



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

7735 Old Georgetown Road, Suite 900

Bethesda, MD 20814

Tel: 240.200.1270

Fax: 240.200.1295

www.nasbp.org

March 6, 2023

RE: Letter submitted via email to executivecommittee@senatedem.ilga.gov, in Strong Opposition to SB157, "Public Construction Bonds."

Dear Chair Cristina Castro, Vice Chair Omar Aquino, Minority Spokesperson Neil Anderson, and members of the Senate Executive Committee:

On behalf of the National Association of Surety Bond Producers ([NASBP](http://www.nasbp.org)), 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 Illinois, **we strongly oppose SB157**. This legislation seeks to amend [Section 1 \(30 ILCS 550/1\) of the Public Construction Bond Act](#), Illinois' Little Miller Act, by raising the current bond threshold from \$50,000 to \$5,000,000. The legislation also creates a "self-insured risk pool" to pay claims or damages arising under a public works construction contract valued at \$5,000,000 or less because of a contractor's failure. SB157 elevates the Illinois' bond threshold to the highest in the Nation, 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, Illinois' bond threshold will become an outlier to the thresholds of neighboring states, such as Indiana (\$200,000), Iowa (\$25,000), (Michigan (\$50,000), Minnesota (\$175,000), Missouri (\$50,000) and Wisconsin (\$148,000/local/\$369,000/state projects), if this bill is enacted, ensuring that Illinois taxpayers will shoulder and be responsible for the most extreme construction default risks compared to those of surrounding states.

Surety Bonds: Sound Public Policy

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 (the state and local jurisdictions) and public taxpayers from financial loss 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 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 SB157, please consider the harmful impacts placed on taxpayers and on small construction businesses. By elevating the bond threshold to such a high level, the legislation would remove performance and payment bond protections on many contracts, which:

- Jeopardizes state taxpayer funds and eliminates payment protections afford to downstream subcontractors and suppliers which otherwise have no lien recourse in the event of non-payment, and which may be local, small businesses that cannot afford the risks of delayed payment or non-payment;
- Removes critical and objective third-party prequalification of construction businesses seeking to perform publicly-funded work;
- Establishes a legal entity known as a "self-insured risk pool" where the public owner "can collectively purchase claims administration services." Which raises pertinent questions:

- Why would an IL public owner want to devote precious taxpayer funds and resources to administer claims when the surety industry offers such a service as a component of the surety bond product?
- Are IL public contracting agencies prepared to forgo such valuable assistance and resources on projects that fall below the elevated threshold?
- Why do lawmakers want voting constituents to assume such financial risks should the contractor default on contracts at or below \$5,000,000?
- If the public owner assumes such risks and no performance and payment bonds are required, any losses relating to the default of the prime contractor will fall squarely on the taxpayer. How many such defaults is the State prepared to self-insure?
- If the objective of SB 157 is for greater inclusion of small and minority businesses as prime contractors on IL public works contracts, better approaches exist, such as federal and 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 SB157, and we ask the Committee also to oppose the bill. We firmly believe that the passage of SB157 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