

CONSTRUCTION BONDS ON PUBLIC PROJECTS

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What is a construction surety bond? A bond is a contract or a guarantee agreement which contains the promise of a third party, a bonding company or surety, to pay a fixed sum if certain acts are not performed. The acts are typically non-performance or non-payment. A surety bond is not an insurance policy. Rather, a surety bond is a guarantee, in which the surety guarantees that the contractor, called the “principal” in the bond, will perform the “obligation” stated in the bond. For example, the “obligation” stated in a bid bond is that the principal will honor its bid; the “obligation” in a performance bond is that the principal will complete the project; and the “obligation” in a payment bond is that the principal will pay subcontractors and suppliers. Bonds frequently state, as a “condition,” that if the principal fully performs the stated obligation, then the bond is void; otherwise, the bond remains in full force and effect.

If the principal fails to perform the obligation stated in the bond, both the principal and the surety are liable on the bond. That is, either the principal or surety or both may be sued on the bond, and the entire liability may be collected from either the principal or the surety. The amount in which a bond is issued is the “penal sum”—the highest limit of liability of the bond.

The person or firm to whom the principal and surety owe their obligation is called the “obligee.” On bid bonds, performance bonds and payment bonds, the obligee is usually the owner. Where a subcontractor furnishes a bond, however, the obligee may be the owner or the prime contractor or both. The people or companies who are entitled to sue on a bond, sometimes called “beneficiaries,” are usually but not necessarily named in the bond. In a payment bond, many of the “beneficiaries” are not yet contracted-with at the time the bond is issued. Fortunately, those yet-to-be-determined beneficiaries are usually defined in the language of the bond by position on the ladder of supply or in state and federal statutes that require bonds on public projects.

While varying types of security have a long history, it wasn’t until the 19th century that corporate surety bonds were used. Recognizing the need to protect taxpayers from contractor failure, Congress passed the Heard Act on August 13, 1894. The Heard Act required surety bonds on all federally funded projects.

During the New Deal, the federal government initiated massive public construction projects. Problems arose when subcontractors and suppliers went unpaid because of defaulting or unscrupulous general contractors working with government agencies. Attempts by suppliers to protect their rights under lien laws ran contrary to the principle of sovereign immunity granted to the United States.

In 1935, Congress passed the Miller Act, which completely eliminated the right of a subcontractor or supplier to impose any form of mechanic’s lien or other encumbrance against federal public works projects. The primary purpose of the Miller Act, however, was to protect subcontractors who supplied material and labor to federal public works projects by providing an alternative, and usually superior, remedy to the assertion of mechanic’s liens. Under the Miller Act, a payment bond must be provided by the principal or general contractor on every federal contract to protect the right of payment for those supplying materials or services to the federal project. With few exceptions, which are not pertinent here, all federal public construction projects are subject to the provisions of the Miller Act.

In the states, suppliers encountered some of the same difficulties with state, county, municipal and other local projects that originally created the need for the Miller Act. Where payments by the general contractor were not made, state and local authorities which owned the project sought to insulate themselves from mechanic’s liens by suppliers and subcontractors as the federal government had. Early efforts by states to declare sovereign immunity to eliminate a mechanic’s lien were met with constitutional challenges.

Following the success of the Miller Act for federal projects, the states then began enacting what came to be known as “Little Miller Acts.” These Little Miller Acts are modeled after the federal Miller Act, and state courts have generally held that the Little Miller Acts are to be interpreted in conformity with the federal statute.

The Little Miller Acts also require the principal or general contractor to post a payment bond as a condition of awarding the contract. This payment bond takes the place of any right of a supplier or subcontractor to assert a mechanic’s or other type of lien. Since the substantive rights of the suppliers and subcontractors were not being adversely affected and, in fact, in many instances were being enhanced, public policy and constitutional protections permitted the elimination of the right to claim a mechanic’s lien on state and municipally funded public projects. Since each state’s statute is somewhat different, suppliers and subcontractors attempting to rely on the provisions of the state legislation should be careful to understand any unique or particular provisions contained in a particular state’s law.

PRIVATE BONDS AND PERFORMANCE BONDS

Although surety bonds are required by law on most public projects, the use of bonds on privately owned projects is up to each owner. With bonds, the risks of project completion are shifted from the owner to the surety company. For that reason, many private owners require surety bonds from their contractors to protect their company, lenders and shareholders from the cost of contractor failure. For suppliers and subcontractors, it is important to ask your customer, the prime contractor and the owner if a private project is bonded.

To bond a project, the owner specifies the bonding requirements in the contract documents. Obtaining bonds and delivering them to the owner is usually the responsibility of the prime contractor, who will consult with a surety bond producer.

Subcontractors may also be required to obtain surety bonds to help the prime contractor manage risk, especially when the subcontractor is a significant part of the job. Most surety companies are subsidiaries or divisions of large insurance companies and are regulated by state insurance departments. The surety prequalifies the contractor based on financial strength and construction expertise. Since the bond is underwritten with little expectation of loss, the premium is primarily a fee for prequalification services, although sureties also use industry-wide loss costs and loss studies to determine premiums.

The Miller Act and the state statutes discussed in this chapter address bonds taken to assure payment to suppliers and materialmen. Many states also have statutes requiring performance bonds. A performance bond guarantees the owner that the principal will complete the contract according to its terms, including price and time. The owner is the obligee of a performance bond and may sue the principal and the surety on the bond. If the principal defaults or is terminated for default by the owner, the owner may call upon the surety to complete the contract. Many performance bonds give the surety three choices: completing the contract itself through a completion contractor; selecting a new contractor to contract directly with the owner; or allowing the owner to complete the work with the surety paying the costs. The penal sum of the performance bond usually is the amount of the prime construction contract, and often is increased when change orders are issued.

When payment bonds have been made available for a particular project, whether governmental or private, the owner is able to substitute the right to assert a mechanic's lien with the right to make a claim against the bond. It is always valuable to know, as a credit grantor, whether there are bonds on a construction project. The terms of the bond can materially affect (positively or negatively) the supplier's rights with respect to payment.

It must be remembered that bonds are obligations of third parties not related to the debtor-creditor relationship that exists. A bond is additional security, like having a third-party guarantee, but like a guarantee, it has conditions which must be met to obtain the payment protections granted. In private bond projects, and frequently on public bond projects, the creditor, as a third-party beneficiary, is bound by the terms of the contract created by the bond, even though the creditor is not a party to this contract. Therefore, it is very important that credit grantors not rely on generalities or oral representations when dealing with bonds, but rather review the actual terms of the bonds to make sure that any reliance is justified, and that any compliance is strictly in accordance with the terms of the agreement.

Payment bonds may have provisions limiting the time in which a claim may be asserted. They may also have additional restrictive periods during which litigation may be filed and prosecuted. Again, it is important that if a credit grantor intends to rely on a payment bond, a copy of the bond should be obtained. Careful attention should be paid to the requirements for giving notice, the type of notice, the documentation to be presented and other time limitations, including the limitation period by which litigation must be commenced.

Suppliers and subcontractors should also attempt to secure a copy of the payment bond during the process of negotiating the underlying contract or as soon as possible thereafter. There are three critical reasons to get copies of bonds up front. First, to be assured the bond exists; second, to determine if the surety has the necessary assets in the event of failure; and, third, because the bond contains the rules to the game.

The Department of the Treasury maintains a list of corporate sureties approved to issue bonds for federal projects. Copies of the list, the Treasury Circular 570, may be obtained on the Treasury's website (www.ustreas.gov/). Whenever a new corporate surety is added to the approved list, a notice is published in the Federal Register. Contracting officers can only accept surety bonds issued by corporate sureties listed in Treasury Circular 570. The circular lists the name and address of each approved surety and all states where each surety is licensed.

THE MILLER ACT

The Miller Act sets out the terms and conditions governing bonds and claims on bonds for federal projects. The following sections discuss specific provisions of the Miller Act along with some of the case law which was developed to apply to the Act.

Obtaining Copies of Payment Bonds

Under the Miller Act, a subcontractor or supplier has the legal right to obtain a copy of the bond which secures a federal construction project. The department or agency is required to provide a certified copy of the bond upon payment of a fee and receipt of an affidavit that the claimant has supplied labor or materials for such work and payment has not been made. The agency is only required to give a copy of the bond after there has been default; however, suppliers and subcontractors should attempt to secure a copy of the bond during the process of negotiating the underlying contract or as soon as possible thereafter.

What Materials and Labor Can Be Reimbursed

A subcontractor or supplier may recover the value of the labor and material furnished for the construction, alteration or repair of any public building or public work of the United States. Labor includes on-site supervisory work of a project manager if he did or might have been called upon to do some on-site work in the regular course of the job.

The general test for whether a particular part or item of equipment is covered by the bond is whether the item was or will be consumed by performance of the work at the job site. The cost of renting equipment for a job has been held to constitute the supplying of goods, and transportation costs relating to moving materials to a job site have also been held to be reimbursable.

MAKING A CLAIM UNDER THE MILLER ACT

Remote Suppliers and Subcontractors Do Not Have the Right to Recover

The Miller Act limits the right to make a claim and file a lawsuit to those suppliers and subcontractors who deal directly with the prime contractor and to those suppliers who, lacking any contractual relationship with the general contractor, have a direct contractual relationship with a subcontractor. A supplier to another supplier who then sells goods to the general contractor has no claim, nor does anyone whose relationship to the general contractor is more remote than a second-tier subcontractor.

90-Day Notice of Intent to Seek Recovery

Any supplier having a contractual relationship with a subcontractor, but not a contractual relationship with the principal or general contractor, can only recover if a notice is given to the contractor within 90 days from the date on which the last material supplied to the job or the last labor furnished on which a claim is being made. A supplier or subcontractor having a direct contractual relationship with the general contractor does *not* need to give the 90-day notice.

To Whom/Which Entity Notice Should Be Given

Claimants must give the 90-day notice only to the principal or general contractor; notice does not have to be given to the surety (the bonding company). However, the surety is the only necessary party in a lawsuit raising a Miller Act claim, so it is a good practice to give the 90-day notice to the surety as well. Notice to any subcontractor with whom the claimant has dealt, and to the government or agency may speed resolution of the claim (even where there is no right to sue on the bond).

Condition Precedent to the Right to Sue

Providing proper notice is a condition precedent to the right to sue. If the proper notice is not provided, claimants do *not* have the right to sue. The 90-day limitation is strict and applies to goods supplied and services performed under the terms of the original contract or any approved modifications.

Start of the 90-Day Period

The 90-day period begins to run on the date materials or labor were last supplied. It is important that a supplier not allow the 90-day period to pass, while discussing payment or payment terms without the 90-day notice being sent. Even where the contractor promises (or even delivers) payments, once the 90th day passes, the claimant loses all rights, absent some form of fraud (which is difficult to prove).

Notice Must Be Actually Received

The majority of courts have ruled that notice *must* actually be received within the 90-day period and the date that the notice was sent by putting it in the mail does not constitute giving notice under the Miller Act.

Content of the 90-Day Notice

The notice must state with specificity the amount due. It must also identify the subcontractor in default that received materials or labor. The notice must inform the general contractor that payment is being sought from the general contractor—in other words, that the supplier is looking to the general contractor for payment. Some of the case law suggests a formal demand is required; other cases suggest the demand can be express or implied. Merely sending open invoices to the general contractor will not be sufficient to comply with the notice requirement of the Miller Act. Even where the principal contractor admits knowledge of the claim, the failure to give the statutory notice legally bars the claim.

Service of the 90-Day Notice

The statute requires that the notice be served by registered mail, return receipt requested.

Jurisdictional Requirements

Where the initial construction contract is private and the government or its agent is not actually a contracting party, courts have generally declined to find jurisdiction even when the construction project itself has been carried out for a public purpose or been funded by public revenues.

Filing a Lawsuit on the Bond

A subcontractor may sue on the payment bond for the balance unpaid at the time of institution of the suit. The suit must be brought in the name of the United States for the claimants use. Generally, the only necessary party defendant to the suit is the surety, as the issuer of the payment bond. The claimant need not join the general contractor (or subcontractor) which was actually furnished with the labor or material to recover; however, most sureties have an agreement by the general contractor to indemnify the surety for losses on the bond, so the general contractor will almost always have financial interest in the case (and should be included if they can be properly brought into that court).

