

## CHAPTER 574

## BONDS, FINES, FORFEITURES

574.01	Bonds, requisites and execution.	574.21	Place of filing bonds.
574.02	State may take fidelity insurance.	574.22	Court proceedings.
574.03	Payment of premium.	574.23	Examination of accounts of public officers.
574.04	Surety bonds to federal government.	574.24	Official bonds, security to whom; actions.
574.05	Liberty loan bonds security.	574.25	Leave to bring action; endorsement on execution.
574.06	Deposit of securities.	574.26	Contractors' bonds for public work.
574.07	Market value.	574.261	Security in place of bond.
574.08	Protection of pledge on commencing action.	574.262	Small business.
574.09	Additional security.	574.263	Forestry development projects.
574.10	Notice of claim.	574.264	Security in place of bond.
574.11	Receivers' bonds to run to state.	574.27	Bidders to have right of action in certain cases.
574.12	Modes of justification.	574.28	Approval and filing of bond.
574.13	State and county officers; uniform bond.	574.29	Failure to get payment bond.
574.14	Bonds executed under other provisions.	574.30	Insolvent or insufficient sureties.
574.15	Surety companies.	574.31	Limit of time to bring action.
574.16	Surety, subrogation.	574.32	Application of payments.
574.17	Sureties for part of penalty.	574.33	Actions for fines, forfeitures, and penalties; collusion.
574.18	Undertaking in lieu of bond.	574.34	Fines, how disposed of.
574.19	Cost of surety bonds; proper expense items.	574.35	Prosecution for fines; court; commitment.
574.20	Bonds, by whom approved.	574.38	Letters of credit.
574.205	Bonds; state officials and employees excluded.		

**574.01 BONDS, REQUISITES AND EXECUTION.**

Save when otherwise specially provided by statute, every bond, recognizance, or undertaking required or permitted to be made, given, tendered, or filed for the security or protection of the state, or of any person, corporation, municipality, or department thereof, or any other organization whatever and conditioned for the doing or not doing of anything in such instrument of security specified, shall be signed by two or more sureties, who shall be residents and freeholders of the state, and justify as provided in section 574.12. Every bond or recognizance shall also be signed by the principal, and every bond shall be acknowledged by the principal and sureties.

*History: (9677) RL s 4523*

**574.02 STATE MAY TAKE FIDELITY INSURANCE.**

The legislative auditor, from time to time, shall make surveys of each department or agency of the state government to determine the employees in the department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employee, and shall submit a list thereof to the commissioner of administration for action thereon. The commissioner may approve in whole or in part and shall certify the action taken thereon to the directing head of each such department or agency, who shall require each of the employees so listed to give bond to the state in the amount indicated in such certificate. The commissioner in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commissioner shall direct, insuring the fidelity of such department employees in the respective amounts so required, upon a form to be prescribed by the legislative auditor. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the commissioner shall require. The surety upon the bonds of all state officers and state employees required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form

and generally by the legislative auditor, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state.

**History:** (9677-1) 1929 c 263 s 1; 1931 c 233 s 1; 1943 c 588 s 1; 1973 c 492 s 14; 1986 c 444

#### 574.03 PAYMENT OF PREMIUM.

The premiums upon the bonds of all state officers and the premiums on all fidelity insurance placed under the provisions of this section and section 574.02 shall be paid out of the appropriation for the maintenance of the department for which such bond or insurance is required and such fidelity insurance, when placed in lieu of individual bond, shall be deemed full compliance with any provision of law requiring any such official or employee to give bond to the state for the faithful discharge of duty. If schedule or position insurance is provided covering the personnel of any department or agency all individual fidelity bonds covering such officers or employees theretofore bonded shall be canceled and a proportionate part of the premiums paid therefor refunded.

**History:** (9677-2) 1929 c 263 s 2; 1931 c 233 s 2

#### 574.04 SURETY BONDS TO FEDERAL GOVERNMENT.

When the laws of the United States, or the regulations or orders of any department of the federal government, require the delivery of a properly executed surety bond, conditioned in a specified manner, as a condition precedent to receiving military property, or equipment, or property of the federal government, from the federal government, or as a prerequisite to doing any specified act, then, and in such case, the chief executive officer of any institution under the financial control of the commissioner of administration may execute and deliver such bond and, if corporate sureties join in the execution of the same, then the cost thereof may be paid by such executive officer out of the funds at the officer's disposal.

