

(d) The county intends to sell this land to resolve a long-standing trespass situation.

Sec. 2. SALE OF ACQUIRED STATE LAND; MILLE LACS COUNTY.

(a) Notwithstanding Minnesota Statutes, section 89.01, subdivision 5, the public sale provisions under Minnesota Statutes, section 94.10, subdivision 1, and any other law to the contrary, the commissioner of natural resources may sell by private sale the land inside of Rum River State Forest which is described in paragraph (c), under the remaining provisions of Minnesota Statutes, chapter 94.

(b) The conveyance must be in a form approved by the attorney general.

(c) The land that may be sold is described as the East 100 feet of the North 406 feet of the Southeast Quarter of the Southeast Quarter of Section 26, Township 42 North, Range 27 West, Mille Lacs County, Minnesota, containing 0.93 acres.

(d) The commissioner intends to sell this land to resolve a long-standing trespass situation.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:06 p.m.

CHAPTER 419—S.F.No. 1692

An act relating to contracts; creating the public contractors' performance and payment bond act by amending existing provisions; amending Minnesota Statutes 1992, sections 574.26; 574.261; 574.262, subdivision 1; 574.263, subdivision 3, and by adding a subdivision; 574.264; 574.27; 574.28; 574.29; 574.30; 574.31; and 574.32.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 574.26, is amended to read:

574.26 CONTRACTORS' BONDS FOR PUBLIC WORK.

Subdivision 1. CITATION. (a) Sections 574.26 to 574.32 are the "public contractors' performance and payment bond act," within those sections referred to as "the act."

(b) For the purposes of the act, (1) "public body" means the state, municipal corporation, school district, or other public board or body; and (2) "labor and materials" means work, skill, tools, machinery, materials, insurance premiums, equipment or supplies, or taxes incurred under section 290.02 or chapter 297A; and (3) "contract" means a contract with a public body for the doing of public work.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. TERMS. Except as provided in sections 574.263 and 574.264 or if the amount of the contract is \$10,000 or less, a contract with ~~the state, or with any municipal corporation or other public board or body thereof,~~ a public body for the doing of any public work, is not valid unless the contractor shall give gives (1) a performance bond to the state or other public body contracted with whom the contractor entered into the contract, for the use and benefit of the obligee, the state and public body to complete the contract according to its terms, and conditioned on saving the public body harmless from all costs and charges that may accrue on account of completing the specified work, and (2) a payment bond for the use and benefit of all persons doing work or furnishing skill, tools, machinery, or materials or insurance premiums or equipment or supplies for any camp maintained for the feeding or keeping of workers and animals labor and materials engaged under, or for the purpose of, such to perform the contract, conditioned for the payment, as they become due, of all just claims for such work, tools, machinery, skill, materials, insurance premiums, equipment, taxes incurred under section 290.92 or chapter 297A, and supplies for the completion of the contract in accordance with its terms; for saving the obligee harmless from all costs and charges that may accrue on account of the doing of the work specified; and for the enforcing of the terms of the bond the labor and materials. Reasonable attorneys' fees, costs, and disbursements may be awarded in an action to enforce claims under the act if the action is brought on the bond; including reasonable attorney's fees, in any case where such action is successfully maintained and for the compliance with the laws appertaining thereto or successfully appealed.

Subd. 3. PENALTY. The penalty of ~~such bond shall be each bond must not be less than~~ the contract price, and if after the giving of the bond the contract price ~~should for any reason be is~~ increased, ~~for any reason, the obligee public body may require an additional bond bonds,~~ the penalty penalties of which shall be not less than the amount of ~~such the~~ increase, and if ~~such the additional bond be bonds are~~ not furnished within ten days after ~~such demand,~~ the work on the contract shall cease until ~~such the additional bond shall have been bonds are~~ furnished. In contracts made by the commissioner of administration or the department of transportation of the state, the ~~penalty of the bond shall be in such amount as 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.