Deadline for Filing Lawsuit on the Bond

The statute of limitations contained in the Miller Act provides that a suit must be brought within one year after the last day on which materials were supplied or labor was performed. The provisions requiring a suit to be brought within one year are not waived or modified merely because there is an arbitration clause in any of the agreements involving the project.

Where to File the Lawsuit

The suit must be brought in U.S. District Court in the district in which the contract was to be performed.

CONSTRUCTION BONDS ON STATE AND LOCAL PUBLIC PROJECTS

As with the Miller Act, those suppliers seeking to secure payment based upon a payment bond for a state or local project must strictly comply with the statute which creates the bonding requirement. In many instances, these state statutes parallel and may even be identical to the Miller Act. However, there are significant differences which require a review of the state law prior to delivery of goods or services in reliance on the bond as the ultimate form of payment.

While the state statutes in many instances deal with state, county, municipal or political subdivision's repair, construction or development of any public building, public work, highway, bridge, sewer project, water project or the like, careful attention must be paid to determine if a particular job is covered by a state's bond law. Do not hesitate to contact the state contracting officer to determine in advance if the project is covered by the law, or subject to some other provision which will require some type of payment bond to ensure payment to subcontractors and suppliers.

STATE-BY-STATE REVIEW OF PUBLIC PROJECT BOND LAWS

Note: State legislatures will on occasion modify an area of law without clear delineation as to its content and context. As a result, even the changes which have been enacted, prior to placement in the state's code, may be difficult to locate. As a result, the Editors urge all users of this text to properly use this publication only as a guide and to consult the latest codified version of the state's law, and applicable case law, for all recent changes.

ALABAMA

Amount of Bond—Not less than 50% of the contract price.

Labor and Material Covered—All labor, supplies and materials used in connection with the public works contract.

Notice Required—Written notice to the surety of the amount claimed to be due and the nature of the claim shall be sent by registered or certified mail.

Time for Suit—Claimant may institute an action upon the additional bond any time after 45 days after the written notice to the surety but such suit must be commenced not later than one year from the date of final settlement of the contract.

Contracts Excluded—Less than \$50,000.

Penalty for Failure to Take Bond—No special statutory provision.

ALASKA

Amount of Bond—One-half of the contract price where the total amount payable by the terms of the contract is not more than \$1,000,000; 40% of the contract price whenever the total amount payable by the terms of the contract is more than \$1,000,000 but not more than \$5,000,000; whenever the total amount payable by the terms of the contract is more than \$5,000,000 the payment bond is in the sum of \$2,500,000.

Labor and Material Covered—Labor and material furnished for the construction, alteration, or repair of any public building or public work of the state.

Notice Required—No notice is required by a person having a contractual relationship, express or implied with the principal contractor. Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the principal contractor must give written notice to the contractor within 90 days from the date on which such person performed the last of the labor or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. Such notice shall be served by mailing it by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where he maintains an office or conducts his business or his residence, or in any manner in which a peace officer is authorized to serve summons.

Time for Suit—Any time after the expiration of 90 days after the day on which the last of the labor was performed or material was furnished for which the claim is made, but such suit must be commenced within one year after the date of final settlement of the contract.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—No special statutory provision.

ARIZONA

Performance bond and payment bond amount equal the full contract amount.

Amount of Bond—100% of the contract price solely for the protection of claimants supplying labor or material to the contractor or his subcontractors in the prosecution of the work provided for in contracts for the construction, alteration, or repair of the public work.

Labor and Material Covered—Labor or material furnished in the prosecution of the work provided for in such contract.

Notice Required—None for a subcontractor having a contract with the general contractor; otherwise, if a subcontractor is unpaid for 90 days after labor performed or materials supplied, and a written preliminary 20-day notice has been given, then upon giving to the contractor written notice within 90 days from the date the labor was performed or materials supplied, which notice states with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was supplied, the claimant can then sue on the bond. Such notice must be served by registered or certified mail.

Time for Suit—No suit can be commenced within 90 days from the date on which the last of the labor was performed or material furnished. Suit must be commenced within one year of the date on which the last of the labor was performed or material furnished for which the claim is being made.

Contracts Excluded—No express statutory provision.

Penalty for Failure to Take Bond—No statutory provision.

ARKANSAS

In Arkansas, special bond statutes are passed because contractors cannot create a lien against a public property when working for a public entity. Arkansas has passed two statutes concerning bonds. The first act was passed in 1911, and is codified under the Mechanic's and Materialmen's Liens section Act of the Arkansas Code. The second act was passed in 1929 and is in the Public Property/Public Works section of the Arkansas Code. These two statutes do not require

two separate bonds, and have been interpreted to be one whole statute by the Arkansas courts. See *Berry Asphalt Co. v. Western Surety Co.*, 223 Ark. 344, 266 S.W.2d 835 (1954).

Amount of Bond—A sum equal to the amount of the contract on all public works.

Labor and Material Covered—All labor and material furnished in the prosecution of the contract to execute and deliver the contract, except Arkansas Highway and Transportation Department contracts. The statute covers all surety bonds required by the State and provides that these bonds shall be liable on all claims for labor and materials entering into the construction, or necessary to or used in the course of construction of the public improvements.

Notice Required—No special statutory provision. However, if a bond is not provided by the contractor on construction projects for churches, religious organizations and charitable institutions as required by A.C.A. § 18-44-504, lien claimants must adhere to the notice and timing requirements set out in the lien statutes. *St. Matthews Church v. White*, 172 Ark. 1152, 291 S.W. 977 (1927); See *South Central District of the Pentecostal Church of God of America, Inc. V. Bruce-Rogers Co.*, 269 Ark. 130, 599 S.W.2d 702 (1980).

Time for Suit—No action shall be brought on the bond after six months from the final payment on the job, unless it is a project on which the Arkansas State Building Services approves final payment on the state contract, in which case the suit must be filed within 12 months from the date that Arkansas State Building Services approves final payment. To avoid controversy, bond claimants should follow the six month statute of limitations.

Statutory Bonds v. Common Law Bonds—The Arkansas courts distinguish statutory bonds and common law bonds in determining the applicable statute of limitations. If a bond provides greater coverage than that set out in A.C.A. § 22-9-401, then the bond is a common law bond not covered by statute, then a bond claimant is not bound by the one-year limitation. *United States Fidelity and Guaranty Co. v. Little Rock Quarry Co.*, 309 Ark. 269, 830 S.W.2d 362 (1992).

Contracts Excluded—Under \$20,000. However, for charitable institutions, only contracts under \$1,000 are excluded.

Penalty for Failure to Take Bond—No special statutory provision.

Surety Company—The bonds must be made by surety companies authorized to do business in Arkansas, and must be executed by a resident agent or nonresident agent licensed by the Insurance Commissioner to represent the surety company executing the bond.

Bond from a Particular Source—It is a Class A misdemeanor for any person to require a bidder or contractor to purchase a surety bond from a particular insurance company.

CALIFORNIA

Labor and Material Covered—Any materials, provisions, provender or other supplies, power or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld and paid over to the Employment Development Board from the wages of employees of the contractor and his subcontractors.

Notice Required—A claimant must give the 20-day preliminary notice as required for mechanic's liens. If claimant fails to give a preliminary notice, claimant may give written notice to the surety and bond principal within 15 days after the recording of the notice of completion, or 75 days after completion if no notice was filed. Said notice to surety must be by registered or certified mail, or by personal delivery.

Time for Suit—Claimant must file suit not later than six months from date of completion if surety has recorded the bond before the work is completed. If surety has not recorded bond before completion, suit is four years unless the period is shortened by the terms of the bond and recorded prior to the time the work of improvement is commenced, but in no event shall the time be shortened to less than six months from date of completion.

COLORADO

Amount of Bond—Set by owner, but not less than one-half of the contract price.

Labor and Material Covered—Labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by contractor or his subcontractor in or about the performance of the public work. Second tier material suppliers (material suppliers to a material supplier) do not have protection under the Colorado public works act. The claimant should carefully read to the terms and conditions of the payment bond to determine if there is coverage.

Notice Required—Person furnishing labor or material to contractor or subcontractor, at any time up to and including the time of final settlement for the work contracted to be done, which final settlement shall be duly advertised at least 10 days prior thereto in the county or counties where the work was contracted for and wherein such work was performed, may file, with the official awarding the contract, a verified statement of the amount due and unpaid, whereupon such official shall withhold payments from contractor sufficient to ensure the payment of such claim, until the same has been paid or the claim has been properly withdrawn. However, such funds shall not be withheld longer than 90 days following the date fixed for final settlement, unless an action is commenced within that time to enforce such unpaid claim and notice thereof is filed with the public body by whom the contract was awarded.

Time for Suit—Within six months after the completion of the public work, or the time limitation set forth in the bond if greater than six months after completion of the project.

Contracts Excluded—Under \$50,000.

Penalty for Failure to Take Bond—Unless such bond is executed, delivered and filed, no claim in favor of the contractor arising under such contract shall be audited, allowed or paid.

Special Provisions—Notwithstanding the monetary qualification, the governing body of any county, city, town or school district determining it to be in the best interest of the county, city, town or school district may require the execution of a penal bond for any contract of \$50,000 or less.

CONNECTICUT

Amount of Bond—A bond in the amount of the contract is required.

Labor and Material Covered—Labor and materials in the prosecution of the work provided for in contract for the construction, alteration or repair of any public building or public work of the state or any subdivision thereof. The word "material" includes the rental of equipment used in the prosecution of such work.

Notice Required—Every person who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished and who has not been paid in full therefore before the expiration of a period of 60 days after the day on which the last of the labor was done or performed by him or for material which was furnished or supplied by him for which the claim is made may enforce the right to payment under the bond by serving a written notice of claim within 180 days from the date when such person performed the last of the labor or furnished the last of the material for which claim is made, on the surety that issued the bond and a copy of the notice on the principal contractor. The notice shall state with substantial accuracy the amount claimed, name of the party for whom labor was performed or to whom materials were furnished and a detailed description of the bonded public project involved. Within 90 days after service of the notice of claim, the surety must pay the claim or such amount which is not disputed in good faith and must notify the claimant as to any unpaid portion for which liability is denied. Notices shall be served by registered mail or certified mail, postage prepaid, in envelopes addressed to any office at which the surety, principal or claimant conducts his business, or in any manner in which civil process may be served.

Time for Suit—No suit may be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the claimant.

Contracts Excluded—Under \$500,000.

Penalty for Failure to Take Bond—Unless such bond is executed, delivered and filed, no claim in favor of the contractor arising under such contract shall be audited, allowed or paid.

DELAWARE

Amount of Bond—100% of the contract price.

Labor and Material Covered—Every person furnishing material or performing labor under the contract may maintain an action thereon for the recovery of such sum as may be due from the contractor. “Material” is defined to mean materials, equipment, tools, supplies or any other personal property but does not include electric, gas, water, telephone or similar utilities.

Notice Required—No special statutory provision.

Time for Suit—Suit must be brought within three years of completion of the work. However, the contract can provide that no suit be commenced within one year following the completion of the work.

Contracts Excluded—A special state body, the Contracting and Purchasing Advisory Council, sets the threshold amount for “large public works” where bonds are required.

Penalty for Failure to Take Bond—No special statutory provision.

DISTRICT OF COLUMBIA

Amount of Bond—One-half of the total amount payable by the terms of the prime contract.

Labor and Material Covered—Labor or material furnished to the prime contractor or a subcontractor in performance of work in the prime contract, including lessors of equipment.

Notice Required—No notice is required by a person having a contract with the prime contractor. Any person having a contract with a subcontractor must give written notice to the prime contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. Such notice shall be served by mailing the same by certified or registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence.

Time for Suit—Suit must be instituted more than 90 days after the last day of labor or material for which claim is made, but within one year from the date final labor was performed or the material was supplied.

Contracts Excluded—Procurement regulations may waive bonds for contracts of \$100,000 or less.