**History:** (9678) 1919 c 98 s 1; 1986 c 444

#### 574.05 LIBERTY LOAN BONDS SECURITY.

Any person or corporation who may make a contract with the state, or with any municipal corporation, or any public board or department thereof, for the doing of any public work, including construction of any drainage ditch, may, in lieu of giving the usual bond or undertaking, pledge United States liberty or victory loan bonds, now or hereafter issued, as security for the protection of the state, or such corporation, board or department with which such contract is made, and of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of executing such contract. Such bonds so pledged shall be security for the payment, as they become due, of all just claims for work, tools, machinery, skill, and materials, 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 on account of the doing of the work specified and compliance with the laws relating thereto.

**History:** (9679) 1919 c 346 s 1

#### 574.06 DEPOSIT OF SECURITIES.

These bonds so pledged shall be delivered to the officer or department required by law to receive the bonds of public contractors, or who may be designated by the state or other municipal corporation or department with which the contract may be made. The deposit of the securities shall be in lieu of and substitution for the bonds required by law to be given by such contractors.

**History:** (9680) 1919 c 346 s 2

#### 574.07 MARKET VALUE.

The market value of the bonds so pledged shall not be less than the contract price.

**History:** (9681) 1919 c 346 s 3

#### 574.08 PROTECTION OF PLEDGE ON COMMENCING ACTION.

Any person entitled to the protection of such pledge, wishing to take advantage of its benefits at the time of commencing any action against either the contractor or any subcon-

tractor engaged in such work, shall notify, in writing, the state or corporation or department with which such pledge is made, of the commencement of such suit, giving the names of the parties and the amount and nature of the claim. No judgment shall be entered within 30 days after the giving of such notice and the state or other corporation or department with which such bonds are pledged and any other person entitled to the protection of such pledge 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 or other appropriate action in which the corporation or department holding the bonds is a party, the court may order the bonds, or a part of them sufficient to pay the unpaid claims, sold at public auction or private sale or on the New York stock exchange and from the proceeds, after deducting the costs of sale, make payments among the parties to the suit entitled thereto; if the proceeds are insufficient to pay the claims in full, they may be paid pro rata. If the state or other corporation or department does not appear and defend, it may, after entry of judgment in favor of such claimants, enforce the pledge and sell the securities at public or private sale or upon the New York stock exchange, and it shall have in addition any and all rights and remedies given pledgees by law for the enforcement of their securities, but it shall not be required to sell such security until 90 days after completion of contract and acceptance of the work done, as provided in section 574.09, or until the work is completed at the instance of the corporation if abandoned by the contractor.

**History:** (9682) 1919 c 346 s 4; 1986 c 444

#### **574.09 ADDITIONAL SECURITY.**

When, in its judgment, other or further security is required, the state or such other corporation or department may require the contractor to furnish other or further security of the same nature within ten days, and thereupon if so ordered, the work on such contract shall cease until such other or further security is furnished. If such other or further security is not furnished within such time, the pledgee may at its option terminate the contract and complete the same as the agent and at the expense of such contractor.

**History:** (9683) 1919 c 346 s 5

#### **574.10 NOTICE OF CLAIM.**

No action shall be maintained by any person seeking to take advantage of the benefit of such pledge, unless within 90 days after the completion of the contract and acceptance by the proper public authorities of the work done, the plaintiff shall serve upon the contractor and upon the state or such corporation or department a written notice specifying the nature and amount of the claim and the date of furnishing the last item thereof, nor unless the action is begun within one year after the service of such notice.

**History:** (9684) 1919 c 346 s 6; 1986 c 444

#### **574.11 RECEIVERS' BONDS TO RUN TO STATE.**

Bonds given by receivers and trustees appointed by the district court in any action or proceedings shall run to the state of Minnesota for the benefit of all persons in interest. Any person interested may maintain an action in the person's own name upon any such bond.

