



National Association of Surety Bond Producers

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NASBP Strongly Opposes HB 585/SB 599 “The Subcontractor Equal Access to Bonding Act of 2013”

The National Association of Surety Bond Producers (NASBP) is a national trade organization of professional surety bond producers, whose membership includes businesses employing licensed surety bond producers placing bid, performance, and payment bonds in Maryland and elsewhere in the United States. NASBP strongly opposes House Bill 585/Senate Bill 599, which permits individual sureties (i.e. natural persons, not authorized surety companies) to write surety bonds on service, supply, and construction-related subcontracts in Maryland without a certificate of authority. HB 585/SB 599 is an expansion of the scope of the 2006 law, which permitted individual sureties to write surety bonds for prime contractors performing public works contracts without obtaining a certificate of authority from the Maryland Insurance Administration (MIA) as an authorized insurer.

NASBP believes that it is vital for purposes of protecting consumers and taxpayers that all insurers, whether natural persons or corporations, be subject to adequate oversight and control in the jurisdiction in which they conduct 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.

There is surety credit capacity from authorized surety companies for qualified businesses at all levels.

There are any number of surety companies that focus all or a significant portion of their business model on extending surety credit to small businesses. It must be remembered, however, that surety is a means to assure the qualifications of an entity to undertake assumed obligations; surety credit should only be extended to those businesses, no matter the size, that are capable of successfully undertaking the contract obligations they seek. Therefore, not all companies will receive or merit surety credit. Further, a surety that is not sound financially cannot add to the credit standing of the business to which it extends surety credit. That is why all sureties, individual or corporate, must be carefully scrutinized and regulated.

The MIA is studying the practices of individual sureties.

The MIA currently is undertaking a study of individual surety practices and any expansion of an unregulated surety market should not be considered until the study is released. The MIA is scheduled to issue this report in December 2013, which will include among its findings: whether individual sureties are allowed to conduct business in other states without obtaining a certificate of authority, and if so how are protections afforded to consumers and businesses; and if there have been problems associated with individual sureties at state and national levels. Given the fact that the MIA is reviewing the practices of individual sureties and is set to issue a report in December 2013, it is prudent to wait for the MIA's findings before passing legislation that expands the 2006 law.

HB 585/SB 599 interferes with the right of private parties to freely contract and dictates their risk management decisions.

The bill removes prime contractors ability to specify the quality of the surety bonds from subcontractors by preventing prime contractors from being able to require that only bonds from regulated corporate sureties would be acceptable. This mandate allows the state to interfere with a prime contractor's ability to manage its subcontract risks and to make its own risk allocation decisions on a project. Prime contractors, which are not in the business of doing so, would be forced into the position of having to evaluate the efficacy of the individual acting as the surety.

The surety industry is vested in helping small and emerging businesses.

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. Bond producers welcome vibrant surety markets for their clients, but the insurers operating within those markets must be regulated.

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, two years ago, 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. There have been other similar efforts in Maryland in the last five years. Small businesses who want to learn the steps to secure surety credit have been afforded the opportunities to do so.

For all of these reasons, NASBP strongly opposes HB 585/SB 599, and we ask that you vote no on these bills.