Penalty for Failure to Take Bond—No special statutory provision.

Statutory Citation—District of Columbia Code, Title 2 Government Administration, Chapter 3, Section 2-305.01 to 2-305.08.

FLORIDA

Amount of Bond—In an amount equal to the original contract price.

Labor and Material Covered—Labor, material and supplies used directly or indirectly in the prosecution of the work by contractors, subcontractors, sub-subcontractors, laborers, materialmen and professional lienors.

Notice Required—A claimant, except a laborer, who is not in privity with the contractor shall, within 45 days after beginning to furnish labor, material or supplies for the prosecution of such work, furnish the contractor with a notice that he intends to look to the bond for protection. A claimant who is or is not in privity with the contractor and who has not received payment for his labor, material or supplies, shall within 90 days after performance of the labor or after complete delivery of all the materials and supplies, deliver to the contractor and the surety written notice of the performance of the labor or delivery of the material and supplies, of the nonpayment and amount of nonpayment and that the claimant is looking to the bond for payment.

Time for Suit—No action or suit shall be instituted or prosecuted against the contractor or against the surety on the bond required by the statute after one year from the performance of the labor or completion of delivery of the materials or supplies.

Contracts Excluded—The threshold for exemption from the bond requirement is \$100,000 on public works. Contracts under \$200,000 may be exempted on public works.

Penalty for Failure to Take Bond—No special statutory provision.

GEORGIA

Amount of Bond—Not less than the contract price.

Labor and Material Covered—All persons supplying labor or material used in the prosecution of the work.

Notice Required—No notice required if there is a direct contractual relationship with the general contractor. Those not under direct contract with the general contractor must give written notice of claim within 90 days after the date on which the last of the labor was performed or the last of the materials furnished.

If the owner, agent of the owner, or general contractor files a Notice of Commencement within 15 days of beginning the project, a lien claimant who does not have a direct contractual relationship with the general contractor is barred unless the claimant serves a Notice to Contractor within 30 days of the claimant beginning work on the project.

Time for Suit—All suits must be brought within one year after the completion of the project and acceptance by the public authority.

Contracts Excluded—Less than \$100,000. However, public authority may require bond when the contract price is less than \$100,000. Less than \$50,000 for DOT projects.

Penalty for Failure to Take Bond—No special statutory provision.

HAWAII

Amount of Bond—Equal to 100% of the contract price.

Labor and Material Covered—All labor and materials furnished to the contractor and used in the prosecution of the work provided for in such contract.

Notice Required—Written notice shall be served by registered or certified mail to contractor and surety within 90 days from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. The notice shall be served to the contractor and surety at any place they maintain an office or conduct their business or in any manner authorized by law to serve summons.

Time for Suit—Every suit instituted on a payment bond shall be brought within one year after the last labor was performed or material supplied for the work provided in the contract.

Contracts Excluded—Contracts \$25,000 and under for construction projects.

Penalty for Failure to Take Bond—No special statutory provision.

IDAHO

Amount of Bond—An amount to be fixed by the contracting body but in no event less than 85% of the contract amount.

Labor and Material Covered—Construction, alteration or repair of any public building or public work or improvement in the state of Idaho or any political subdivision, public authority or public instrumentality thereof, including the renting or leasing of equipment.

Notice Required—No notice is required by a person having a contractual relationship, express or implied, with the principal contractor. Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the principal contractor must give written notice to the contractor within 90 days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the person to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence.

Time for Suit—No such suit shall be commenced after the expiration of one year from the date on which claimant performed the last of the labor or furnished or supplied the last of the material or equipment for which such suit is brought except that if the claimant is a subcontractor of the contractor no such suit shall be commenced after the expiration of one year from the date on which final payment under the subcontract became due.

Contracts Excluded—No special statutory provision.

Penalty for Failure to Take Bond—Any public body subject to this statute who fails or neglects to obtain the required payment bond shall, upon demand, itself make prompt payment to all persons who have supplied materials or performed labor in the prosecution of the work under the contract, and if such creditor has a direct right of action upon his account against such public body in any court having jurisdiction in any county in which the contract was to be performed and executed, which action must be commenced within one year after the furnishing of materials or labor.

ILLINOIS

Amount of Bond—Shall be fixed by such officials, boards, commissions, commissioners or agents awarding the contract in an amount equal to or greater than 110% of bid.

Labor and Material Covered—Material used in such work and for all labor performed in such work, whether by subcontractor or otherwise.

Notice Required—Every person furnishing material or performing labor, either as an individual or as a subcontractor for any contractor with the state or any political subdivision thereof, has a right to sue on the bond provided, however, that any person having a claim for labor or material as aforesaid shall have no such right of action unless he shall have filed verified notice of claim with the officer, board, bureau or department awarding the contract within 180 days after the date of the last item of work or the furnishing of the last item of materials and files a copy of the notice with the contractor within 10 days after filing the notice with the officer.

The claim shall be verified and shall contain (1) the name and address of the claimant; the business address of the claimant within the state of Illinois, and if the claimant be a foreign corporation having no place of business within the state of Illinois, the notice shall state the principal place of business of said corporation, and in the case of a partnership the notice shall state the name and residence of each of the partners; (2) the name of the contractor for the government; (3) the name of the person, firm or corporation by whom the claimant was employed or to whom he or it furnished materials; (4) the amount of the claim; (5) a brief description of public improvement sufficient for identification.

Time for Suit—No action shall be brought on the bond until the expiration of 120 days after the date of the last item of work or the furnishing of the last item of materials, except where the final settlement between the public body and the contractor shall have been made prior to the expiration of the 120-day period “in which case action may be taken immediately following such final settlement.” No action of any kind can be brought later than six months after the acceptance by the State or political subdivision thereof, of the building project or work.

Public Improvement Lien—Illinois provides a lien on unexpended funds due the contractor. To preserve the lien, written notice of the potential claim must be sent to the public authority and contractor prior to the payment of funds. Notice must be provided to the clerk or secretary, as the case may be, of the local government unit.

A prime contractor can force a subcontractor to file its claim for lien by giving notice to subcontractor and if the subcontractor fails to file its lien claim within 30 days of notice, the lien is forfeited. Suit must be filed within 90 days after filing the notice of claim. The suit must make the prime contractor and any intermediate subcontractors defendants. Notice of the suit must be sent to the public authority. On state jobs, the suit must be filed not less than 15 days before the date that the state paid the prime contractor or the claim will lapse.

Contract Excluded—Under \$5,000.

Penalty for Failure to Take Bond—No special statutory provision.

INDIANA

Types of Projects—In Indiana there are four different public works statutes: Title 4 for State of Indiana ownership projects like state prisons; Title 5 for other state projects like state supported universities; Title 8 for state highways, bridges and rest stops; and Title 36 for local government projects, including public schools.

Amount of Bond—Total contract price. Each of the four statutes requires a bond for the total contract price if the project is required to be bonded.

Labor and Material Covered—Any labor or services performed or materials furnished or services rendered in the construction, erection, alteration or repair of any public building; work or improvement of any nature or character; however, under Title 36 projects, lessors of equipment to a subcontractor are not covered. Also, under Title 8, a claimant who does not have privity of contract with the contractor or a subcontractor (any subcontractor or material supplier who is not a first or second tier claimant) is not entitled to the coverage of a performance bond.

Notice Required—Title 4: To impound contract proceeds, a Verified Claim in writing, stating the amount due and owing to the claimant must be filed with the Public Works Division of the Indiana Department of Administration within 60 days after the last labor performed, last materials furnished or last services rendered. To make a claim under the bond, a Verified Claim must be given to the surety and the Public Works Division must be notified that the surety has been given the Verified Claim.

Title 5: To make a claim against the retainages, a Verified Statement of Claim, setting forth the amount due and owing, the name of the subcontractor, when the work was performed or materials furnished, must be filed in duplicate with the public agency that is administering the contract within 60 days after the last work or services performed on or last item of materials furnished to the project by the claimant. To make a claim against the bond, a Duplicate Verified Statement must be filed with the appropriate state agency within 60 days after any claimant has worked on the project setting forth the same information as required in the Verified Statement of Claim.

Title 8: To claim against the contract proceeds, a Triplicate Verified Itemized Statement must be filed with the Department of Transportation. This must be in writing, verified, contain an itemized statement of the amount due, identify the claimant by name and address, identify the contractor for whom the work was performed, set forth the dates including the last date on which the work was performed, describe the work and the costs thereof, and attach itemized statements or invoices. This should be filed in triplicate within 60 days of the last labor performed or materials furnished and in all events within 30 days after final acceptance of the project. To claim against the bond, the claimant must file a statement of the amount due and owing with the surety on the bond. The statement of the amount due and owing must be furnished to the surety within one year after acceptance of the labor, materials or services by DOT. The surety must be given 60 days to respond, after which suit may commence on the bond.

Title 36: To claim against retainages, file a Verified Claim, containing the project by name and address, the amount due and owing, the contractual relationship between the claimant and the subcontractor or general contractor, and the date upon which the last work was performed or materials furnished. The Verified Claim is filed with the public agency. To claim against the bond, file a signed duplicate statement with the governing body setting forth the same information as the Verified Claim within 60 days after the last labor or materials were furnished to the project by any contractor on the project.

Time for Suit—Title 4: Claimant may not file suit against the contractor's surety on the payment bond until 30 days after filing the Verified Claim with the Public Works Division. Unless the bond provides a greater period of time, all suits must be brought against the surety on the payment bond under Title 4 within one year after final settlement with the contractor.

Title 5 and Title 36: If a Verified Statement is filed, suit cannot be brought against the surety on the payment bond until the expiration of 30 days after the filing of the Verified Duplicate Statement with the governing body. Must commence suit within 60 days after final completion and acceptance of the public works project by the public agency which by case law interpretation is generally the "substantial completion date."

Title 8: If the triplicate notice is filed with DOT as against retainages, then the DOT is required upon receipt to withhold from the retainages a sum equal to the amount of the claim. The prime contractor is given 20 days within which to give written notice to DOT of allowing or rejecting the claim. If the claim is rejected in whole or in part, the DOT is to give immediate notice of the contractor's action by registered mail to the claimant. Within 90 days after receiving notice of a rejection from DOT, the claimant must take two procedural steps to perfect its claim. First, it must commence an action against the contractor or surety in a court of competent jurisdiction. Second, once the lawsuit has been filed, the claimant must obtain a certificate from the clerk stating that the action has been filed, date filed and identify the parties to the action. The claimant must file a certificate with the DOT within a 90-day period. If a claim is made as against the bond only, and not retainages, then after the surety is given 60 days to respond, suit must be filed 18 months from the date of final acceptance of the project.

Contracts Excluded—Title 4, Title 5, Title 8 and Title 36 now require bonds for state and local projects in excess of \$200,000.

Penalty for Failure to Take Bond—No special statutory provision.

IOWA

Amount of Bond—Not less than 75% of the contract price, excepting that, in contracts where no part of the contract price is paid until after the completion of the public improvement, the amount of the bond may be fixed at not less than 25% of the contract price.

Labor and Material Covered—Labor performed or material, services or transportation furnished in the construction of a public improvement under a contract with the principal contractor or with subcontractors, except those furnishing materials to a subcontractor.

Notice Required*—To principal contractor. No part of the unpaid fund due the contractor shall be retained on claims for material furnished other than material ordered by the general contractor or the authorized agent thereof unless such claims are supported by a certified statement that the general contractor has been notified within 30 days after the materials are furnished, or by itemized invoices rendered to the contractor during the progress of the work, of the amount, kind and value of the material furnished for use upon said public improvement.

Time of Filing Claims—Claims must be filed no later than 30 days after the completion and final acceptance of the project, or at any time if no action is pending and the full contract price has not been paid.

Highway Improvements—In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract. In case of contracts for improvements on the farm-to-market system paid from farm-to-market funds, claims shall be filed with the auditor of the state department of transportation.

Interest—Interest is available on unpaid funds; however, the rate of interest is determined by the period of time during which interest accrues, and shall be the same as the rate of interest that is in effect under section 12C.6, as of the day interest begins to accrue.