Sec. 2. Minnesota Statutes 1992, section 574.261, is amended to read:

574.261 SECURITY IN LIEU PLACE OF BOND.

Subdivision 1. **CERTIFIED OR CASHIER'S CHECK.** With the approval of the commissioner of administration and ~~where if~~ the amount of the contract is not ~~in excess of more than~~ \$5,000 a person may make a contract with the state ~~for the doing of any to do~~ public work and in lieu place of giving the ~~bond bonds~~ required by section 574.26, submit to the commissioner of administration for deposit with the state treasurer (1) a certified check or cashier's check in the same amount as would be is required for a performance bond as security ~~for~~

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~~protection of to protect the state, including its tax revenues, and (2) a certified or cashier's check in the same amount as is required for a payment bond for all persons doing work or furnishing skills, tools, machinery, or labor and materials under or for the purpose of executing such to perform the contract. Such deposit shall be The deposits are security for the payment, as they become due, of all just claims for work, skills, tools, machinery, and labor and materials; and for the performance and completion of the contract in accordance with according to its terms; and as security for all costs and charges that may accrue for the doing of the work specified and compliance with the laws relating thereto.~~

Subd. 1a. LETTERS OF CREDIT. Whenever this act or other law or home rule charter requires a performance bond from a contractor doing a public work project of under \$50,000 for a public body, the public body may permit the contractor to provide, in place of the performance bond, an irrevocable bank letter of credit in the same amount as required for the bond and subject to the same conditions as the bond.

Subd. 2. CLAIMS. A person entitled to the protection of such the deposit in place of a payment bond and wishing to take advantage of its benefits shall, at the time of commencing any action against either the contractor or any subcontractor engaged in such work no later than 120 days after the person's last contribution of labor and materials was furnished to the public work that is the subject of the contract, notify in writing the commissioner of administration and the state treasurer of the commencement of such suit person's claim, giving the names of the parties involved and the amount and nature of the claim. No If an action is commenced to obtain the benefit of the deposit in place of a payment bond, a judgment shall must not be entered within 30 days after the giving of such the notice of the claim and the state and or any person entitled to the protection of such the deposit may be admitted on its motion as a party to the action and the court shall determine the rights of all parties in the premises. In such suit in which the state treasurer is a party, the court may order the treasurer to make payment among the parties to the suit entitled thereto to payment. If the amount of the deposit is insufficient to pay the claims in full, the court may direct that they be paid on a pro rata prorated basis. The deposit in place of a payment bond made with the treasurer pursuant to the terms of under this section shall be held by the treasurer for 90 120 days after the contract with the state has been completed last item of labor and materials was furnished to the public work that is the subject of the contract. If no suit a claim is commenced not filed within said period of 90 days the 120-day period, the deposit shall be returned to the person making it. If suit a claim is commenced filed within said 90 day the 120-day period, the deposit shall be disbursed by the state treasurer pursuant to the under an order of the court. Such moneys as are deposited with the state treasurer pursuant to the terms of this section are hereby annually appropriated to the state treasurer for the purpose of carrying out the terms and provisions hereof.

Subd. 3. APPROPRIATION. Money deposited with the state treasurer under this section is annually appropriated to the state treasurer to carry out this section.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 3. Minnesota Statutes 1992, section 574.262, subdivision 1, is amended to read:

Subdivision 1. **BONDS.** To carry out the programs, established elsewhere by law, for awarding certain portions of state construction and procurement contracts and subcontracts to small businesses and small businesses owned by economically and socially disadvantaged persons, the commissioners of administration and transportation may, when deemed appropriate, arrange, through competitive bidding or negotiation, to partially indemnify bonding companies which provide bid ~~and~~, performance, and payment bonds covering all or any part of the construction and procurement contracts or subcontracts which are designated for award to small businesses and small businesses owned by economically and socially disadvantaged persons. The amount of the indemnity for all the bonds on each contract shall not exceed \$100,000. Bonds which are subject to indemnity shall be provided to contractors at a cost which shall not exceed the cost of bid ~~and~~, performance, and payment bonds if purchased in the usual manner by other businesses for similar contract work or procurement.

