NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS
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March 8, 2023

RE: Letter in strong opposition to SB1135, "An Act Authorizing the waiver of certain performance bond requirements" submitted via the Committee's website

Dear Co-Chairs Kavros DeGraw, Rahman, Ranking Members Zullo, Fazio, Vice Chairs Chafee, Needleman, and members of the Joint Planning and Development Committee:

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 the State of Connecticut, **we strongly oppose SB1135**. This legislation seeks to amend Chapter 846 §§49-41(a), Connecticut's Little Miller Act, by raising the current bond threshold from $100,000 to $5,000,000 for "construction, alteration or repair of a public building or public work of a municipality, should "such municipality by a vote of its legislative body, waives the inclusion of such provision."

SB1135 increases Connecticut's bond threshold specific to municipal construction contracts to the highest in the United States, which is 35 times greater than the federal threshold ($150,000) as required by the Miller Act (***40 U.S.C.*** §§ ***3131*** et seq;) and applicable regulations. In addition, Connecticut's bond threshold will become an outlier to the thresholds of neighboring states throughout the northeast, such as Massachusetts ($25,000), Maine ($125,000), New Hampshire ($75,000-state contracts/$150,000-local contracts), New York ($100,000/$200,000) Pennsylvania ($100,000-state contracts/$10,000-local contracts),Vermont ($100,000) and Rhode Island ($150,000), if this bill is enacted, ensuring that Connecticut taxpayers will shoulder and be responsible for the most extreme construction default risks compared to those of surrounding states.

Surety Bonds: Sound Public Policy

Public construction projects are complex and inherently risky, as typical construction projects involve many variables and parties. Not surprisingly and for many decades, surety bonds have served as preferred, statutorily-required protection to offset the substantial risks attendant on publicly-funded construction projects. Corporate surety bonds are three-party contract agreements by which one party (a surety company) guarantees or promises a second party (the obligee/government) the successful performance of an obligation by a third party (the principal/contractor). The bid bond assures that the bid has been submitted in good faith and the contractor will enter into the contract at the bid price and provide the required performance and payment bonds. A performance bond protects the project owner (municipalities) and Connecticut taxpayers from financial losses should the contractor fail to perform the contract in accordance with its terms and conditions. The payment bond protects subcontractors and suppliers, which do not have direct contractual agreements with the public owner or obligee and which would be unable to recover lost wages or expenses should the contractor refuse to pay or be unable to pay its financial obligations. Importantly, surety bonds provide essential prequalification services, assuring that taxpayer-funded projects are being undertaken by qualified, vetted firms and, in the less likely event a default occurs, shifting financial losses away from taxpayers to a regulated surety company with expertise in construction contracts and claims administration.

When deliberating the merits of the SB1135, please consider the potential harmful impacts placed on taxpayers and on small and disadvantaged construction businesses. By permitting the bond threshold to be elevated to such a high level, the legislation would remove performance and payment bond protections on many contracts, which:

- Jeopardizes taxpayer funds and eliminates payment protections afforded to downstream subcontractors and suppliers which otherwise have no lien recourse in the event of non-payment and which may be local,

small or disadvantaged businesses that cannot afford the risks of delayed payment or non-payment by the contractor;
- Deprives contracting entities and taxpayers of valuable payment and performance protections, especially as localities continue to recover from the economic effects of the COVID pandemic; and
- Removes critical and objective third-party prequalification of construction businesses seeking to perform publicly-funded work, especially problematic during a time in which construction businesses are experiencing increased stressors such as higher costs and workforce and supply chain issues.

NASBP refuses to believe that knowledgeable lawmakers would desire to have their voting constituents assume the risks and associated costs of non-performance on municipal construction contracts at or below $5,000,000. Simply put, allowing municipalities the discretion to waive bonds on projects at or below $5,000,000 places construction contractor defaults squarely on the shoulders of municipal and, ultimately, state taxpayers.

If the objective of SB 1135 is for greater inclusion of small and disadvantaged businesses as prime contractors on municipal public works contracts, better approaches exist, such as federal and industry bonding educational programs, which include:

- The Office of Surety Guarantees of the U.S. Small Business Administration (bond guarantee program aimed at providing bonds to small and emerging construction businesses);
- The Office of Small and Disadvantaged Business Utilization of the U.S. Department of Transportation (offers lending and other programs specifically designed to benefit small and emerging contractors seeking to perform transportation contracts); AND
- The NASBP/SFAA Contractor Bonding Education & Mentoring Program (a free program to help new and emerging construction businesses, particularly minority-owned and other under-represented businesses, learn how to qualify for surety bonds).

These are tremendous programs which can position small and disadvantaged construction businesses to better qualify for surety bonding, ensuring that such businesses become more competitive in the marketplace and are positioned for long-term success through standing arrangements that enhance their credit arrangements, support networks, and business resources. NASBP would welcome the opportunity to collaborate with members of the Committee on programs to expand business opportunities for small and disadvantaged businesses.

For the foregoing reasons, NASBP strongly opposes SB1135, and we ask the Committee also to oppose the bill. We firmly believe that the passage of SB1135 would be fiscally irresponsible, needlessly resulting in many unbonded contracts where protections for taxpayers and businesses are forsaken and public coffers and resources are indebted.

Please feel free to contact me should you have further questions at 240-200-1272 or by email at lleclair@nasbp.org.

Respectively submitted for your consideration,

Larry LeClair
Director, Government Relations