Time for Suit—Any time after the expiration of 30 days, and not later than 60 days, following the completion and final acceptance of the public improvement.

Contracts Excluded—Public improvement contracts under \$25,000. No minimum for other contracts.

Penalty for Failure to Take Bond—Bond mandatory.

Statutory Citation—Code of Iowa, Chapter 573.

***Counsel should also note**—Under the Code of Iowa, Chapter 26, the construction bidding procedures have changed.

KANSAS

Amount of Bond—Not less than the sum total of the contract.

Labor and Material Covered—All supplies, materials or labor furnished, used or consumed in connection with or in or about the construction of said public improvements or in making such public improvements.

Notice Required—No special statutory provision, except in connection with the improvement of highways.

Time for Suit—On bonds other than state highway bonds, no action shall be brought on the bond after six months from the completion of the public improvement. On bonds given in connection with the construction, improvement, reconstruction, and maintenance of the state highway system, no action may be brought after one year from the completion of the contract.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—No special statutory provision.

KENTUCKY

Amount of Bond—A payment bond in the amount of 100% of the contract price.

Labor and Material Covered—All persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract.

Notice Required—Within 60 days of the last day of the month in which materials were provided, the claimant must file a statement in writing verified by affidavit, setting for the amount due, the date on which work was last performed, and the name of the public improvement upon which it is claimed. The statement shall be filed in the county clerk's office of the county in which the seat of government of the owner is located.

Time for Suit—This also is not specified in the statute. Kentucky’s general statute of limitations includes civil actions on bonds in the class of procedures which must be initiated within 15 years after cause of action has accrued. However, the Kentucky courts have allowed the surety to a shorter period in the bond.

Contracts Excluded—Under \$25,000.

Penalty for Failure to Take Bond—No special provisions.

LOUISIANA

Amount of Bond—Private Works. The owner may relieve himself of the claims and privileges afforded by the Private Works Act if he requires the contractor to give a bond with good and sufficient surety. The amount of the bond must be the amount of the contract, if the contract does not exceed \$10,000; between \$10,000 and \$100,000 the amount of the bond must be 50% of the contract, but in no event less than \$10,000. For contracts over \$100,000, but not in excess of \$1,000,000, the bond must be 33 $\frac{1}{3}$ % of the contract, but in no event less than \$50,000, and for contracts exceeding \$1,000,000 the bond must be 25% of the amount of the contract but not less than \$333,333. The bond must be attached to and recorded with the contract (or notice of contract).

Public Works. Louisiana law requires that whenever the state or any state entity, agency or political subdivision enters into a contract in excess of \$5,000 for the construction, alteration or repair of any public work, the contract must be in writing and a bond furnished in an amount not less than 50% of the contract price. The bond is given to ensure the faithful performance of the contract and for the payment of certain claims arising out of the work. Under a 1985 amendment to the Public Works Act, lessors of equipment used in the construction project are now protected by the Act. Although the statute only requires a bond in an amount equal to 50% of the contract price, nearly all public contract bonds are for the full amount of the contract.

On public contracts of \$100,000 or less, the required performance bond is waived for any contractor who (1) qualifies as a small business; (2) is a “responsible bidder”; (3) has been operating under the same name for over a year; and (4) has been denied a guaranteed bond by the Small Business Administration or an established surety firm, for any reason other than a previous performance default. Under Louisiana law, a public works bond is considered a statutory bond. This means that regardless of the contents and provisions of the bond document itself, the bond is deemed to provide coverage under such terms as are specified in the Public Works Act. This entails that any provisions of the Act which were omitted from the bond would be read into the bond, and extra-statutory language in the bond would be read out of the bond. This is known as the “read-in, read-out” rule.

Labor and Material Covered—Any person to whom money is due pursuant to a contract with a contractor or subcontractor for doing work, performing labor or furnishing materials or supplies for the construction, alteration, or repair of any public works, or for transporting and delivering such materials or supplies to the site of the job by a for-hire carrier, or for furnishing oil, gas, electricity or other materials or works, including persons to whom money is due for the lease or rental of movable property used at the site and including any architect or consulting engineer engaged by the contractor or subcontractor in connection with the building of any public work. See Chapter 13.

Notice Required—See Chapter 13. However, it must be noted that suits on “conventional” bonds—that is, on bonds not supplied in accordance with or pursuant to statutory requirements—are not subject to claim restrictions based on the Private and Public Works Acts and the filing and notice requirements therein contained. Instead, claims against conventional bonds are governed by the terms of the bond and the prescriptive statutes (statutes of limitation) governing conventional obligations.

Time for Suit (for statutory bonds and related “lien” type claims only)—On private works, one year following the last day upon which liens can be filed. On public works, one year following the date upon which the notice of termination was filed.

Attorney’s Fees Recoverable by Claimant—In the public works context, after amicable demand for payment has been made on the principal and surety and 30 days have elapsed without payment being made, any claimant recovering the full amount of his timely and properly recorded or sworn claim, whether by concursus proceeding or separate suit, shall be allowed 10% attorney’s fees which shall be taxed in the judgment on the amount recovered.

Penalty for Failure to Take Bond—In the private context, there is no penalty in the strict sense, other than the loss of protections for the owner from personal liability and from the in rem liability related to the property that is the subject of the work. On public jobs, when an awarding authority makes final payment to the contractor without deducting the total amount of all outstanding claims properly served on it or without obtaining a bond (in this case, a release of lien bond; the existing payment bond will not suffice for the purpose) from the contractor to cover the total amount of all outstanding claims, the awarding authority shall become liable from its ordinary budget for the amount of these claims.

Statutory Citation—La. R.S. 9:4802C, 9:4811-4812, 9:4823A(2), 38:2247 and 38:2246A.

MAINE

Bonds Required—Both payment and performance bonds in an amount equal to the full contract amount. The performance bond shall be conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such bond is solely for the protection of the State or the contracting body awarding the contract. The payment bond shall be 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.

Labor and Material Covered—Labor or material supplied to the contractor or his subcontractor in the prosecution of the work provided for in the contract for the construction, alteration, or repair of any public building or other public improvement or public work including highways awarded to any person by the state or by any political subdivision or quasi municipal corporation or by any public authority. The term “material” includes rental of equipment.

Notice Required—No notice is required by a claimant having a contractual relationship, express or implied, with the principal contractor. A claimant having a direct contractual relationship with a subcontractor of the contractor but no contractual relationship, express or implied, with such contractor shall not have the right of action upon such payment bond unless he shall have given written notice to such contractor within 90 days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or at his residence.

Time for Suit—No suit shall be commenced prior to 90 days from the date on which claimant furnished the last of the labor or material for which such claim is made and no action may be commenced after the expiration of one year from the date on which the last of the labor was performed or material was supplied for the payment of which such action is brought. Every action shall be brought in the county in which the principal or surety has its principal place of business.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—No special statutory provision.

Statutory Citation—14 M.R.S.A. § 871.

MARYLAND

Amount of Bond—50% of the total amount payable under the prime contract.

Labor and Material Covered—For the protection of all persons supplying labor and material to the contractor, a subcontractor or a sub-subcontractor in the prosecution of the work provided for in the contract.

Notice Required—No notice is required by a person having a contract with the prime contractor. Any claimant having a contract with a subcontractor, or with any sub-subcontractor must give written notice to the prime contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished, or for whom the labor was performed. Such notice shall be served by mailing certified mail to the contractor at the contractor's residence or a place where the contractor has an office or does business.

Time for Suit—Suit must be instituted more than 90 days after the day on which the claimant last supplied labor or materials for which the claim is made, but no more than one year after the public body finally accepts the work performed under the contract.

Contracts Excluded—Under \$100,000, except in the case of highways.

Penalty for Failure to Take Bond—No special statutory provision, except in the Transportation Code. The Controller shall furnish a certified copy of a payment bond to a person who submits an affidavit that the person has supplied labor or materials for which payment has not been made.

Waiver—An executory contract may not waive payment bond rights. A “pay when paid” provision in an executory contract does not waive payment bond rights.

MASSACHUSETTS

Amount of Bond—A bond in the amount of not less than one-half of the total contact price shall be obtained.

Labor and Material Covered—All subcontractors and materialmen.

Notice Required—A claimant having a contractual relationship with a subcontractor, but not with the general contractor, must give notice of a claim in writing to the general contractor within 65 days after the day on which the claimant last performed labor or furnished labor, materials, equipment, appliances or transportation, stating with substantial accuracy the amount claimed, the name of the party for whom such labor was performed or such labor, materials, equipment, appliances or transportation was furnished.

To make a claim covering specially fabricated material the claimant must give the contractor principal written notice of the placement of the order and the amount thereof not later than 20 days after receiving the final approval in writing for the use of the material. The notices shall be served by mailing a sworn statement by registered or certified mail postage prepaid in an envelope addressed to the contractor principal at any place at which the contractor principal maintains an office or conducts his business, or at the contractor principal's residence, or in any manner in which civil process may be served.

Time for Suit—Within one year after the day such claimant last performed the labor or furnished the labor, materials, equipment, appliances or transportation included in his claim, and by prosecuting the claim thereunder by trial in the superior court to final adjudication.

Demand for Direct Payment—A written demand for direct payment directly to the awarding authority is a way for a “subcontractor” to be paid by the awarding authority for both progress payments and for final payments on certain kinds of public work. For the purposes of this remedy, a “subcontractor” is defined as being three things: (1) a filed sub-bidder with a written subcontract on public building contracts; (2) for either public buildings or public works, an entity approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor; and (3) for contracts with the commonwealth (only) and not awarded under the competitive bid statute for buildings, a person contracting with the general contractor to supply materials used in a public works project for a price in excess of \$5,000.

Contracts Excluded—Statute requires that bond must be furnished where the amount of the contract is more than \$5,000 in the case of the Commonwealth and more than \$2,000 in the case of a contract with a county, city, town, district or other political subdivision.

New Reform Legislation—Highlights of Chapter 193 of the Acts of 2004 (An Act Further Regulating Public Construction in the Commonwealth) include: filed sub-bid subcontractors must furnish payment and performance bonds on projects where prequalification is required or utilized by the awarding authority; requires an owner's project manager for projects valued at \$1.5 million or more; requires DCAM certification of subcontractors submitting filed sub-bids after January 1, 2005; subcontractors must furnish payment and performance bonds on CM at Risk projects.

Public Construction/Prevailing Wage—The Massachusetts prevailing wage laws require that employees on public works projects, except those who perform strictly supervisory functions, be paid a minimum hourly rate set by the Department of Labor and Workforce Development, Division of Occupational Safety (DOS) (Mass. General Laws c. 149, s. 26).

Penalty for Failure to Take Bond—No special statutory provision.

Statutory Citation—Includes Massachusetts General Laws Chapter 149, §§ 26, 27D, 28, 29, 44A et al.

MICHIGAN

Bonds Required/Types of Projects (State (non-highway) and Municipal Projects)—Any contract exceeding \$50,000 for the construction, alteration, or repair of any public building or public work or improvement of the state or a county, city, village, township, school district, public educational institution, other political subdivision, public authority, or public agency shall require that the principal contractor furnish at his or her own cost to the governmental unit a performance bond and a payment bond. If the principal contractor is a common carrier or the designated operator of a state subsidized railroad, the principal contractor may provide an irrevocable letter of credit from a state or national bank or a state or federally chartered savings and loan association instead of the bonds. Each payment and performance bond shall be in an amount fixed by the government unit to be not less than 25% of the contract price.

State Highway Projects (Michigan Department of Transportation). State highway jobs under the Michigan Department of Transportation (MDOT) are covered by a separate statute, MCL 570.101 et seq. General contractors are required to file a payment bond for the protection of subcontractors and suppliers.

Labor and Material Covered—Labor, material, or both used or reasonably required for use in the performance of the contract, including that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract. A separate statute (MCL 570.101 et seq.) covers State highway projects.

