought in the county in which the principal~~
28 ~~or surety has its principal place of business. No~~ Any such action may not be commenced
29 after the expiration of one year from the date on which the last of the labor was
30 performed or material was supplied for the payment of which ~~such the~~ action is brought.
31 ~~Provided, except~~ that in the case of a material supplier, ~~where when~~ the amount of the
32 claim is not ascertainable due to the unavailability of final quantity estimates, ~~such the~~
33 action may be commenced before the expiration of one year from the date on which the
34 final quantity estimates are determined. The notice of claim from the material supplier to
35 the contractor furnishing the payment bond ~~shall~~ must be filed before the expiration of 90
36 days following the determination by the contracting authority of the final quantity
37 estimates.

38 The contracting body and the agent in charge of its office shall furnish to anyone making
39 written application therefor who states that ~~he~~ the person has supplied labor or materials
40 for such work, and payment therefor has not been made, or that ~~he~~ the person is being
41 sued on any such bond, or that ~~he~~ the person is the surety thereon, a certified copy of ~~such~~
42 the bond and the contract for which it was given, which copy ~~shall be~~ is prima facie
43 evidence of the contents, execution and delivery of the original. Applicants shall pay for
44 ~~such the~~ certified copies such reasonable fees as the contracting body or the agent in
45 charge of its office fixes to cover the actual cost of preparation thereof.



123rd MAINE LEGISLATURE

LD 2092

LR 3002(02)

An Act To Amend the Public Works Contractors' Surety Bond Law of 1971

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Bureau of Financial Institutions in the Department of Professional and Financial Regulation can be absorbed by the bureau utilizing existing budget resources.