**History:** (9685) 1921 c 17 s 1; 1986 c 444

#### **574.12 MODES OF JUSTIFICATION.**

The justification of sureties mentioned in section 574.01 shall be by affidavit, annexed to the bond or other security, wherein each surety shall state, under oath, that it is worth a certain definite amount above its debts and liabilities and exclusive of its property exempt from execution, but the aggregate of the amount sworn to as aforesaid by all the sureties shall be not less than double the amount of the penalty of such bond or other security. Where in the cases provided by law exception is taken to sureties, they shall be examined by the judge or officer before whom they are required to attend for purposes of justification, in such manner as the judge or officer shall deem proper. The examination shall be reduced to writing and filed in the cause and, on deeming the sureties sufficient, the judge or officer shall endorse approval upon the instrument, and return the same to the proper custodian thereof.

**History:** (9686) RL s 4524; 1907 c 311 s 1; 1986 c 444

**574.13 STATE AND COUNTY OFFICERS; UNIFORM BOND.**

When, by law, an official bond is required of any state or county officer, it shall be sufficient for all purposes if the same be substantially in the following form:

“Know All by These Presents, that ....., as principal, and ....., as surety ....., are jointly and severally held and firmly bound to the State of Minnesota in the sum of ..... dollars, lawful money of the United States, to the payment of which, well and truly to be made, we hereby bind ourselves, and each of us, our, and each of our, heirs, executors, administrators, successors, and assigns, firmly by these presents.

Sealed with our seals and dated this ..... day of ....., A.D. 19 .....

The condition of the above obligation is such that, whereas, the above bounden was heretofore duly elected (or appointed) to the office of .....

Now, therefore, if the said ..... shall faithfully and impartially, in all things, during continuance in office, perform the duties thereof without fraud, deceit or oppression, and pay over without delay to the officer entitled by law thereto all moneys which shall come into the hands of ..... by virtue thereof, then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed and delivered ..... (Seal)

in presence of

.....  
 .....

**History:** (9687) 1909 c 107 s 1; 1986 c 444

**574.14 BONDS EXECUTED UNDER OTHER PROVISIONS.**

All those rights and obligations which would be created were the bond of any such officer executed under any other law are hereby declared to exist and be of the same force where such bond is executed in the foregoing form.

**History:** (9688) 1909 c 107 s 2

**574.15 SURETY COMPANIES.**

When the bond or other instrument is required to be made with one surety, or with two or more sureties, it shall be sufficient if the same be executed, or the conditions thereof be guaranteed, solely by a corporation authorized by law so to do. No such corporation shall be accepted or approved as a surety or guarantor unless it holds the certificate of the commissioner of commerce, showing that it is authorized to contract as such.

**History:** (9689) RL s 4525; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

**574.16 SURETY, SUBROGATION.**

When the surety upon the bond of any state officer shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of such officer, such surety shall be subrogated to all the rights of the state and, if there shall be any property, evidence of indebtedness, or other obligation, or evidence thereof, in the possession of any official of the state and which shall have been received in connection with the transaction wherein such loss shall have occurred, the governor, upon satisfactory proof that such loss has been so paid and the obligation of such bond fulfilled by such surety, shall thereupon, by sufficient instruments of transfer, assign, transfer, or convey to such surety any such property, evidence of indebtedness, or obligation.

**History:** (9690) 1917 c 492 s 1

**574.17 SURETIES FOR PART OF PENALTY.**

Sureties may be accepted, in the discretion of the approving officer or body, for a part only of the penalty, and may justify in separate and different sums; but the aggregate liability of the sureties shall in all cases be not less than that required by law if each surety had justified in the full amount.

