

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2092

H.P. 1478

House of Representatives, December 27, 2007

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

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative HASKELL of Portland.  
Cosponsored by Representative CROCKETT of Augusta, Senator BRYANT of Oxford and  
Representatives: BEAUDETTE of Biddeford, BRYANT of Windham, CAREY of Lewiston,  
FAIRCLOTH of Bangor, HINCK of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

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

4 **3. Surety bonds.** Except as provided in Title 5, section 1745, before any contract  
5 exceeding ~~\$100,000~~ \$250,000 in amount for the construction, alteration or repair of any  
6 public building or other public improvement or public work, including highways, is  
7 awarded to any person by the State or by any political subdivision or quasi-municipal  
8 corporation, or by any public authority, that person must furnish to the State or to the  
9 other contracting body, as the case may be, the following surety bonds:

10 A. A performance bond in an amount equal to the full contract amount, conditioned  
11 upon the faithful performance of the contract in accordance with the plans,  
12 specifications and conditions thereof. Such bond is solely for the protection of the  
13 State or the contracting body awarding the contract, as the case may be; and

14 B. A payment bond in an amount equal to the full amount of the contract solely for  
15 the protection of claimants supplying labor or materials to the contractor or the  
16 contractor's subcontractor in the prosecution of the work provided for in the contract.  
17 The term "materials" includes rental of equipment.

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

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

26 The bid security may be required at the discretion of the contracting authority to assure  
27 that the contractor is bondable.

28 The bid securities other than bid bonds must be returned to the respective unsuccessful  
29 bidders. The bid security of the successful bidder must be returned to the contractor upon  
30 the execution and delivery to the contracting agency of the contract and performance and  
31 payment bonds, in terms satisfactory to the contracting agency for the due execution of  
32 the work.

33 In the case of contracts on behalf of the State, the bonds must be payable to the State and  
34 deposited with the contracting authority. In the case of all other contracts subject to this  
35 section, the bonds must be payable to and deposited with the contracting body awarding  
36 the contract.

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

38 **3-A. Letter of credit.** Notwithstanding the surety bond requirements of subsection  
39 3, at the discretion of the State or other contracting authority, a person may provide an  
40 irrevocable letter of credit in lieu of the performance bond required by subsection 3.

1 paragraph A or the payment bond required by subsection 3, paragraph B, or both, to the  
2 State or the contracting authority, as the case may be.

3 A. The letter of credit must be:

4 (1) Issued in favor of the State or other contracting authority by an issuer;

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

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

7 B. If the letter of credit has an expiration date that is earlier than the date of  
8 acceptance of performance of the contract in accordance with the plans, specifications  
9 and conditions of the contract, a replacement letter of credit that meets the  
10 specifications of paragraph A must be delivered to the State or other contracting  
11 authority not later than 30 days prior to that expiration date.

12 For purposes of this subsection, "letter of credit" has the same meaning as in Title 11,  
13 section 5-1102, subsection (1), paragraph (j).

14 **SUMMARY**

15 This bill amends the Public Works Contractors' Surety Bond Law of 1971 by:

16 1. Increasing from \$100,000 to \$250,000 the threshold limit for a contract for the  
17 construction, alteration or repair of any public building or other public improvement or  
18 public work for which a person must provide a performance bond and a payment bond;  
19 and

20 2. Allowing, at the discretion of the State or other contracting authority, the person to  
21 provide an irrevocable letter of credit instead of either or both the performance bond and  
22 the payment bond.