Notice Required (State (non-highway) and Municipal Projects)—No notice is required by a claimant having a contractual relationship with the principal contractor. A claimant not having a direct contractual relationship with the principal contractor does not have a right of action upon the payment bond unless: (a) claimant has within 30 days after furnishing the first of such material or performing the first of such labor served on the principal contractor a written notice which shall inform the principal of the nature of the materials being furnished or to be furnished or labor being performed or to be performed and identifying the party contracting for such labor or material and the site for the performance of such work or the delivery of such materials; and (b) claimant has given written notice to the contractor and the governmental unit involved within 90 days from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material for which the claim was made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the principal contractor, the governmental unit involved, at any place at which said parties maintain a business or residence.

Notice Required (State Highway Projects)—“Notice of Lien Claim” must be filed by subcontractor or material supplier to MDOT as notice of an intent to file a claim against the bond. Even though the claim is against the bond and not real property, the notice is referred to as a Notice of Lien Claim. A form is available on MDOT's website. Subcontractors must provide the required notice within 60 days after furnishing the last material or supplies or performing the last work covered by their subcontract. However, this period has been modified by MDOT endorsement. A copy of the bond and notice requirements should be

requested early in the project to ensure compliance. In the notice, the claimant must specify the work provided, that it relies upon the security of the bond given by the general contractor and directs the MDOT to notify the surety on the bond.

Relevant Statutes—Michigan’s Public Act 524 of 1980 (Retainage Act)—Contract retainage funds must be segregated and interest must be paid on the retainage when final payment on project is released. The Retainage Act restricts the public owner’s ability to withhold retainage to 10% of the first 50% of the work in place. Michigan’s Differing Site Conditions statute applies to all public works projects over \$75,000. The act provides for a negotiating process for contractors who encounter unusual or misrepresented conditions while performing public works projects.

Pending Legislation—SB 0405 of 2005: Liens, construction, construction liens on residential property. Revise various provisions, including fees for membership in the homeowner construction lien recovery fund. Amends title and secs. 104, 106, 107, 114, 201, 202, 203 and 204 of 1980 PA 497 (MCL 570.1104 et seq.) and adds sec. 114a.

Tie barred with SB 0459 of 2005: Construction, contracts. Provision for timely payment of certain services rendered; clarify exceptions to act. Amends sec. 5 of 1980 PA 524 (MCL 125.1565).

Statutory Citation—MCL 129.201 et seq.; MCL 570.101 et seq.

MINNESOTA

Amount of Bond—Performance and payment bonds each to be not less than the contract price. The penalty of each bond must not be less than the contract price, and if after the giving of the bond the contract price is increased, for any reason, the public body may require additional bonds, the penalties of which shall be not less than the amount of the increase, and if the additional bonds are not furnished within 10 days after demand, the work on the contract shall cease until the additional bonds are furnished. In contracts made by the Commissioner of Administration or the Department of Transportation of the state, the Commissioner of Administration or the Commissioner of Transportation, respectively, may fix the amount of the bond penalty, but at not less than three-quarters of the contract price.

Labor and Material Covered—Claims of all persons doing work or furnishing skill, tools, machinery or materials, or insurance premiums, equipment or supplies, or sales or wage tax, under or for the purpose of such contract.

Notice Required—In the event of a claim on a payment bond by a person furnishing labor and materials, no action shall be maintained unless, within 120 days after completion, delivery or provision by the person of its last item of work, the person serves a written notice of claim personally or by certified mail upon the surety that issued the bond and the contractor on whose behalf the bond was issued at their addresses as specified in the bond. The notice must specify the nature and amount of the claim and the date the claimant furnished its last item of labor or materials for the public work.

Time for Suit—No action shall be maintained unless begun within one year after the date of the last work by the claimant on the public project as stated in its notice of claim.

Contracts Excluded—Projects under \$75,000, Natural Resource Development projects, and projects of the Department of Transportation costing less than \$75,000, or involving the permanent or semipermanent installation of heavy machinery, fixtures, or other capital equipment to be used primarily for maintenance or repair

Penalty for Failure to Take Bond—If the bond is taken, the corporation or body for which work is done under the contract shall not be liable to any person furnishing labor, skill, or material to the contractor, and for any loss resulting to them from such failure.

Statutory Citation—Sections 574.26 to 574.32 are the “public contractors’ performance and payment bond act,” within those sections referred to as “the act.”

MISSISSIPPI

Amount of Bond (excepting state highway projects)—A performance bond payable to, in favor of, or for the protection of such public body, as owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract; a payment bond payable to such public body but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person, in an amount not less than the amount of the contract.

Labor and Material Covered—All persons supplying labor or material used in the prosecution of the work. The labor and/or materials must have been approved by the public authority or its architect or engineer, where required. The Little Miller Act provides that the only persons that a payment bond must protect on a state or local public job are: (a) first tier subcontractors and material suppliers below the prime contractor; (b) second tier sub-subcontractors and material suppliers below subcontractors who give notice of their claims within 90 days of their last addition of labor or materials; and (c) laborers with wage claims who have performed work on the project site. The Little Miller Act does not require protection for materialmen of materialmen, and for subs below the sub-sub level, although the bond itself may include such protection.

Notice Required—Persons having a direct contractual relationship with a subcontractor but not the contractor must give written notice to the contractor by hand delivery or certified mail within a 90-day period after the date on which the last of the labor was performed by him or the last of the materials was furnished by him.

Time for Suit—When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond obligee, suit shall be commenced within one year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

When suit is instituted on a payment bond given in accordance with this chapter, it shall be commenced within one year after the day on which the last of the labor was performed or material was supplied by the person bringing the action and not later.

Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond.

Attorneys’ Fees—Whenever any person supplying labor or material in the prosecution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant’s attorney’s fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney’s fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney’s fees where provided by contract or bond.

Contracts Excluded—Whenever a contract is less than \$25,000, the owners may elect to make a lump sum payment at the end of the job. In such cases, a performance bond is not required.

General Liability Insurance Coverage—Any person entering into a formal contract with the state which exceeds \$5,000, or with a county, city, or other public authority which exceeds \$25,000, for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to the public body proof of general liability insurance coverage in an amount not less than \$1,000,000 for bodily injury and property damage. Exempted from the provisions of this subsection are any persons who enter into a contract with the Mississippi Department of Rehabilitation Services for the construction, alteration or repair of the home of a disabled individual who has been determined eligible for services by the Mississippi Department of Rehabilitation Services.

Payment of Interest on Delinquent Accounts—When a contractor receives any payment under a public construction contract, the contractor shall, upon receipt of that payment, pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier. If for any reason the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make any payment to his subcontractors and material suppliers within 15 days after the receipt of payment under the public construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, a penalty in the amount of ½ of 1% per day of the delinquency, calculated from the expiration of the 15-day period until fully paid. The total penalty shall not exceed 15% of the outstanding balance due.

Penalty for Failure to Take Bond—No special statutory provision.

Statutory Citation—Mississippi’s Little Miller Act appears at §§ 31-5-51 to 57; Miss. Code Ann. (1972).

MISSOURI

Little Miller Act Performance and Payment Bonds—Missouri laws controlling public construction projects are known collectively as The Little Miller Act. Missouri requires that a payment and performance bond be posted for public construction contracts in excess of \$25,000 (or if entered into by any officer or agency of any city containing 500,000 inhabitants or more). Such bond, among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise.

Public Works Contracts Defined—The term “public works contract” means a contract of the state, county, city and other political subdivisions of the state, except the Missouri transportation department, for the construction, alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other works dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work.

Labor and Material Covered—Material, lubricants, oil, gasoline, grain, hay, feed, coal and coke, repairs to machinery, groceries and foodstuffs, equipment and tools, consumed or used in connection with the construction of the public improvement and all insurance premiums, both compensation and all other kinds of insurance, on said work and for labor performed in such work, whether by subcontractor or otherwise.

Notice Required—No special statutory provision, the terms of the bond will typically be enforced.

Time for Suit—No special statutory provision except in specific municipalities, most notably St. Louis, where suit must be brought within 90 days of completion of the work.

City Counselor Ops. 9644

Cases. Performance bond provision requiring suits based thereon to be instituted prior to 90 days after completion of contract did not conflict with state statute. *City of St. Louis ex rel. Atlas Plumbing Supply Co. v. Aetna Casualty and Surety Co.*, 444 S.W. 2d 513 (1969).

Contracts Excluded—Under \$25,000.

Prompt Payment Act—Requires public owners and contractors to make payments within specific periods of time. Retainage amounts allowed are limited and provisions are made for early release. There is also a “good faith” haven for withholding payments for specific reasons.

Penalty for Failure to Take Bond—No special statutory provision.

Statutory Citation—Varied, but includes R.S. Mo. 34.057, 34.058.1, 8.250 and 6.04.100.

MONTANA

Amount of Bond—Full contract price for state contracts. The amount may be fixed by municipal ordinance, but in no event shall the penal sum be less than 25% of the contract price.

Labor and Material Covered—Provender, materials, supplies, provisions or goods supplied and performed or labor furnished in the prosecution of the public work.

Notice Required—Not later than 30 days after the date of the first delivery of the provender, material, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract with respect to the prosecution of said public work, delivered or sent by registered mail to the contractor. This notice must contain the name of the subcontractor or agent ordering or to whom the same was furnished and state that such contractor or his bond will be held for the same. No suit or action shall be maintained in any court against the contractor or his bond to recover for such provender, provisions, material or supplies or any part thereof unless such notice shall have been given.

No right of action shall be had on the bond unless within 90 days from and after the completion of the contract and the acceptance of the work by the public officials the claimant shall present to and file with the public body a notice in writing substantially in the form as required by the statute.

Time for Suit—No special statutory provision. In the case where a settlement procedure is provided by a contracting agency, all actions authorized thereunder must be commenced within one year after a final decision has been rendered pursuant to such settlement procedure; and in the case where no settlement procedure is provided by the contracting agency, the action must be commenced by the contractor within one year after the cause of action has arisen.

Contracts Excluded—A school district may waive their requirements of these bonds for contracts under \$7,500. Other state or governmental authorities may waive their requirements for under \$50,000.

Penalty for Failure to Take Bond—The municipal corporation is liable to the persons intended to be protected by the bond to the full extent and for the full amount of all the debts so contracted by any subcontractor as well as the contractor.

Limit on Retainage for Public Contracts—The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract. The retainage percentage withheld by a government entity from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

Public Contracts—Prevailing Wage Law. Montana’s prevailing wage law, often referred to as Montana’s Little Davis-Bacon Law, applies to public works contracts entered into for construction services (heavy, highway and building) or nonconstruction services by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is \$25,000 or more involving public funds. It requires that bidders on contracts pay a set rate of compensation, including employee benefits, and that at least 50% of the employees of each contractor working on the jobs be bona fide Montana residents.

Statutory Citation—Montana Code, Title 18, Chapters 1 through 11.

NEBRASKA

Amount of Bond—The amount of the bond on a public structure or improvement to which the mechanic's lien laws do not apply shall be not less than the contract price.

Labor and Material Covered—Labor performed, materials furnished and rental of equipment actually used in the erecting, furnishing or repairing of public building, bridge, highway or other public structures or improvements for the state of Nebraska or any political subdivision thereof.

Notice Required—Any person having direct contractual relationship with a subcontractor, but no contractual relationship, express or implied, with the contractor furnishing said bond, shall have a right of action upon the bond upon giving written notice to the contractor within four months from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by registered or certified mail, postage prepaid, in an envelope directed to the contractor at any place where he maintains an office or conducts his business, or his residence or in any other manner in which a notice may be served.

Time for Suit—No suit shall be commenced after the expiration of one year after the date of final settlement of the principal contract.

Contracts Excluded—Any project bid which has a total cost of \$5,000 or less, or state projects if less than \$15,000.

Penalty for Failure to Take Bond—No special statutory provision.

NEVADA

Amount of Bond—The payment bond shall be not less than 50% of the contract price.

Labor and Material Covered—Labor performed or materials furnished in the prosecution of the work.