**History:** (9691) RL s 4526

**574.18 UNDERTAKING IN LIEU OF BOND.**

In all cases of appeal from a county board to the district court upon the allowance or disallowance of claims, in all actions begun in the district, county or municipal court, in all cases of appeal or writ of error to remove a cause or proceeding to the court of appeals or the supreme court, and in all cases of special or equitable proceedings in the district court, the court of appeals, or the supreme court, the filing or service, or both, as may be required, of an undertaking, signed by a surety or sureties, as the law may require, containing a condition substantially the same as required for bonds, with like sureties, qualifications, and justifications, and without acknowledgment or signature of the principal, shall be deemed a sufficient compliance with the law to sustain the action, appeal, or proceeding. Every undertaking shall save and secure all rights and liabilities to the same extent as a bond. The damages presumed to accrue to the party against whom the proceeding is taken shall be deemed a sufficient consideration for the undertaking, though no consideration is mentioned in it. No undertaking or bond need be given upon any appeal or other proceeding instituted in favor of the state, or any county, city, town, or school district in it, or of any executor or administrator as such.

**History:** (9692) *RL s 4527; 1967 c 854 s 1; 1973 c 123 art 5 s 7; 1983 c 247 s 193*

**574.19 COST OF SURETY BONDS; PROPER EXPENSE ITEMS.**

Any receiver, assignee, trustee, committee, guardian, executor, administrator, or other fiduciary, required by law to give bond as such, may include as a part of lawful expenses such actual sum paid for such suretyship, not exceeding \$10 per annum when the amount of the bond is not more than \$1,000, and not more than one percent per annum on the excess when over \$1,000, as the head of the department, court, judge, or officer by whom, or the court or body by which, the fiduciary is appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein the reasonable fees of such company for executing or guaranteeing any bond or undertaking therein. The several county and town boards, and the governing body of any city, or school district, may allow the treasurer of the municipality such reasonable sum, not exceeding the amount herein specified, as may have been paid by the treasurer for such suretyship, to be paid out of the general revenue fund of the municipality. The officers required by law to approve such bill may first designate the surety company to be employed, if its charges be as low as those offered by any other responsible company.

**History:** (9693) *RL s 4528; 1933 c 311; 1973 c 123 art 5 s 7; 1986 c 444*

**574.20 BONDS, BY WHOM APPROVED.**

Except as otherwise provided by law in particular cases, bonds shall be approved as follows:

(1) The official bonds of all state officers, including those of the treasurers, superintendents, and other officials, and employees of the several public educational, charitable, penal, and reformatory institutions belonging to the state, shall be approved, as to form, by the attorney general, and in all other respects by the governor and the legislative auditor, or one of them;

(2) The official bonds of county, town, city, and school district officers and employees by the governing body of the political subdivision for whose security they are, respectively, given; and

(3) Those required or permitted by law to be given in any court, by the judge or justice of the court in which the proceeding is begun or pending.

No officer, official, or employee required to give bond shall enter upon duties until the bond is duly approved and filed.

**History:** (9694) *RL s 4529; 1945 c 317 s 1; 1973 c 123 art 5 s 7; 1973 c 492 s 7; 1973 c 524 s 15; 1983 c 359 s 82; 1986 c 444*

**574.205 BONDS; STATE OFFICIALS AND EMPLOYEES EXCLUDED.**

On and after July 1, 1971, and notwithstanding any law to the contrary, elected state officials, appointed state officers and other state employees are not required to give and file

surety or fidelity bonds, except when federal law or rule requires such a bond as a condition precedent to receiving federal grants.

*History: 1971 c 889 s 1*

#### **574.21 PLACE OF FILING BONDS.**

Except when otherwise especially provided by law, the bonds of public officials shall be filed as follows:

(1) Those of all state officers, including the officials and employees of the several departments and institutions thereof, with the secretary of state, who shall record and retain the same;

(2) Those of all county officers, and of all other officials or persons, given to the county, with the county recorder;

(3) Those of all city officers, with the court administrator of such municipality;

(4) Those of school district officers, with the court administrator of the district.

*History: (9695) RL s 4530; 1973 c 123 art 5 s 7; 1974 c 138 s 1; 1976 c 181 s 2; 1Sp1986 c 3 art 1 s 82*

#### **574.22 COURT PROCEEDINGS.**

All bonds required or permitted by law to be given in actions or proceedings in any court shall be filed in such court, unless especially required by law to be filed, delivered, or deposited elsewhere, or unless the judge or justice of such court shall, by written order, direct some other disposition thereof.

