

HOUSE BILL No. 2794

By Committee on Judiciary

2-7

9 AN ACT concerning civil procedure; relating to public works sureties;
10 amending K.S.A. 60-1111 and 60-1112 and repealing the existing
11 sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-1111 is hereby amended to read as follows: 60-
15 1111. (a) *Bond by contractor.* Except as provided in this section, when-
16 ever any public official, under the laws of the state, enters into contract
17 in any sum exceeding \$100,000 with any person or persons for the pur-
18 pose of making any public improvements, or constructing any public
19 building or making repairs on the same, such officer shall take, from the
20 party contracted with, a bond to the state of Kansas with good and suf-
21 ficient sureties in a sum not less than the sum total in the contract, con-
22 ditioned that such contractor or the subcontractor of such contractor shall
23 pay all indebtedness incurred for *withholding taxes, unemployment in-*
24 *surance contributions, any other amounts owed to the state of Kansas or*
25 *any state agency*, labor furnished, materials, equipment or supplies, used
26 or consumed in connection with or in or about the construction of such
27 public building or in making such public improvements.

28 A contract which requires a contractor or subcontractor to obtain a
29 payment bond or any other bond shall not require that such bond be
30 obtained from a specific surety, agent, broker or producer. A public of-
31 ficial entering into a contract which requires a contractor or subcontractor
32 to obtain a payment bond or any other bond shall not require that such
33 bond be obtained from a specific surety, agent, broker or producer.

34 (b) *Filing and limitations.* The bond required under subsection (a)
35 shall be filed with the clerk of the district court of the county in which
36 such public improvement is to be made. When such bond is filed, no lien
37 shall attach under this article. Any liens which have been filed *under this*
38 *article* prior to the filing of such bond shall be discharged. ~~Any~~ *The state*
39 *of Kansas or any state agency to which there are due any taxes, contri-*
40 *butions or other amounts, as stated in subsection (a), or any person to*
41 *whom there is due any sum for labor or material furnished, as stated in*
42 *subsection (a), or such person's assigns, may bring an action on such bond*
43 *for the recovery of such indebtedness but no action shall be brought on*

1 such bond after six months from the completion of such public improve-
2 ments or public buildings.

3 (c) In any case of a contract for construction, repairs or improvements
4 for the state or a state agency under K.S.A. 75-3739 or 75-3741, and
5 amendments thereto, a certificate of deposit payable to the state may be
6 accepted in accordance with and subject to K.S.A. 60-1112, and amend-
7 ments thereto. When such certificate of deposit is so accepted, no lien
8 shall attach under this article. Any liens which have been filed *under this*
9 *article* prior to the acceptance of such certificate of deposit shall be dis-
10 charged. ~~Any~~ *The state of Kansas or any state agency to which there are*
11 *due any taxes, contributions or other amounts, as stated in subsection (a),*
12 *or any person to whom there is due any sum for labor furnished, mate-*
13 *rials, equipment or supplies used or consumed in connection with or for*
14 *such contract for construction, repairs or improvements shall make a*
15 *claim therefor with the director of purchases under K.S.A. 60-1112, and*
16 *amendments thereto.*

17 Sec. 2. K.S.A. 60-1112 is hereby amended to read as follows: 60-
18 1112. (a) The director of purchases may accept a certificate of deposit
19 payable to the state instead of any required surety bond from a bidder or
20 contractor in the case of any contract for construction, repairs or im-
21 provements under K.S.A. 75-3739, 75-3741 or 60-1111 and amendments
22 thereto. Each such certificate of deposit shall be in an amount which is
23 at least equal to the contract price, shall be subject to forfeiture to the
24 state and shall be in a form and under such other conditions as may be
25 applicable and prescribed by the director of purchases for surety bonds
26 and in accordance with this section.

27 (b) Each such certificate of deposit shall be retained by the state for
28 at least six months after the final acceptance of the construction, repairs
29 or improvements for which the contract was entered into. At the end of
30 such period, the certificate of deposit may be endorsed back to the vendor
31 or bidder if there are no claims by the state under the contract for which
32 the certificate of deposit was accepted under this section or by any person
33 making a claim against the certificate of deposit under subsection (c). All
34 interest accruing under any such certificate of deposit shall belong to the
35 bidder or contractor unless the certificate of deposit is forfeited to the
36 state or as otherwise provided under subsection (c).

37 (c) (1) In any case of a breach of performance under a contract for
38 construction, repairs or improvements for which a certificate of deposit
39 was accepted under this section, the director of purchases shall determine
40 the amount of money needed to remedy such breach and may set off the
41 amount from the moneys on deposit under the certificate of deposit, after
42 notice to the contractor of such breach and the amount determined by
43 the director therefor.

1 (2) In any case of a claim against a certificate of deposit accepted
2 under this section for *withholding taxes, unemployment insurance con-*
3 *tributions, any other amounts owed to the state of Kansas or any state*
4 *agency*, labor furnished, materials, equipment or supplies used or con-
5 sumed in connection with or for the contract for construction, repairs or
6 improvements, the director of purchases may pay such claim from the
7 moneys on deposit under the certificate of deposit if the contractor does
8 not dispute such claim or the amount thereof. If the contractor disputes
9 any such claim or the amount thereof, the director of purchases may
10 interplead such claim or claims in the district court for a county where
11 the construction, repairs or improvements are located. The director of
12 purchases may file an original action to resolve such claim or claims, if
13 necessary, and pay any moneys remaining from the certificate of deposit
14 into the district court therefor.

15 Sec. 3. K.S.A. 60-1111 and 60-1112 are hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the statute book.