



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Sent via email to: James.Settlemeyer@sen.state.nv.us

February 24, 2015

Senator James A. Settlemeyer
Co-Majority Whip
2388 Highway 395
Minden, NV 89423-8923

Re: Concerns with NV SB 108—Specifically Section 16 Addressing Surety Bonds

Dear Senator Settlemeyer:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing firms employing surety bond producers, including licensed resident and non-resident agents placing contract surety bonds in Nevada, we are very concerned about the substantial, negative impact that Senate Bill Number 108 will cause. S.B. 108 amends NRS 339.025 of the Code of Nevada, relating to public procurement; bid, performance, and payment bonds, by substantially increasing the minimum contract from \$100,000 to \$1 million. If S.B. 108 were enacted Nevada's bonding threshold would be the highest in the nation. In fact, it would become seven times higher than the current bonding threshold of the Federal Government.

By enacting a statute requiring the furnishing of payment bonds, the Nevada Legislature recognized the importance of protecting the downstream businesses that supply labor and materials on Nevada public construction projects. Often these business entities are small businesses whose only viable remedy in the event of nonpayment by a prime contractor is to make a claim on the payment bond. If a prime contractor fails to pay subcontractors and suppliers due to bankruptcy or for other reasons, such subcontractors and suppliers do not have an alternative means to recover their wages, costs, and expenses. They cannot sue the governmental entity, since they do not have a direct contract with the governmental entity, and they may not be able to place a mechanic's lien against the public property. The only practical remedy for these subcontractors and suppliers is the existence of the payment bond, which, with passage of this legislation, will be absent on a higher number of projects, potentially jeopardizing their business viability in the event of nonpayment.

As payment bonds protect subcontractors and suppliers, performance bonds protect contracting agencies and precious taxpayer funds. In the absence of a performance bond, additional taxpayer funds will be required to complete projects should a prime contractor default in its performance of such contracts. Raising the bonding threshold for contracts so drastically will place precious taxpayer funds in peril. By requiring performance bonds, the State transfers the financial risk of contract defaults to the surety, which assumes the risk of nonperformance by the contractor, ensuring that taxpayers do not bear the costs of completing the contractor's obligations in the event of a default.

According to data from the Surety & Fidelity Association of America (SFAA), a licensed rating and advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience, between 2001-2013 the total premium surety earned on Nevada state and municipal public works projects was nearly \$370 million while losses for that same time period were over \$135 million, which amounts to a loss ratio of slightly more than 37%. In 2009, when the Nevada economy took a serve downturn, surety losses were \$47 million versus \$43 million in premium. Can you envision the financial burden Nevada taxpayers and small businesses would have faced if the bond threshold was at \$1 million?

By removing needed protections and transferring the risk of losses to taxpayers, S.B. 108 is an imprudent, if not fiscally dangerous, measure. S.B. 108, as introduced, does not serve the interests of the State of Nevada, its taxpayers, or its many businesses performing as subcontractors and suppliers on public construction projects.

We strongly request that you remove Section 16 from S.B. 108 due to the harms it will inflict on Nevada's taxpayers and subcontractors and suppliers.

Please feel free to contact us if you have any questions or need additional clarification with any of the points we have raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Larry LeClair".

Larry LeClair, Director Government Relations
National Association of Surety Bond Producers (NASBP)

cc: Mark McCallum, CEO, NASBP
Martha Perkins, General Counsel, NASBP