*History: (9696) RL s 4531*

#### **574.23 EXAMINATION OF ACCOUNTS OF PUBLIC OFFICERS.**

In case of the filing of a new official bond or other security, the expiration of the term of office, or the death, resignation, or removal of the officer, the officer, board, committee, or body required or permitted to accept or approve such bond or other security, having jurisdiction or being authorized or required to examine the accounts of such officer, shall make or cause to be made a thorough examination of the bonded officer's accounts and, if any shortage or irregularity is discovered, shall at once notify such officer and sureties of the amount claimed to be due, or the nature of the irregularity. Such statement shall be in writing, and be served upon such officer and sureties, or their agents or attorneys, by mail, addressed to their residences, if known; but failure to make the examination or give such notice shall not discharge the sureties.

*History: (9697) RL s 4532; 1986 c 444*

#### **574.24 OFFICIAL BONDS, SECURITY TO WHOM; ACTIONS.**

The official bond or other security of a public officer, whether with or without sureties, shall be security to all persons severally for the official delinquencies against which it is intended to provide, as well as to the obligee designated therein, and when no other provision is made by law it shall run to the state. When a public officer, by official misconduct or neglect, forfeits the bond or renders the officer's sureties liable thereon, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in the person's own name, against the officer and the sureties, to recover the amount to which the person is entitled by reason of the delinquency; and a judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

*History: (9698) RL s 4533; 1986 c 444*

#### **574.25 LEAVE TO BRING ACTION; ENDORSEMENT ON EXECUTION.**

Before an action shall be brought by a plaintiff other than the state or body politic named in the bond, leave shall be obtained of the district court of the county in which the action is triable, or a judge thereof, by the production of a copy of the bond and an affidavit showing

the delinquency; and, if the delinquency be such that, if established on the trial, it would entitle the applicant to recover, leave shall be granted. Upon the execution issued on a judgment recovered upon the official security of a public officer, against the officer and a surety, there shall be endorsed a direction to the officer to whom the same is delivered to collect the same out of the property of the principal, if sufficient can be found, and, if not, out of the property of the surety.

**History:** (9699) *RL s 4534; 1986 c 444*

#### 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 290.92, chapter 268, or 297A; and

(3) "contract" means a contract with a public body for the doing of public work.

Subd. 1a. **Exemption; certain manufacturers.** Sections 574.26 to 574.32 do not apply to a manufacturer of public transit buses that manufactures at least 100 public transit buses in a calendar year. For purposes of this section, "public transit bus" means a motor vehicle designed to transport people, with a design capacity for carrying more than 40 passengers, including the driver. The term "public transit bus" does not include a school bus, as defined in section 169.01, subdivision 6.

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 a public body for the doing of any public work is not valid unless the contractor gives (1) a performance bond to the public body with whom the contractor entered into the contract, for the use and benefit of the 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 furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for 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 successfully maintained or successfully appealed.

Subd. 3. **Penalty.** 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 ten 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.

**History:** (9700) *RL s 4535; 1909 c 429 s 1; 1923 c 373 s 1; 1929 c 369 s 1; 1931 c 229 s 1; 1975 c 377 s 39; 1976 c 166 s 7; 1985 c 112 s 2; 1986 c 327 s 5; 1986 c 444; 1994 c 419 s 1; 1995 c 54 s 28; 1995 c 200 s 1*

#### 574.261 SECURITY IN PLACE OF BOND.

Subdivision 1. **Certified or cashier's check.** With the approval of the commissioner of administration and if the amount of the contract is not more than \$5,000 a person may make a contract with the state to do public work and in place of giving the 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 is required for a performance bond as security to protect the state, and (2) a certified or cashier's check in the same amount as is required for a payment bond for all persons furnishing labor and materials under or to per-

form the contract. The deposits are security for the payment, as they become due, of all just claims for labor and materials and for the performance and completion of the contract according to its terms.

