



National Association of Surety Bond Producers

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NASBP Position on Maryland SB 782 (Pugh)/HB 1071 (Vaughn/Morhaim)

Senate Bill 782 and House Bill 1071 recently have been introduced in the Maryland General Assembly to exempt individual sureties from obtaining a certificate of authority from the Maryland Insurance Commissioner when conducting surety business on private work in the State of Maryland.

- NASBP **opposes** any measure that would exempt a surety insurer conducting business in Maryland from being subject to the oversight and control of the Insurance Commissioner.
- NASBP's position is that any insurer, whether a natural person or a corporation, should be subject to adequate oversight and control in the jurisdiction in which it conducts business.
- The state's interest in regulating and imposing certain minimum requirements, such as capital and financial reporting requirements, on those who conduct surety business in the state of Maryland is paramount to protect the state's and taxpayer resources, its citizens, and the businesses that rely upon the protection of the surety bond product.
- If enacted, SB 782/HB 1071 would strip the Insurance Commissioner of any ability to exercise control or jurisdiction over individual sureties writing on private work. There would be absolutely no vetting process of these individuals, except that done by the obligee, who will not possess the experience or knowledge to do so.
- With no oversight and control in place, Maryland residents will be denied needed safeguards, placing them at the mercy of individuals who may not possess the commitment, experience, and financial wherewithal to act as surety insurers.
- These bills are nonsensical as they provide an open invitation to unscrupulous parties to dupe unwitting or unsophisticated persons and businesses out of premium for illusory bonds with little or no meaningful repercussions.
- Since the Insurance Commissioner will have no authority over such individuals, those individuals essentially are free to charge whatever rates they wish for surety bonds, which may be considerably higher than standard rates.
- The Maryland General Assembly passed a law in 2006, permitting use of unlicensed individual sureties on state public works contracts. NASBP opposed the measure, but the bill was enacted presumably for the purpose of providing

bonding opportunities to small and emerging businesses. As part of the then new law, state agencies would report annually to the General Assembly about the effectiveness of the law in accomplishing that aim. Interestingly, the two reports made by the Board of Public Works to the General Assembly thus far indicate that small businesses have not benefitted from the law. The last report, issued November 3, 2009, states the following: “***Bidders and offerors submitted zero individual surety bonds in FY 2008 and 2009.*** This continues the trend previously reported in FY 2007 when only *one* individual surety bond was submitted in response to a State solicitation. The failure of bidders/offerors to submit ISBs [individual surety bonds] is striking particularly in light of the fact that only one agency prohibited individual surety bonds as acceptable security.” Exempting individual sureties from obtaining certificates of authority does not assist small businesses, though it may facilitate the victimization of these businesses by unscrupulous operators.

- Individual surety bond fraud is well-documented. These bills will likely increase, not decrease, the occurrence of such fraud.
- Like what occurred in the mortgage loan context, when government fails to regulate economic activity properly, taxpayers suffer losses!