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Talking Points in opposition to SB157 (Villivalam)/HB2482(Buckner)

[SB157/HB2482](#) 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.

Key messaging points in opposition to SB157/HB2482:

- Increasing the bond threshold to \$5MM is unprecedented and would elevate Illinois' threshold to the highest in the Nation.
- Increasing the bond threshold to \$5MM is bad public policy because it removes critical and objective third-party prequalification of construction businesses seeking to perform publicly-funded work, jeopardizes state taxpayer funds, and eliminates payment protections afforded to downstream subcontractors and suppliers that otherwise have no lien recourse in the event of non-payment.
- The State of Illinois should not seek to deprive businesses and taxpayers of valuable payment and performance protections, especially as the nation continues to recover from the economic effects of the COVID pandemic.
- By removing needed protections and transferring the risk of losses to taxpayers, SB157/HB2482 is fiscally imprudent, if not dangerous, and does not exhibit sound public policy.
- SB157/HB2482 ultimately does not serve the interests of the State, its taxpayers, or its many businesses performing as subcontractors and suppliers on public construction projects.

Additional Messaging Points for consideration:

1. **Legislation is harmful to downstream construction parties (i.e., subcontractors and suppliers)**
 - By statutorily requiring prime contractors to furnish payment bonds on state construction contracts, the IL Legislature recognized the important protection payment bonds provide to downstream parties--subcontractors, laborers and material suppliers--should prime contractors fail to meet payment obligations.
 - Increasing the bond threshold to \$5MM means that these downstream parties will be left without valuable payment protections.
 - Having no recourse in the event of nonpayment will be disastrous for those construction firms, particularly since many of them already are struggling to survive after enduring the difficult economic times in the aftermath of the pandemic.
 - Often subcontractors and/or suppliers are small businesses whose only recourse is to file a claim on the payment bond.
 - Subs/suppliers are prohibited from suing the governmental entity, since these businesses do not have a direct contract with the governmental entity, and they cannot place mechanic's liens against public property.
 - To the extent the proposed "self-insured risk pool" takes into account potential claims of downstream parties, how will claim administration occur, particularly in the absence of any precedents? What is the self-insured risk pool is not adequately funded to address the level of claims from downstream parties?
2. **Jeopardizes precious taxpayer funds**
 - As payment bonds protect subs/suppliers, performance bonds protect contracting agencies and precious taxpayer funds. Thus:
 - Increasing the bond threshold for contracts exceeding \$5MM means that many more taxpayer-funded projects will not have performance bonds in place;
 - As a result, IL taxpayers will be subjected to providing additional funds to complete projects when prime contractors default on their performance obligations, as transfer of risks to competent third-parties—regulated surety companies regularly in the business of assuming such risks—did not occur.
3. **IL bond threshold becomes an outlier to the Federal Gov't & surrounding states**

- Increasing Illinois' bond threshold to \$5MM means:
 - It would be the highest in the nation;
 - It would be nearly 35X greater (\$4,850,000) than the federal requirement (\$150,000) as required by the Miller Act (**40 U.S.C. §§ 3131 et seq.**) AND becomes an outlier to its neighboring states:
 - Indiana (\$200,000), Iowa (\$25,000), (Michigan (\$50,000), Minnesota (\$175,000), Missouri (\$50,000) and Wisconsin (\$148,000/local/\$369,000/state projects).
 - No other state has made such a drastic decision to self-insure publicly-funded construction risks, place such risks on the backs of its taxpayers.

4. Self-Insured Risk Pool—Is this the role of public owners?

- Legislation creates a legal entity known as a "self-insured risk pool" where the public owner "can collectively purchase claims administration services."
- 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?
- Surety companies provide various kinds of assistance and advice on such matters as internal controls, key management decisions, and as well as professional references, such as accountants and engineers, to ensure that bonded contractors remain in position to complete contracts. Further, surety companies meet with bonded contractors on a regular basis for progress reports.
 - Are IL public contracting agencies prepared to forgo such valuable assistance and resources on projects that fall below the elevated threshold?
- Again, why does the state want to assume the financial risk should the contractor default on contracts at or below \$5,000,000?
 - If the public owner assumes the risk and no performance and payment bond is 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?

5. Final points for consideration

- If the goal of this legislation is for greater inclusion of small and minority businesses as prime contractors on IL public works contracts, better approaches exist that do not involve stripping subcontractors, suppliers and taxpayers of needed protections or indebting public coffers and resources.
- Federal and bonding educational programs designed to assist small and minority contractors with obtaining bonding exist, such as:
 - [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).

Take Action--Contact your IL legislators

NASBP members and their contractor clients are urged to contact those Senators who serve on the Senate [Assignments](#) and [Executive](#) Committees where [SB157](#) was assigned to express your strong opposition to this legislation. [HB2482](#) was assigned to the [House Rules Committee](#). Please contact those members who serve on the House Rules Committee and voice your strong opposition. Please feel free to share these points with your surety colleagues and your clients.