**Subd. 1a. Letters of credit.** Whenever Laws 1994, chapter 419, 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 the deposit in place of a payment bond and wishing to take advantage of its benefits shall, 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 person's claim, giving the names of the parties involved and the amount and nature of the claim. If an action is commenced to obtain the benefit of the deposit in place of a payment bond, a judgment must not be entered within 30 days after giving the notice of the claim and the state or any person entitled to the protection of 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 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 prorated basis. The deposit in place of a payment bond made with the treasurer under this section shall be held by the treasurer for 120 days after the last item of labor and materials was furnished to the public work that is the subject of the contract. If a claim is not filed within the 120-day period, the deposit shall be returned to the person making it. If a claim is filed within the 120-day period, the deposit shall be disbursed by the state treasurer under an order of the court.

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

*History: 1965 c 825 s 1; 1975 c 377 s 40; 1986 c 444; 1994 c 419 s 2*

#### **574.262 SMALL BUSINESS.**

**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, 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, performance, and payment bonds if purchased in the usual manner by other businesses for similar contract work or procurement.

**Subd. 2. Participation limit.** No small business or small business owned and operated by economically and socially disadvantaged persons shall be eligible for bonding pursuant to this section for a period of more than five years from the date that the small business or small business owned and operated by economically and socially disadvantaged persons received its first bond pursuant to this section.

**Subd. 3.** [Repealed, 1989 c 155 s 5]

**Subd. 4. Encumbrance not applicable.** Agreements of indemnity entered into pursuant to subdivision 1 shall not be subject to encumbrance requirements imposed by other provisions of law.

*History: 1977 c 394 s 1; 1982 c 424 s 130; 1994 c 419 s 3*

#### **574.263 FORESTRY DEVELOPMENT PROJECTS.**

**Subdivision 1. Definition.** For the purposes of this section and section 574.264, "forestry development project" includes site preparation by discing, shearing, rock raking or piling,



patch scarification, or furrowing; tree planting; tree seeding; tree pruning; timber stand improvement by thinning or clearing existing forest trees by manual, mechanical, or chemical techniques; or forest road and bridge construction, reconstruction, and maintenance.

**Subd. 2. Contractor's bond.** A contract with the state for a forestry development project may require a performance bond at the discretion of the commissioner of natural resources. If the commissioner determines that a performance bond is required, it shall not be less than five percent of the contract price.

**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 place of a performance bond for charges that may accrue because of doing the specified work and to enforce the terms of the contract. The commissioner may set the amount of the bid deposit, but it may not be less than five percent of the contract price.

**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.

**History:** 1985 c 112 s 3; 1994 c 419 s 4,5

#### **574.264 SECURITY IN 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 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 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 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.

**Subd. 2. Claims against securities in place of bid deposits.** Securities in place of payment bonds are subject to claims as provided for other deposits in section 574.261, subdivision 2.

**History:** 1985 c 112 s 4; 1989 c 50 s 1; 1994 c 419 s 6

#### **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 are received and where, in connection with such bids, a deposit of money, or a certified check, or bid bond or other security must be provided with the bid, the 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 if the bidder's bid on such public work or improvement is not accepted, or if the bidder's bid 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 exists even though the failure to return the money, certified check, or other thing of value is due to the defalcation or unlawful conversion of the thing of value by the officer of the public body charged with the custody of it.

**History:** (9701) 1923 c 348 s 1; 1986 c 444; 1994 c 419 s 7

#### **574.28 APPROVAL AND FILING OF BOND.**

Before beginning work on the contract for the public work, the contractor on whose behalf the payment and performance bonds were issued must file both bonds with the treasurer,

board, or officer having financial management of the public body named in the bonds. 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 public body, or by the public body's treasurer. The public body must make the payment and performance bonds available for inspection and copying upon request. An assignment, modification, or change of the contract, or change in the work covered by the contract, or an extension of time to complete the contract, does not release the sureties on the bonds.

**History:** (9702) *RL s 4536; 1907 c 379; 1931 c 157; 1994 c 419 s 8; 1995 c 31 s 3*

**574.29 FAILURE TO GET PAYMENT BOND.**

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.