Sec. 4. Minnesota Statutes 1992, section 574.263, subdivision 3, is amended to read:

Subd. 3. BID DEPOSIT IN PLACE OF PERFORMANCE BOND.

For a contract made by the commissioner for a forestry development project, the commissioner may require a bid deposit in lieu place of a performance bond for charges that may accrue because of doing the specified work and to enforce the terms of the contract, ~~including reasonable attorney's fees if an action is successful.~~ The commissioner may set the amount of the bid deposit, but it may not be less than five percent of the contract price.

Sec. 5. Minnesota Statutes 1992, section 574.263, is amended by adding a subdivision to read:

Subd. 4. PAYMENT BOND. A contract with the state for a forestry development project may require a payment bond at the discretion of the commissioner of natural resources. If the commissioner determines that a payment bond is required, the commissioner also has the discretion to decide whether the bond may be in the form of securities in place of a bond as provided in section 574.264. If so, the securities cannot have less value than five percent of the contract price.

Sec. 6. Minnesota Statutes 1992, section 574.264, is amended to read:

574.264 SECURITY IN LIEU PLACE OF BOND.

Subdivision 1. **FOREST DEVELOPMENT PROJECTS.** In place of a performance or payment bond or bid deposit for a state contract for a forestry development project less than \$50,000, the person required to file the bond or bid deposit may deposit in a local designated state depository or with the state

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treasurer a certified check, a cashier's check, a postal, bank, or express money order, assignable bonds or notes of the United States, or an assignment of a bank savings account or investment certificate or an irrevocable bank letter of credit, in the same amount that would be required for ~~a the~~ bond or bid deposit. If securities listed in this section are deposited, their value shall not be less than the amount required for the bond or bid deposit and the person required to file the ~~performance~~ bond or bid deposit shall submit an agreement authorizing the commissioner to sell or otherwise take possession of the securities in the event of default under the contract or nonpayment of any persons furnishing labor and materials under, or to perform, the contract. ~~The security deposits are for the protection of the state and for the performance and completion of the contract in accordance with its terms and as security for all costs and charges that may accrue for the doing of the work specified and compliance with the laws relating to it.~~

Subd. 2. **CLAIMS AGAINST SECURITIES IN PLACE OF BID DEPOSITS.** ~~The bid deposit is~~ Securities in place of payment bonds are subject to claims as provided for other deposits in section 574.261, subdivision 2.

Sec. 7. Minnesota Statutes 1992, section 574.27, is amended to read:

574.27 BIDDERS TO HAVE RIGHT OF ACTION IN CERTAIN CASES.

A public body may require that a bidder provide a bid bond or other security as a proposal guaranty that the bidder will enter into a contract if its bid is accepted. Any bidder upon any public work or public improvement of any kind in this state where bids ~~therefor~~ are received and where, in connection with such bids, a deposit of money, or a certified check, or ~~bid~~ bond or other security ~~is required to must be given for the performance of~~ provided with the bid if accepted, the ~~political subdivision of the state~~ public body causing such public work or other public improvement to be made or done shall be liable to such bidder for a return of the money, certified check, or other thing of value so deposited ~~in the event of the nonacceptance of~~ if the bidder's bid on such public work or improvement ~~is not accepted, or, in the event of the acceptance of~~ if the bidder's bid; ~~during the interval between such acceptance and the entering into of a contract for such work and the giving of security in connection therewith by the bidder, and is accepted before the bid expires, after the bidder enters into a contract for the work and provides acceptable security in connection with it.~~ This liability ~~shall exist~~ exists even though the failure to return ~~such the~~ money, certified check, or other thing of value ~~be occasioned by~~ is due to the defalcation or unlawful conversion ~~thereof of the thing of value~~ by the officer of ~~such political subdivision~~ the public body charged with the custody ~~thereof of it.~~