Notice Required—To principal contractor. No notice is required by a claimant having a contractual relationship, expressed or implied, with the principal contractor. Any claimant who has a direct contractual relationship with any subcontractor of the contractor who gave such payment bond, but no contractual relationship, expressed or implied, with such contractor, may bring an action on the payment bond, only: (a) if he has, within 30 days after furnishing the first of such materials or performing the first of such labor, served on the contractor a written notice which shall inform the latter of the nature of the materials being furnished or to be furnished, or the labor performed or to be performed, and identifying the person contracting for such labor or materials and the site for the performance of such labor or materials; and (b) after giving written notice to such contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment.

Each written notice shall state with substantial accuracy the amount claimed and the name of the person for whom the work was performed or the material supplied, and shall be served by being sent by registered mail, postage prepaid, in an envelope addressed to such contractor at any place in which he maintains an office or conducts business, or at his residence.

Time for Suit—A period commencing 90 days after the date on which claimant performed the last of the labor or furnished the last of the material for which he claims payment but no such action may be commenced after the expiration of one year from the date on which the claimant performed the last of the labor or furnished the last of the material for the payment of which such action is brought.

Contracts Excluded—Under \$35,000.

Penalty for Failure to Take Bond—No statutory provision.

NEW HAMPSHIRE

Amount of Bond—At least 100% of the contract price or of the estimated cost of the work if no aggregate price is agreed upon.

Labor and Material Covered—All labor performed or furnished, all equipment hired including trucks, all material used, fuels, lubricants, power, tools, hardware and supplies purchased by the principal contractor and used in carrying out said contract, and for labor and parts furnished upon the order of the contractor for the repair of equipment used in carrying out said contract.

Notice Required—In order to obtain the benefit of such bond any person, firm or corporation having any claim for labor performed, materials, machinery, tools or equipment furnished as aforesaid, shall within 90 days after the completion and acceptance of the project by the contracting party, file in the Office of the Secretary of State, if the state is a contracting party, or with the Department of Public Works and Highways, if the state is a party to said contract by or through said department, or in the Office of the Clerk of the Superior Court for the county within which the contract shall be principally performed, if any political subdivision of the state is a contracting party, a statement of the claim; a copy of which shall forthwith be sent by mail by the office where it is filed to the principal and surety.

Time for Suit—One year after filing of claim as above.

Contracts Excluded—Generally those under \$25,000.

Penalty for Failure to Take Bond—No statutory provision.

NEW JERSEY

Amount of Bond—At least 100% of the contract price.

Labor and Material Covered—All labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for, or about the construction, alteration or repair of any public building or other public work or improvement.

Notice Required—Any person who does not have a direct contract with the contractor furnishing the bond shall provide the contractor with written notice via certified mail, prior to furnishing work, that such person is a beneficiary under the bond. Failure to give notice limits the claimant to "the benefits available" from the date on which notice is given.

Time for Suit—No suit shall be brought against the sureties on said bond until after the expiration of 90 days from the date last materials or labor were provided, but within one year of the same date of last furnishing of materials and labor.

Contracts Excluded—The state may waive the bond requirements on contracts for its public works not in excess of \$200,000. In addition, a public body may waive the bond requirements on contracts for public works at the expense of a county, municipality, or school district, not in excess of \$100,000.

Penalty for Failure to Take Bond—No special statutory provision.

NEW MEXICO

Amount of Bond—100% of the contract price, but in its discretion, the state purchasing agent or central purchasing office may reduce this amount under certain circumstances, but in no case can the amount be less than 50% of the contract price.

Labor and Material Covered—All just claims for labor performed, and materials and supplies furnished, upon or for the work of construction, alteration, improvement or repair of any public buildings, structure or highway or for any public work, furnished under the original contract or under any subcontract.

Notice Required—Any person having a direct contractual relationship with a subcontractor but no contractual relation, express or implied, with the principal

contractor, must give written notice to the contractor within 90 days from the date on which such person performed the last of the labor or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the service of summons in civil process is authorized by law.

Time for Suit—No suit on the bond may be commenced after the expiration of one year from the date of final settlement of the contract. Claimant in such suit shall notify the public body of the beginning of the action, stating the amount claimed and no judgment shall be entered in such action within 30 days after giving such notice.

Contracts Excluded—\$25,000 or under at sole discretion of state agency.

Penalty for Failure to Take Bond—No special statutory provision.

NEW YORK

Amount of Bond—No special statutory provision.

Labor and Material Covered—Labor or material furnished to the contractor or his subcontractors in the prosecution of the work provided for in a contract for the prosecution of a public improvement for the State of New York.

Notice Required—No notice is required by a person having a direct contractual relationship with the principal contractor. Any person having a direct contractual relationship with a subcontractor of the contractor furnishing the payment bond but no contractual relationship, express or implied, with the principal contractor, must give written notice to the contractor within 120 days from the date on which the last of the labor was performed or the last of the material was furnished for which his claim was made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place where he maintains an office or conducts his business or at his residence, provided, however, that where such notice is actually received by the contractor by other means, such notice shall be deemed sufficient.

Time for Suit—No action on a payment bond shall be commenced after the expiration of one year from the date on which final payment under the claimant's subcontract became due.

Contracts Excluded—Payment bond may be waived for public works contracts for less than \$50,000 or where the contract is not subject to the multiple contract award requirements of Section 135 of the State Finance Law, waiving the bonds is in the public interest and the aggregate amount of the contract is less than \$200,000.

Penalty for Failure to Take Bond—No special statutory provision.

NORTH CAROLINA

Amount of Bond—100% of the contract price.

Labor and Material Covered—All materials furnished or labor performed in the prosecution of the public work, whether or not the labor or materials enter into or become a component part of the public improvement, including gas, power, light, heat, oil, gasoline, telephone services and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the public work.

Notice Required—Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor must give written notice to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. This notice is required to be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or served in any manner provided by law for the service of summons.

Time for Suit—At any time after the expiration of 90 days after claimant performed the last of the labor or furnished the last of the material for which he claims payment, but no such suit may be commenced after the expiration of the “longer period of one year from the day on which the last of the labor was performed or material was furnished by the claimant, or one year from the day on which final settlement was made with the contractor.”

Contracts Excluded—Under \$300,000.

Penalty for Failure to Take Bond—Designated official who fails to require the bonds guilty of a Class 1 misdemeanor.

NORTH DAKOTA

Amount of Bond—100% of contract price, plus interest.

Labor and Material Covered—Materials including supplies used for machinery and equipment performed, furnished and used in performance of the contract including all demands of subcontractors.

Notice Required—Any person having a direct contractual relationship with a subcontractor but no contractual relationship with the contractor furnishing the bond shall not have a right of action against the bond unless he has given written notice to the contractor within 90 days from the date on which the person completed his contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office, conducts his business, or has a residence.

Time for Suit—Suit must be commenced within one year of final completion and acceptance of the project.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—Any officer and the members of any board who shall fail to take a bond before entering into such a public contract shall be personally liable for all such bills, claims and demands which are not paid within 30 days after the completion of the work.

OHIO

Amount of Bond—Contract price.

Labor and Material Covered—All labor performed or materials furnished in carrying forward, performing, or completing a contract for the construction, demolition, alteration, repair or reconstruction of any public improvement.

Notice Required—At any time after furnishing labor or material, but not later than 90 days after the acceptance of the public improvement by the duly authorized board or officer, claimant shall furnish surety a statement of the amount due. Subcontractors and materialmen must serve notice of furnishing within 21 days after the date that the subcontractor or materialman first performed labor or furnished materials on the site of the public improvement, or be limited to amounts owed or labor and work performed and material furnished during and after the 21 days immediately preceding service of the notice of furnishing. No subcontractor who is in direct privity of contract with the principal contractor need provide this notice.

Time for Suit—No suit shall be brought against the surety until after 60 days after the furnishing of the statement, but suit must be commenced not later than one year from date of acceptance of the public improvement.

Contracts Excluded—No specific statutory provision.

Penalty for Failure to Take Bond—No special statutory provision.

OKLAHOMA

Amount of Bond—100% of the contract amount.

Labor and Material Covered—All indebtedness by contractor or his subcontractors for labor and materials and repairs to and parts for equipment used and consumed in the performance of said contract.

Notice Required—Any person having direct contractual relationship with a subcontractor performing work on said contract but no contractual relationship expressed or implied with contractor furnishing said payment bond must give written notice to the contractor and surety on said payment bond within 90 days from the date on which said person did or performed the last of the labor or furnished or supplied the last of the material or parts for which such claim is made stating with substantial accuracy the amount claimed and the names of the parties to whom the material or parts were supplied or for whom the labor was done or performed. Such notice is required to be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business together with a copy thereof to the surety or sureties on said payment bond.

Time for Suit—No action shall be brought on said payment bond after one year from the date on which the last of the labor was performed or materials or parts furnished for which such claim is made.

Contracts Excluded—Under \$25,000.

Penalty for Failure to Take Bond—No special statutory provisions.

OREGON

Amount of Bond—Bond shall be equal to contract price except for forest road contracts (bond amount determined by county court, ORS 376.340), certain bridge contracts (50% of contract amount) and certain water district contracts (an amount to insure the completion of the work).

Labor and Material Covered—All persons supplying labor or materials to the contractor or his subcontractor for prosecution of the work provided in the contract (including lower tier subcontractors and suppliers to a subcontractor at any level); a person furnishing or providing medical, surgical or hospital care to the employees of a contractor of a contract made with a public body or the subcontractor; all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the contractor or his subcontractor, in connection with the performance of the contract, shall promptly be made; and all sums required to be deducted from the wages of employees of the contractor and his subcontractor pursuant to the Oregon Revised Statutes shall be paid over to the State Tax Commission.

Notice Required—Any person claiming to have supplied labor or material, including any person having a direct relationship with the contractor furnishing the bond, a subcontractor or an assignee of such person, or a person claiming monies due the State Accident Insurance Fund, the State Department of Employment Trust Fund, or the Department of Revenue in connection with the performance of the contract has a right of action on the bond, cashier's check, or certified check only if he or his assignee has not been paid in full and has presented and filed a Notice of Claim to the contractor and the Secretary of State or Clerk of other public entity before the expiration of 120 days after the person last provided labor or furnished material or 150 days for claims for contribution to employee benefit plans.

Such notice must be in writing addressed to the appropriate public body and setting forth information such as the name of the claimant; a brief description of the labor or material performed or furnished and the name of the person who performed or furnished labor or material; if the claim is for other than labor or materials, a brief description of the claim; the amount of the claim and the name of the principal and surety or sureties upon the bond and a brief description of the work involved for which the bond was issued; and to whom materials and labor were supplied. The notice shall be signed by the person making the claim or giving the notice.

The notice shall be in substantially the following form:

To: [name of the contractor or subcontractor and the name of the state agency or public body]

Notice hereby is given that the undersigned [name of the claimant] has a claim for [insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim] in the sum of [amount] dollars against the [insert public works bond or payment bond] taken from [name of the principal and, if known, the surety or sureties upon the bond] for the work of [insert a brief description of the work concerning which the bond was taken]. Such material or labor was supplied to [name of the contractor or subcontractor].

[Signature]

The notice of claim must be sent by registered or certified mail or hand delivered no later than 120 days after the person last provided labor or furnished materials. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business, or at the residence of the contractor.

A person who has made such claim, or his assignee, may institute an action on the contractor's bond.

Time for Suit—A claimant may institute an action on the contractor's bond not later than two years after the person last provided labor or materials or two years after the worker listed in the commissioners' notice of claim last provided labor.

Contracts Excluded—The Public Contract Review Board or the local contract review board may exempt certain contracts, both security and bond.

Penalty for Failure to Take Bond—The state of Oregon and the officers authorizing the contract are jointly liable for the labor and material used in the performance of any work under the contract, and for claims due the State Industrial Accident Fund, the Unemployment Compensation Trust Fund, and the Department of Revenue, if the contract was entered into with the state of Oregon and the state neglected to require the execution of a bond, cashier's check, or certified check. The public body and the officers authorizing the contract are jointly liable if the contract was entered into on behalf of a public body other than the state.

Statutory Citation—Oregon Revised Statutes, Chapter 279, §§ 279.526 to 279.542. For public contracts first advertised, or if not advertised then entered into, on or after March 1, 2005, the effective statutes have been renumbered Oregon Revised Statutes, Chapter 279C, §§ 279C.600 to 279C.625.