**History:** (9703) *RL s 4537; 1986 c 444; 1994 c 419 s 9*

**574.30 INSOLVENT OR INSUFFICIENT SURETIES.**

When, in the public body's judgment, a surety on a bond required by the act is insolvent, or for any cause is no longer a proper or sufficient surety, the public body may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by the public body, all work on the contract must cease until the new or additional bonds are furnished. If the bonds are not furnished within the ten days, the public body may, at its option, terminate the contract and complete the same as the agent, and at the expense of the contractor and its sureties.

**History:** (9704) *RL s 4538; 1986 c 444; 1994 c 419 s 10; 1995 c 31 s 4*

**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 later than permitted under the statute of limitations applicable to the claim. Nothing in this subdivision may be construed to otherwise affect the common law or equitable rights of performance bond sureties, principals, or public bodies that are obligees.

**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)

**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: .....

MINNESOTA STATUTES 1996

(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 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.

(d) The claimant can extend the time within which to bring an action to enforce a claim under the bond to beyond that specified in paragraph (c) either by: (1) written stipulation between the claimant and surety stating the extended deadline and executed by both parties before the expiration of one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work; or (2) written notice extending by one year the deadline specified in paragraph (c) sent by the claimant to the surety via certified mail 90 days before the expiration of the deadline specified in paragraph (c), which notice is not objected to in a return written notice sent by the surety to the claimant via certified mail within 30 days after the surety's receipt of claimant's notice. If a claimant's payment is not yet contractually due within one year from the actual date of completion, de-

livery, or provision by the claimant of its last item of labor and materials, the court shall continue and not dismiss the action until the payment is due.

**History:** (9705) *RL s 4539; 1909 c 413 s 1; 1929 c 369 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 11; 1995 c 31 s 5, 6*

#### 574.32 APPLICATION OF PAYMENTS.

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.

**History:** (9705-1) *1929 c 369 s 3; 1971 c 293 s 1; 1973 c 241 s 1; 1978 c 674 s 60; 1979 c 2 s 1; 1983 c 289 s 114 subd 1; 1984 c 592 s 90; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 12*

#### 574.33 ACTIONS FOR FINES, FORFEITURES, AND PENALTIES; COLLUSION.

Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who by special provisions of law are authorized to recover them; and, whether prosecuted by public officers or by private persons, shall be governed by the same rules as other civil actions, except as herein otherwise prescribed. When an action is brought for a penalty, the amount of which is limited by law, it may be brought for the amount so limited, and upon trial the amount recovered shall be in proportion to the offense. Recovery of a judgment for a penalty or forfeiture, by collusion between the parties and with intent to save the defendant from the consequences contemplated by law, where the same is given wholly or partly to the prosecutor, shall not prevent a recovery of the same by another person.

**History:** (9706) *RL s 4540*

#### 574.34 FINES, HOW DISPOSED OF.

Subdivision 1. **General.** Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where they are incurred.

Subd. 2. **Municipal prosecution; gross misdemeanors.** If a city or municipal attorney prosecutes a gross misdemeanor offense, the proceeds of any fine collected by the court shall be disbursed in the same manner as though the offense was a misdemeanor prosecuted by the city or municipal attorney in county or municipal court. The county shall pay for any costs associated with incarceration.

**History:** (9707) *RL s 4541; 1983 c 177 s 16*

#### 574.35 PROSECUTION FOR FINES; COURT; COMMITMENT.

All fines and forfeitures imposed as a punishment for any offense or for the violation of any duty imposed by statute may be prosecuted for and recovered by indictment in the district court, or, when the amount or value does not exceed \$100, before a judge of county or municipal court, who shall have jurisdiction concurrently with the district court. In all cases of the imposition of a fine pursuant to statute, as punishment for any offense, the offender may be committed until it is paid or the offender is otherwise discharged according to law.

**History:** (9708) *RL s 4542; 1983 c 359 s 83; 1986 c 444*

#### 574.36 [Renumbered 511.195]

#### 574.38 LETTERS OF CREDIT.

Whenever this chapter 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 home rule charter or statutory city, county, town, school district or other local government authority, the contractor may be permitted to provide, in lieu of the bond, an irrevocable bank letter of credit in the same amount required for the bond and subject to the same conditions as the bond.

**History:** *1989 c 132 s 1*