



National Association of Surety Bond Producers

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Education, Health & Environmental Affairs (EHE)
2 West, Miller Senate Building
11 Bladen Street
Annapolis, MD 21401-1991

Chairwoman Joan Carter Conway
Miller Senate Office Building, 2 West Wing
11 Bladen St., Annapolis, MD 21401

Vice-Chairman Roy P. Dyson
James Senate Office Building, Room 102
11 Bladen St., Annapolis, MD 21401

RE: NASBP's strong opposition to SB 377—Extension of Sunset to Maryland's Individual Surety Law

Dear Chairwoman Carter Conway, Vice-Chairman Dyson, and members of EHE:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes businesses employing licensed resident and non-resident surety bond producers placing bid, performance, and payment bonds in Maryland and elsewhere in the United States, we strongly oppose Senate Bill 377, which extends the sunset of Maryland's individual surety law to 2019.

In 2006, legislation was enacted permitting individual sureties (i.e. natural persons, not authorized surety companies) to write surety bonds for prime contracts on state projects without obtaining a certificate of authority from the Maryland Insurance Administration (MIA) as an authorized insurer. This law was set to sunset in 2009, but was extended to September 2014.

For the compelling reasons set forth below, the 2006 law should not be extended and should be permitted to sunset.

The Maryland Insurance Administration (MIA) studied the practices of individual and corporate sureties and concluded that the 2006 individual surety law should sunset.

On November 25, 2013, the MIA completed *MSAR No. 9319, A Final Report on the Analysis of the Practices of Corporate and Individual Sureties in Maryland*. Among the key Findings and Recommendations are the following:

- In recent years, at least 13 states have issued Cease and Desist Orders against individuals acting as sureties without first obtaining a certificate of authority or license¹ to do so;
- The MIA has identified no basis for continuing to permit unregulated individuals to solicit or to issue surety bonds or contracts of surety insurance²;
- The MIA recommends that the laws authorizing the use of individual sureties in the State be permitted to sunset as scheduled on September 30, 2014³;

¹ MSAR No. 9391, pg. 12.

² *Id.*

³ *Id.*

- Since the passage of the 2006 law, the MIA identified only 6 bids where contractors attempted to secure projects using individual sureties⁴;
 - Of those, only 2 projects were awarded using individual surety bonds⁵.
 - Thus, it is apparent from the MIA's data that the 2006 law has proven not to be beneficial to small and disadvantaged construction businesses.
 - Continuing the law could be harmful to consumers and state taxpayers, however.
- Research conducted by the MIA indicates that 12 individual sureties have engaged in fraudulent or misleading conduct, such as:
 - Creating the illusion of a corporate form;
 - Inflating the valuation of property pledged;
 - Pledging the same collateral for multiple projects;
 - Misrepresenting facts as part of the surety bond submission⁶;
- The MIA further reflected on the wisdom of carving out an exemption to licensing, stating, "In order to better safeguard the public against the issuance of fraudulent surety bonds or contracts of surety insurance, all sureties doing business in the State should be required to obtain a certificate of authority issued by the Commissioner and should be subject to the same level of regulatory oversight required by corporate sureties under Maryland Law."⁷

The surety industry continues to help small and emerging businesses to qualify for surety credit.

The legislative intent of the 2006 law was to provide greater State contracting opportunities for small and minority contractors who may have been unable to obtain corporate surety bonding. Bond producers and surety underwriters have undertaken considerable outreach in Maryland to make small and emerging contractors aware of bonding resources and the steps they must take to achieve surety credit. For example, bond producers worked with the MD DOT in collaboration with the U.S. Department of Transportation to conduct a bonding education program in Maryland for contractors and subcontractors. In November of 2012 and at the request of Senator Dolores Kelley, the bond producer, lending, and legal communities conducted a one-day bonding education and awareness program in Baltimore County for the local small business community. Furthermore, between 2004-2012, total surety premium in the State for surety bonds or contracts of surety insurance has increased by 53.5%⁸, reflecting a vibrant corporate surety market.

NASBP members, professional surety bond producers, have vested interests in assisting construction firms of all sizes, including small and emerging businesses, to qualify for surety credit. Bond producers are familiar with the surety market and the business strategies and underwriting differences among sureties and act in many critical roles—guide, educator, adviser, and match-maker—all in an effort to position firms to meet the underwriting requirements for surety credit and to become long-term viable businesses.

For these reasons, NASBP strongly opposes SB 377, and we ask that you vote **NO** on this bill.

Please feel free to contact Larry LeClair, Director, Government Relations, at 202-686-3700 or lleclair@nasbp.org if you have any further questions.

⁴ MSAR No. 9319, pg.14

⁵ *Id.*

⁶ MSAR N. 9319, pg. 25.

⁷ MSAR N. 9319, pg. 26.

⁸ MSAR N. 9319, pg. 19.