Sec. 8. Minnesota Statutes 1992, section 574.28, is amended to read:

574.28 APPROVAL AND FILING OF BOND.

Such bond shall be approved by, and filed Before beginning work on the contract for the public work, the contractor on whose behalf the payment and

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performance bonds were issued must file both bonds with; the treasurer, board, or officer having financial management of the obligee named therein unless the contract be for work upon a state trunk highway; or erection, improvement, or repair of buildings for a state institution; in which case it shall be approved and filed with the board or officer having the financial management thereof in the bonds. If such bond be not taken; the corporation or body for which work is done under the contract shall be liable to all persons furnishing labor, skill, or material to the contractor thereunder for any loss resulting to them from such failure. ~~No~~ The payment and performance bonds must list the address of the contractor on whose behalf the bonds were issued and of the surety providing the bonds. The payment and performance bonds, if acceptable in form and content, must be approved by the board or officer having financial management of the obligee, or by the obligee's treasurer. An assignment, modification, or change of the contract, or change in the work covered thereby by the contract, nor any or an extension of time for completion of to complete the contract, shall does not release the sureties on the bond bonds.

Sec. 9. Minnesota Statutes 1992, section 574.29, is amended to read:

574.29 ACTION ON FAILURE TO GET PAYMENT BOND.

Any person entitled to the protection of such bond may maintain an action thereon for the amount due. The person shall notify the obligee named in the bond of the beginning of such action; giving the names of the parties; describing the bond sued upon; and stating the amount and nature of the claim. No judgment shall be entered in such action within 30 days after the giving of such notice. The obligee, or any other person having a cause of action on such bond, may be admitted, on motion, as a party to such action; and the court shall determine the rights of all parties thereto. If the amount realized on the bond be insufficient to discharge all such claims in full; such amount shall be distributed among the parties pro rata. If the state or other public body fails to get and approve a valid payment bond or securities in place of a payment bond as required by the act, the public body for which work is done under the contract is liable to all persons furnishing labor and materials under or to perform the contract for any loss resulting to them from the failure. The public body is not liable if the bond does not list the proper address of the contractor on whose behalf the bond was issued or of the surety providing the bond.

Sec. 10. Minnesota Statutes 1992, section 574.30, is amended to read:

574.30 INSOLVENT OR INSUFFICIENT SURETIES.

When, in its the obligee's judgment, any of the sureties a surety on such a bond have become required by the act is insolvent, or for any cause are is no longer a proper or sufficient sureties surety, the obligee may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by such the obligee, all work on such the contract shall must cease until such the new or additional bond is bonds are furnished. If such bond be the bonds are not furnished within such time the ten days, the obligee may, at its

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option, ~~determine~~ terminate the contract and complete the same as the agent, and at the expense of ~~such~~ the contractor and its sureties.

Sec. 11. Minnesota Statutes 1992, section 574.31, is amended to read:

574.31 LIMIT OF TIME TO BRING ACTION.

Subdivision 1. CLAIMS ON PERFORMANCE BONDS. In the event of a claim by the public body on a performance bond, no action shall be maintained on any such bond unless within 90 days after the completion of the contract and acceptance thereof by the proper public authorities, the claimant shall file a written notice later than permitted under the statute of limitations applicable to the claim. As a condition precedent to bringing an action upon a performance bond, the public body must first serve written notice of claim under the contractor's bond personally or by certified mail upon the surety who issued the bond and upon the contractor on whose behalf the bond was issued specifying the nature and amount of the claim and the date of furnishing the last item thereof, in the office of the commissioner of commerce, in case the contract is for the performance of work for the state or any department thereof; and, in case the contract is let by any county, municipal corporation, or other public board or body, then such notice shall be filed in the office of the auditor of the county letting the contract or the county in which such municipal corporation, public board or body is situate; and if situate in two or more counties, then such notice shall be filed in the office of the auditor of each county; nor unless the action is begun within one year after the filing of such notice. The county auditor shall enter the time of filing every such notice in a book kept for that purpose, which shall be properly indexed breach or default, and the performance requested of the surety.

