

1786

2009-2010 Regular Sessions

I N S E N A T E

February 6, 2009

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed,
and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to performance and
payment bond requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 137 of the state finance law, as
2 separately amended by section 17 of part MM of chapter 57 and chapter
3 619 of the laws of 2008, is amended to read as follows:
4 1. In addition to other bond or bonds, if any, required by law for the
5 completion of a work specified in a contract for the prosecution of a
6 public improvement for the state of New York a municipal corporation, a
7 public benefit corporation or a commission appointed pursuant to law, or
8 in the absence of any such requirement, the comptroller may or the other
9 appropriate official, respectively, shall nevertheless require prior to
10 the approval of any such contract a bond guaranteeing prompt payment of
11 moneys due to all persons furnishing labor or materials to the contrac-
12 tor or any subcontractors in the prosecution of the work provided for in
13 such contract. Whenever a municipal corporation issues a permit subject
14 to compliance with section two hundred twenty of the labor law, such
15 permittee or its contractor or subcontractors furnishing workers shall
16 post a payment bond subject to this section. Provided, however, that all
17 performance bonds and payment bonds may, at the discretion of the head
18 of the state agency, public benefit corporation or commission, or his or
19 her designee, be dispensed with for the completion of a work specified
20 in a contract for the prosecution of a public improvement for the state
21 of New York for which bids are solicited where the aggregate amount of
22 the contract is under one hundred FIFTY thousand dollars and provided
23 further, that in a case where the contract is not subject to the multi-
24 ple contract award requirements of section one hundred thirty-five of
25 this article, such requirements may be dispensed with where the head of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 the state agency, public benefit corporation or commission finds it to
2 be in the public interest and where the aggregate amount of the contract
3 awarded or to be awarded is less than [two] THREE hundred thousand
4 dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION OR
5 COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE CONTRACT
6 AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR INCREASES
7 IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL PROVIDE
8 INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF, PERFORMANCE AND
9 PAYMENT BONDS. Provided further, that in a case where a performance or
10 payment bond is dispensed with, twenty per centum may be retained from
11 each progress payment or estimate until the entire contract work has
12 been completed and accepted, at which time the head of the state agency,
13 public benefit corporation or commission shall, pending the payment of
14 the final estimate, pay not to exceed seventy-five per centum of the
15 amount of the retained percentage.

16 S 2. Subdivision 4 of section 139-f of the state finance law, as
17 amended by chapter 83 of the laws of 1995, is amended to read as
18 follows:

19 4. Notwithstanding any other provision of this section or other law,
20 requirements for the furnishing of a performance bond or a payment bond
21 may be dispensed with at the discretion of the head of the state agency
22 or corporation, or his or her designee, where the public owner is a
23 state agency or corporation described in subdivision one-a of this
24 section and the aggregate amount of the contract awarded or to be
25 awarded is under ONE HUNDRED fifty thousand dollars and, in a case where
26 the contract is not subject to the multiple contract award requirements
27 of section one hundred thirty-five of this article, such requirements
28 may be dispensed with where the head of the state agency or corporation
29 finds it to be in the public interest and where the aggregate amount of
30 the contract awarded or to be awarded is under [two] THREE hundred thou-
31 sand dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION
32 OR COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE
33 CONTRACT AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR
34 INCREASES IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL
35 PROVIDE INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF,
36 PERFORMANCE AND PAYMENT BONDS. Provided further, that in a case where a
37 performance or payment bond is dispensed with, twenty per centum may be
38 retained from each progress payment or estimate until the entire
39 contract work has been completed and accepted, at which time the head of
40 the state agency or corporation shall, pending the payment of the final
41 estimate, pay not to exceed seventy-five per centum of the amount of the
42 retained percentage.

43 S 3. This act shall take effect immediately.