PENNSYLVANIA

Amount of Bond—100% of the contract price.

Labor and Material Covered—All labor or materials supplied to the prime contractor to whom the contract was awarded or to any of his subcontractors in the prosecution of the work provided for in such contract whether or not the material furnished or labor performed enters into and becomes a component part of the public building or other public work or public improvement including highway work. "Labor or materials" includes public utility services and reasonable rental of equipment, but only for the periods when equipment rented is actually used at the site. Materials supplied by a material supplier to another material

supplier are not covered by the bond. Note: Under the Commonwealth Procurement Code, once a contractor has made payment to the subcontractor according to the provisions of the Code, future claims for payment against the contractor or its surety by parties owed payment from the subcontractor which has been paid, are barred.

Notice Required—A claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave a payment bond but has no contractual relationship, with such prime contractor may bring an action on the payment bond only if he has given written notice to such contractor within 90 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place where his office is regularly maintained for the transaction of business or served in any manner in which legal process may be served.

To municipality. Duplicate copy of financial security to be filed with contracting agency.

Time for Suit—An action upon any payment or performance bond must be commenced after the expiration of 90 days, but within one year, after performance.

Contracts Excluded—Under \$10,000.

Penalty for Failure to Take Bond—No statutory provisions.

PUERTO RICO

Amount of Bond—The Commonwealth of Puerto Rico requires a payment bond for not less than one-half the contract amount. The penal sum of the payment bond required by various Authorities in Puerto Rico varies in amount

Labor and Material Covered—The payment bond required by the Commonwealth of Puerto Rico from every contractor who is awarded a contract for the construction, reconstruction, enlargement, alteration or preparation of any public work covers: (a) the payment to the workers and employees for the contractor, of the salaries and wages earned by them in their work; and (b) the payment, to the persons selling, supplying or delivering equipment, tools and material for the work of the price or value of the materials, equipment and tools supplied, sold or delivered.

Notice Required—The law of Puerto Rico applicable to bonds taken by the Commonwealth of Puerto Rico first reads that every person who has worked as a worker or employee on or who has supplied, sold or delivered materials, equipment and tools for work and who has not been paid, in whole or in part, his salaries or wages or the price of the materials, equipment and tools sold, delivered or supplied for the work shall have the right to file suit on the bond without necessity for previous notice for recovery of any amount, which may for such reason be owing him.

It also reads: “Any person or persons who have a direct contractual relationship with a subcontractor on the work and who have or do not have an expressed or implied contractual relationship with the contractor on the work, who has posted the bond, may institute action against the contractor, the bond of the contractor, the bondsmen of the contractor, or against any of said bondsmen, for the recovery of any part of: (a) any amount which may be owed them by the subcontractor for salaries or wages they have earned as employees or workers of the subcontractor on the work; and (b) any amount which may be owed them by reason of their having supplied, sold or delivered materials, equipment and tools for the subcontractor on the work.

Suppliers or sellers of materials, equipment and tools to the subcontractor shall be obligated, before instituting action against the contractor, his bond or his bondsmen, to notify the contractor by registered mail of their claim. At the expiration of 30 days from the mailing of said notice they may institute the action herein authorized.

Workers and employees of the subcontractor may institute action at any time without previous notice to the contractor of their claim.”

Time for Suit—Cannot be filed until after 30 days from the date of mailing of notice to the contractor before instituting suit on the contractor’s public work bonds. Suit must be instituted by all claimants within six months after final acceptance of the work by the Commonwealth of Puerto Rico.

Contracts Excluded—No special statutory provision.

Penalty for Failure to Take Bond—No special statutory provision.

RHODE ISLAND

Amount of Bond—Not less than 50% and not more than 100% of the contract price.

Labor and Material Covered—All labor performed or materials and equipment furnished.

Notice Required—Any person having a direct contract with a subcontractor but no express or implied contract with the contractor furnishing the bond shall only have a right of action upon giving written notice to the contractor within 90 days of the date on which the person furnished or performed the last labor, materials or supplies. The notice must state with substantial accuracy the amount claimed and the name of the party to whom the labor or materials was furnished. The notice shall be served by mailing via certified mail, postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an office or conducts his or her business or his or her residence.

Time for Suit—Any time after the expiration of 90 days after the day which the last of the labor was furnished or performed or material or equipment was furnished or supplied by any person claiming, but within two years, or under the maximum time limit as contained within any labor or material payment bond required under § 37-12-1, whichever period is longer.

In any suit brought under this chapter, such personal notice of the pendency of the suit as the court may order shall be given to all known creditors or persons claiming to be such under the bond as shall not have entered their appearances in the suit. In addition, the notice of pendency must be published in some newspaper in the state of general circulation in the city or town where the work in the contract was carried out. Such publication shall be once a week for three consecutive weeks in such form as is ordered by the court. These notice requirements may, however, be waived by the court.

Contracts Excluded—Any public road or portion thereof or any bridge in which the contract price shall be in excess of \$50,000 shall be required to furnish a bond; no exclusion provided for other projects.

Penalty for Failure to Take Bond—No express statutory provision.

SOUTH CAROLINA

Amount of Bond—For public highway construction contracts, a performance bond for 100% of the contract and in no case less than \$10,000; payment bond not less than 50% of the contract. For other public improvement contracts, a performance and payment bond, both equal to 100% of the contract price.

Labor and Material Covered—Labor and material supplied in the prosecution of the work.

Notice Required—No notice is required by a claimant having a contractual relationship, expressed or implied, with the principal contractor. However, any claimant having a direct contractual relationship with a subcontractor but no contractual relationship, expressed or implied, with the contractor must give written notice to contractor within 90 days from the date on which claimant did or performed the last of the labor or furnished or supplied the last of the material for which the claim is made stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed.

Time for Suit—In no event, may suit be commenced more than one year after the final settlement of the contract with respect to highway work. As to all other state construction, suit must be brought within one year after plaintiff last supplied materials or labor.

Contracts Excluded—Under \$10,000 (highway work). In the case of other public improvement contracts valued at \$100,000 or less, the using agency may waive the bond requirements providing the using agency has protected the state.

Penalty for Failure to Take Bond—No special statutory provision.

SOUTH DAKOTA

Amount of Bond—Not less than contract price.

Labor and Material Covered—Labor and material used in the prosecution of the work provided for in the public contract.

Notice Required—Anytime after the completion of any work or improvement for any public body the contractor may issue notice stating that the improvement has been completed and that all subcontractors or persons furnishing any item of labor, service, skill, material, shipment or supplies for any subcontractor must file their claims with the contractor within 120 days after the first publication of such notice. Assuming that the labor is proper (there are specific requirements concerning notice), the claim by any subcontractor or any other person will be barred as a claim or lien against the public body and contractor if such claim is not filed within 120 days from the date of first publication. If notice is not timely, all claims, setoffs or counterclaims will be barred as to the public body or contractor or surety.

Time for Suit—If no suit is brought by the public corporation within six months of the completion and final settlement of the contract, any person furnishing the contractor with labor or material shall, on proper application therefore, be provided with a certified copy of the contract and surety. Such person shall be permitted to bring suit in the name of the public corporation for his use and benefit against the contractor and surety from whom he has not received payment. If suit is instituted against the surety of the contractor, it may not be commenced until six months after the complete performance of the contract and final settlement thereof. Any suit commenced more than one year thereafter shall be barred. Personal notice of the pendency of such suit must be given to all known creditors and, in addition thereto, notice shall be given by publication in some newspaper of general circulation published in the county where the contract is being performed for at least three successive weeks, the last publication to be at least three months before the time limited for suit.

Contracts Excluded—The state may waive the bond requirement on contracts of less than \$50,000.

Penalty for Failure to Take Bond—The public corporation shall be liable to pay all persons who have performed labor or furnished material that entered into the public building the value of the work or material, and an action may be maintained therefore, provided same is commenced within 90 days from the acceptance of the work for which the same is claimed.

TENNESSEE

Amount of Bond—Bond shall be 25% of the contract price on all contracts in excess of \$100,000.

Labor and Material Covered—Labor or material furnished to a contractor or to any immediate or remote subcontractor under him.

Notice Required—The person furnishing labor and/or material shall, after such labor or material is furnished, within 90 days after the completion of such public work, give written notice to either the contractor or the public official who had charge of the letting of the contract, by return-receipt registered mail or by personal delivery, such written notice to set forth the nature and itemized account of the material furnished or labor done, balance due therefore, and a description of the property improved; provided that, in the case of public work undertaken by a municipality, the required notice or statements so mailed or delivered to the mayor thereof shall be deemed sufficient; in the case of public work by any county, the required notice or statements so mailed or delivered to the Chairman of the County Court of such county shall be deemed sufficient; in the case of public work by the state, the required notice so mailed or delivered to the governor shall be deemed sufficient.

The statute pertaining to highways provides that the performance of a highway contract shall not be finally accepted until the general contractor has satisfied the Highway Department that all materials “used by him, his subcontractors, or his agents” have been paid for and until “laborers and other employees working for him, his subcontractors, or his agents” have been paid. The Highway Department is required to take the initiative and advertise in the county where the work was done 30 days prior to final settlement. Such advertisement must state the date of the proposed final settlement and notify claimants to file notice with the Department not less than 30 days after the last published notice.

The Highway Commissioner is required to withhold, for a period of 60 days after the date of the last advertisement, sufficient funds to pay all claims so filed. If a claimant brings suit against the contractor within such 60-day period, the Highway Department pays such retained fund into court, otherwise to the contractor.

Time for Suit—Action shall be brought or claims so filed within six months following the completion of such public work or the furnishing of such labor or materials.

Under the Highway Code all actions on bonds furnished under the Highway Code shall be commenced after the expiration of one year following the date of the first publication of the notice required to be published in some newspaper in the county where the work was done, etc.; that settlement is about to be made, notifying all claimants to file notice of their claims with the department.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—Public officer who fails to obtain the bond is guilty of a misdemeanor. No similar counterpart in Highway Code. The Highway Commissioner is required to withhold, for a period of 60 days after the date of the last advertisement, sufficient funds to pay all claims so filed. If a claimant brings suit against the contractor within such 60-day period, the Highway Department pays such retained fund into court, otherwise to the contractor.

Time for Suit—Action shall be brought or claims so filed within six months following the completion of such public work or the furnishing of such labor or materials.

Under the Highway Code all actions on bonds furnished under the Highway Code shall be commenced after the expiration of one year following the date of the first publication of the notice required to be published in some newspaper in the county where the work was done, etc.; that settlement is about to be made, notifying all claimants to file notice of their claims with the department.

Contracts Excluded—Under \$100,000.

Penalty for Failure to Take Bond—Public officer who fails to obtain the bond is guilty of a misdemeanor. No similar counterpart in Highway Code.

TEXAS

Amount of Bond—The amount of the contract.

Labor and Material Covered—All “public work material” and “public work labor” supplied to the project.

“Public work material” means: (1) material used, or ordered and delivered for use, directly to carry out a public work; (2) specially fabricated material, which is material ordered by a prime contractor or subcontractor, that is specially fabricated for use in a public work and reasonably unsuitable for another use; (3) reasonable rental and actual running repair costs for construction equipment used, or reasonably required and delivered for use, directly to carry out work at the project site; or (4) power, water fuel and lubricants used, or ordered and delivered for use, directly to carry out a public work.

“Public work labor” means labor used directly to carry out a public work.

Notice Required—*Notice Required for Claim for Payment for Labor and Material.* To recover in a suit on a payment bond for a claim for payment for public work labor performed or public work material delivered, a payment bond beneficiary must mail to the prime contractor and the surety written notice of the claim on or before the 15th day of the third month after each month in which any of the claimed labor was performed or any of the claimed material was delivered. The notice must be accompanied by a sworn statement of account that states in substance the amount claimed is just and correct, and all just and lawful offsets, payments and credits known to the affiant have been allowed.

The statement of account shall include the amount of any retainage applicable to the account that has not become due under the terms of the public work contract between the payment bond beneficiary and the prime contractor or between the payment bond beneficiary and a subcontractor.

