



## National Association of Surety Bond Producers

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Delivered via email to [h48@iga.in.gov](mailto:h48@iga.in.gov) and [h35@iga.in.gov](mailto:h35@iga.in.gov)

Representative Doug Miller  
200 W. Washington St  
Suite 401  
Indianapolis, IN 46204-2786

Representative Melanie Wright  
200 W. Washington Street  
Indianapolis, IN 46204

*RE: Concerns with HB 1117, legislation to increase surety bond threshold for state educational institutions*

Dear Representatives Miller and Wright,

On behalf of the members of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes resident and non-resident firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the U.S., including in Indiana, I am contacting you regarding our concerns with House Bill 1117, as recently passed by the Senate. As it currently stands, HB 1117 increases the statutory bond threshold on state educational institutions' contracts from \$200,000 to \$500,000. Subsequently, HB 1117 is a substantial policy shift from the original bills that you sponsored, which was ultimately approved by the House. Moreover, the impact of HB 1117 would be many more taxpayer-funded construction contracts procured without the vital assurance of performance and payment guarantees, and thereby placing public funds at risk in the event of contract defaults.

The Indiana legislature recognized the important, protective role surety bonds play on public works contracts by enacting Indiana Code § 5-16. Such statutory requirements ensure that only pre-qualified construction firms receive award of public contracts and that subcontractors and suppliers on such contracts have vital payment remedies in place in the event of non-payment.

If Indiana raises its bond threshold for state educational institutions to \$500,000, it would have the highest threshold in the upper Midwest. Surrounding states bond their work at the following levels: Ohio, no threshold; Kentucky, \$40,000; Illinois, \$50,000; and Michigan, \$50,000. NASBP urges you to leave the bonding threshold at its present level of \$200,000.

NASBP is concerned that HB 1117 would have a pronounced negative impact on small businesses that supply labor and materials on Indiana public construction projects as well as the taxpayers of Indiana. Small businesses often cannot compete as prime contractors on public construction contracts, so they participate at subcontractor and supplier levels. At that level, these businesses' only viable remedy in the event of nonpayment by the prime contractor is to claim on the statutorily-required payment bond. If the prime contractor fails to pay subcontractors and suppliers due to bankruptcy, or for other reasons, such subcontractors and suppliers would not have an alternative means to recover their wages, costs, and expenses.

They cannot sue the governmental entity, because they do not have a direct contract with the governmental entity, and they cannot place a mechanic's lien against public property. The absence of a payment bond can mean that such businesses will not remain viable.

Furthermore, taxpayer dollars are at risk when state projects are awarded without the protection of performance bond guarantees. In the absence of a performance bond, additional taxpayer funds will be required to complete projects where prime contractors default in their performance of public construction contracts. By increasing the threshold for a surety bond, contracting agencies also will have to shoulder a higher burden of screening and pre-qualifying more contractors, diverting their resources and energies away from other important tasks. For example, the recent situation involving subcontractors and suppliers who were left unpaid on the I-69 P3 agreement for nearly nine months shows the importance of adequate payment bonds on projects. In this case a 5% payment bond only was required, which was deemed inadequate, and the contractor default on such a significant project illustrates that even large firms can fail.

By removing needed protections and transferring the risk of losses to taxpayers, HB 1117 is fiscally imprudent. In short, HB 1117, as passed by the Senate, does not serve the best interests of the State of Indiana, its taxpayers, or its many businesses performing as subcontractors and suppliers on public construction projects.

NASBP and its Indiana members strongly support referring HB 1117 to a conference committee where the potential problems of increasing the bond threshold can be discussed and debated by all interested parties.

If you have any questions concerning the issues raised, please feel free to contact me at 202-686-3700 or [lleclair@nasbp.org](mailto:lleclair@nasbp.org).

Respectively submitted for your consideration,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" being more prominent than the last name "LeClair".

Larry LeClair  
Director, Government Relations