Subd. 2. CLAIMS ON PAYMENT BONDS. (a) In the event of a claim on a payment bond by a person furnishing labor and materials, no action shall be maintained on the payment bond unless, within 120 days after completion, delivery, or provision by the person of its last item of labor and materials, for the public work, the person serves written notice of claim under the payment bond 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 stated in the bond specifying the nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work. For the purpose of this section, notice is sufficient if served personally or via certified mail to the addresses of the contractor and surety listed on the bond. The form of notice is sufficient if it is substantially as follows:

NOTICE OF CLAIM ON PAYMENT BOND FOR PUBLIC WORK

TO:
(Surety that issued payment bond)
and
(The contractor on whose behalf the bond was issued)

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NOTICE IS HEREBY GIVEN that the undersigned claimant has a claim against the above named surety for labor and materials furnished by the undersigned for the public work described as follows:

(Description of the public work)

The labor and materials were furnished under a contract or agreement with

(Name and address of contractor or supplier requesting labor and materials from the claimant)

The nature of the labor and materials furnished is as follows:

The amount of the claim is:

The date the claimant last furnished labor and materials to this public work is the ... day of, 19...

Claimant seeks payment of the claim according to the law.

.....
Claimant

.....
Address

STATE OF

ss.

COUNTY OF

..... being duly sworn on oath says that ... is of the claimant named above and has knowledge of the claim and that the claim is correct, and no part of the claim has been paid.

Signed and sworn to before me

on, 19...

by

(Notary Seal)

.....

Notary Public

(b) If the contractor providing the payment bond fails to comply with the filing requirements of section 574.28 by failing to state its address or the address of the surety providing the bond, then a claimant under the bond need not provide the surety or the contractor written notice of its claim under paragraph (a).

(c) An action to enforce a claim against the surety under the bond must be commenced within one year from the date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work stated in its notice of claim. If no notice of claim was required because the contractor providing the bond failed to comply with the requirements of section 574.28, then any action under the bond must be commenced within one year from the

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actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work. Any other person having a cause of action on a payment bond may be admitted, on motion, as a party to the action, and the court shall determine the rights of all parties. If the amount realized on the bond is insufficient to discharge all the claims in full, the amount must be prorated among the parties.

Sec. 12. Minnesota Statutes 1992, section 574.32, is amended to read:

574.32 NOTICE APPLICATION OF PAYMENTS.

The commissioner of commerce or the county auditor in whose office the written notice is filed shall, upon receipt of such written notice, mail one copy of the same, by certified mail, to the principal contractor, at its last known address, and to each of the sureties on the contractor's bond, at their last known addresses, and the claimant shall, at the time of filing the written notice, furnish the commissioner of commerce or the county auditor in whose office the notice is filed, at least three copies of the notice. The commissioner of commerce or county auditor with whom the notice is filed shall be entitled to charge a fee of \$15 for filing the notice and may also charge a fee to cover the cost of mailing the copies as herein provided. The failure of the commissioner of commerce or the county auditor with whom the notice is filed to mail these copies as herein provided, shall in no way affect the validity of the claim or the right of the claimant to maintain an action thereon. If a claimant on a payment bond had actual knowledge or should have known that a payment it received was for labor and materials supplied under, or to perform, public work under which a payment bond was provided, then the claimant must prove that it applied the payment to its account for that public work. Its claim must be reduced to the extent it cannot so prove.

Sec. 13. EFFECTIVE DATE.

Sections 1 to 12 are effective August 1, 1994, to apply to contracts for public work awarded after July 31, 1994.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:17 p.m.

CHAPTER 420—H.F.No. 2306

An act relating to the city of Minneapolis; providing that a levy for a contribution to the Minneapolis teachers retirement fund association is a special taxing district levy for property tax purposes; amending Minnesota Statutes 1993 Supplement, section 354A.12, subdivision 3b.

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