Notice of Claim for Unpaid Labor or Materials When Written Agreement Does Not Exist. When no written agreement exists between the claimant and the prime contractor or between the claimant and a subcontractor, the notice for a claim for unpaid bills must contain the name of the party for whom the public work labor was performed or to whom the public work material was delivered, the approximate date of performance or delivery, a description of the public work labor or material for reasonable identification and the amount due. The claimant shall generally itemize the claim and include with it copies of documents, invoices or orders that reasonably identify the public work labor performed or public work material delivered for which the claim is made, the job and the destination of delivery.

Notice of Claim for Multiple Items of Labor or Material. When the claim is for multiple items of public work labor or material, to be paid on a lump sum basis, the notice must describe the labor or material in a manner that reasonably identifies the labor or material, state the name of the party for whom the labor was performed or to whom the material was delivered, the approximate date of performance or delivery, whether the contract is written or oral, the amount of the contract and the amount claimed.

Notice of Claim for Unpaid Labor or Material Under Written Unit Price Agreement. Where a claimant who is a subcontractor or materialman to the prime contractor or to a subcontractor has a written unit price agreement that is wholly or partially completed, notice is sufficient, if claimant attaches to the sworn statement of account a list of units and unit prices as fixed by his contract, and a statement of those completed and partially completed units.

Additional Notice Required for Payment Bond Beneficiary Without Direct Contractual Relationship with Prime Contractor. A payment bond beneficiary who does not have a direct contractual relationship with the prime contractor for public work labor or material must also provide the following notices:

(1) To perfect a claim for contractual retainage, the payment bond beneficiary must provide written notice to the prime contractor that the contract provides for retainage, and generally indicates the nature of the retainage on or before the 15th day of the second month after the date of the beginning of the delivery of public work material or the performance of public work labor.

(2) To perfect a claim for unpaid public work labor performed or public work material delivered, a second tier payment bond beneficiary must provide written notice to the prime contractor on or before the 15th day of the second month after each month in which the labor was performed or the material was delivered. A copy of the statement sent to a subcontractor is sufficient as notice under this subsection;

(3) To perfect a claim for specifically fabricated materials, a payment bond beneficiary must mail to the prime contractor, on or before the 15th day of the second month after the receipt and acceptance of an order for specially fabricated material, written notice that the order has been received and accepted; and

These additional notice provisions do not apply to a payment bond beneficiary who is an individual mechanic or laborer who makes a claim for wages.

Retainage. Retainage, as defined in the statute, means the part of the payments that are not required to be paid within the month after the month in which the labor is performed or material furnished.

Notice Required for Claim for Payment of Retainage. To recover on a payment bond for a claim for payment of retainage, a claimant whose contract with a prime contractor or subcontractor provides for retainage must mail written notice of the claim to the prime contractor and the surety on or before the 90th day after the date of the final completion of the public work contract. The notice shall consist of a statement stating, the amount of the contract, any amount paid and the outstanding balance. Notwithstanding the above, notice for claim for payment of retainage is not required if the amount claimed is part of a prior claim made for payments other than retainage.

Time for Suit—Suit on a payment bond may be filed if the claim is not paid before the 61st day after the date the notice of claim is mailed. No suit may be brought on the payment bond after the expiration of one year after the date the notice of claim is mailed.

Contracts Excluded—Contracts excluded are those less than \$25,000.

Penalty for Failure to Take Bond—If the payment bond is not furnished, the governmental entity is subject to the same liability that a surety would have if the surety had issued the payment bond and the governmental entity had required the bond to be provided.

Statutory Citation—Texas Government Code, Chapter 2253.

UTAH

Amount of Bond—A payment bond must be in an amount equal to 100% of the price specified in the contract.

Labor and Material Covered—Labor, service, equipment and/or material supplied to the contractor or its subcontractors for the performance of the work provided for in the contract.

Notice Required—For subcontractors and suppliers, a preliminary notice must be filed with the State Construction Registry before making a claim (commencing an action) on a payment bond. Subcontractors and suppliers of all tiers must file a preliminary notice within 20 days of their first furnishing labor, equipment, or material to a project or within 20 days of the filing of the notice of commencement, whichever is later. Preliminary notices filed after this timeframe only become effective five days after which they are filed and preclude a subcontractor or supplier from filing a claim for compensation for labor, equipment or materials furnished prior to the effective date of the preliminary notice, except as against the person with whom the subcontractor or supplier contracted. The preliminary notice must include the: (1) claimant's name, address and telephone number; (2) name and address of the person who contracted for the labor, equipment, service, equipment or materials; (3) name of the record or reputed owner of the project; (4) name of the original contract under which the work is performed; and (5) project address or a description of the location of the project.

Time for Suit—A period commencing 90 days after the date on which claimant supplied the last of the labor, service, equipment and/or material for which he claims payment to one year after the date of last supplied, labor, service, equipment and/or material for which the claim is made.

Contracts Excluded—There are no contracts excluded. However, rules may provide for waiver of the payment bond requirement for circumstances in which the state considers a payment bond to be unnecessary to protect the state.

Penalty for Failure to Take Bond—If the state or a political subdivision fails to obtain a payment bond, it shall, upon demand by a person who has furnished labor or supplied materials to the contractor or subcontractor for the work provided for in a contract promptly make payment to that person. That person shall have a direct right of action against the state or the political subdivision upon giving written notice to the state or political subdivision within 90 days from the date on which such person performed the last of the labor or supplied the last of the material for which claim is made. The person shall state in the notice a designation of the construction project and its location, the amount claimed, and the name of the party for whom the labor was performed or to whom the material was supplied. The notice shall be served by registered or certified mail, postage prepaid, on the state agency or political subdivision that is a party to the contract. No such action may be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by such person. There is some question as to whether preliminary notice is required as a prerequisite to commencing a failure to obtain payment bond action.

VERMONT

Amount of Bond—The penal sum of the additional bond is to be in such an amount as the Highway Board shall direct.

Labor and Material Covered—All creditors of the contractor for materials, merchandise, labor, rent or hire of vehicles, power shovels, rollers, concrete-mixers, tools and other appliances, professional services, premiums and other services used or employed in carrying on the work, and is further conditioned for the payment of taxes, both state and municipal, and contributions to the State Commissioner of Employment and Training accruing during the term of performance of said contract.

Notice Required—The claimant must file with the secretary a sworn statement of his claim within 90 days after the final acceptance of the project by the state of Vermont or within 90 days from the time such taxes or contributions to the Vermont Commissioner of Employment and Training are due and payable.

Time for Suit—Within one year after filing his claim with the Commissioner of Highways, claimant must institute suit on the bond, with notice and summons to the contractor, the surety and the secretary to enforce such claim, or must intervene in a suit theretofore instituted.

Contracts Excluded—Non-highway projects.

Penalty for Failure to Take Bond—No special statutory provision.

VIRGINIA

Amount of Bond—Payment bonds in the sum of the prime contract amount required on all public construction contracts exceeding \$100,000.

Labor and Material Covered—Labor performed and material furnished to the prime contractor or to a subcontractor in furtherance of the work in the prime contract, including public utility services and equipment rented.

Notice Required—No notice is required by a person having a contract with the prime contractor. Claimant having a contract with a subcontractor must give written notice of the bond claim to the prime contractor within 180 days from the date on which the claimant performed the last labor or furnished the last material for which he claims payment, stating with substantial accuracy the amount claimed and the name of the party to whom the work was performed or to whom the material was furnished. Such notice shall be served by registered or certified mail, postage prepaid, to the contractor at any place where his office is regularly maintained for the transaction of business. The 180-day time limit does not apply to claims for retainages. A claimant having a contract with a subcontractor required by the prime contractor to have a subcontractor payment bond is allowed to bring an action on the subcontractor's payment bond, but may not bring an action on the prime contractor's payment bond.

Time for Suit—Suit must be instituted more than 90 days after the last day labor or material was supplied for which payment is claimed, but within one year after the day on which the claimant last performed labor or last furnished materials.

Contracts Excluded—Contracts of \$100,000 or less, unless required by a public body.

Penalty for Failure to Take Bond—No special statutory provision.

Waiver—A waiver of bond rights is void unless in writing and signed after the supply of labor or material.

WASHINGTON

Amount of Bond—Full contract price, except in cases of cities and towns, in which case the municipality may, by general ordinance, fix and determine the amount of the bond, provided same shall not be less than 25% of contract price.

Labor and Material Covered—All laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such person or persons with provisions or supplies for the carrying on, prosecution, or doing of any public work.

Notice Required by Suppliers. Every person, firm or corporation furnishing materials, supplies or provisions shall, not later than 10 days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of such work, deliver or mail to the contractor a notice in writing, stating, in substance and effect, that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished, and that such contractor and his bond will be held for the payment of the same. No suit may be maintained in any court against the contractor or his bond to recover for such material, supplies, or provisions or any part thereof unless this notice has been given.

Generally. Creditor shall not have any right of action on the bond unless, within 30 days from and after the completion of the contract with an acceptance of the work by the executive action of the municipal officers, the creditor shall present to and file with such public official a notice in writing in substance of claim. This notice must be signed by the person or corporation making the claim or giving the notice, and, after being presented and filed, the notice becomes a public record.

Time for Suit—No special statutory provision for suit against payment bond.

Contracts Excluded—In cases of contracts of \$25,000 or less, the public entity may retain 50% of the contract amount in lieu of bond.

Penalty for Failure to Take Bond—Municipality is liable to all persons authorized to sue on the bond to the full extent and for the full amount of all debts due them by the contractor.

WEST VIRGINIA

Amount of Bond—In contracts for the construction, alteration or repair of public buildings other than school edifices, penal sum equal at least to the reasonable cost of the materials, machinery, equipment and labor required for the completion of said contract. In the case of highway work, in such penal sum as the State Road Commissioner shall require, but not to exceed the contract price. A bond in double the amount of the contract price is required in connection with contracts for the building or repair of school property. With respect to school construction, boards shall require all persons contracting for the building or repairing of school property, where the contract exceeds \$100, to execute a bond, with approved security, in the amount of the contract price.

Labor and Material Covered—All materials, machinery, equipment and labor delivered to the contractor for use in the erection, construction, improvement, alteration or repair of any public building used or to be used for public purposes.

Notice Required—No special statutory provision.

Time for Suit—No special statutory provision.

Contracts Excluded—No special statutory provision.

Penalty for Failure to Take Bond—No special statutory provision.

WISCONSIN

Amount of Bond—Not less than contract price.

Labor and Material Covered—All labor or material furnished, used, or consumed in making a public improvement or performing a public work where the claimant has a direct contract with the prime contractor or with any subcontractor of the prime contractor.

Notice Required—A subcontractor or supplier may only maintain an action if the claimant has, within 60 days after the first provision of labor or materials, notified the prime contractor in writing that the claimant has or will provide labor and materials on the project. Written notice of claim to Public Authority and contractor prior to funds being paid to contractor. If contractor does not dispute within 30 days, the claim must be paid upon demand.

Time for Suit—No later than one year after the completion of the work under the contract.

Contracts Excluded—All contracts with state for amounts less than \$10,000, but not more than \$100,000.

Penalty for Failure to Take Bond—No special statutory provision.

WYOMING

Amount of Bond—Not less than one-half of the contract price, except where such price exceeds \$100,000, in which case the bond shall be in such amount as the appropriate officer, agency or governing body deems sufficient.

Labor and Material Covered—All work, labor, material or goods of any kind which were used in the execution of the contract concerning any public building or other public structure.

Notice Required—Subcontractors or materialmen on projects of \$50,000 or more must give written notice to the general contractor of his rights under the bond within 60 days of first providing labor or materials. If this notice is not given, all rights under the payment bonds are waived.

Time for Suit—Suit must be brought within one year after the date of the first publication of notice of final payment of the contract. Any person entitled to protection of the bond shall notify the obligee named in the bond at the beginning of his suit and shall include in said notice the names of the parties, a description of the guarantee and the amount and nature of his claim.

Contracts Excluded—\$7,500 or under.

Penalty for Failure to Take Bond—None.