

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL NO. 169  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Weldon” and substitute “Weldon, Barve, Benson, Bromwell, Donoghue, Kohl, Kullen, Mandel, McDonough, Murray, Nathan-Pulliam, Pendergrass, Rudolph, and V. Turner”; in line 2, strike “Bid, Payment, and Performance”; in line 3, after “of” insert “increasing the maximum amount of the bonds that the Maryland Small Business Development Financing Authority may issue as a surety for the benefit of a principal in connection with certain contracts;”; in line 10, after “regulation;” insert “requiring the Procurement Advisor appointed by the Board of Public Works to report to the Governor and certain committees by certain dates regarding the implementation of this Act; providing for the application of this Act; providing for the termination of this Act;”; and after line 11, insert:

“BY repealing and reenacting, with amendments,

Article 83A - Department of Business and Economic Development  
Section 5-1035  
Annotated Code of Maryland  
(2003 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, without amendments,

Article 83A - Department of Business and Economic Development  
Section 5-1037  
Annotated Code of Maryland  
(2003 Replacement Volume and 2005 Supplement)”.

AMENDMENT NO. 2

On page 1, after line 23, insert:

“Article 83A - Department of Business and Economic Development

(Over)

5-1035.

(a) Subject to the restrictions of this Part VI, the Authority, on application, may guarantee any surety up to the lesser of 90 percent or \$1,350,000 of its losses incurred under a bid bond, a payment bond, or a performance bond on any contract, the majority of the funding for which is provided by the federal government or a state government, a local government or a utility regulated by the Public Service Commission.

(b) The term of a guaranty under this Part VI may not exceed the contract term.

(c) The Authority may vary the terms and conditions of the guaranty from surety to surety, based upon the Authority's history of experience with that surety and upon any other factor that the Authority considers relevant.

(d) (1) The Authority may execute and perform bid, performance, and payment bonds as a surety for the benefit of a principal in connection with any contract, the majority of the funding for which is provided by the federal government or a state government, a local government, or a utility regulated by the Public Service Commission.

(2) The bonds:

(i) May not exceed [~~\$1,000,000~~] \$5,000,000 each; and

(ii) Shall be subject to the approval of the Authority, based on the bond worthiness of the principal as determined by the Authority on review of an application.

(3) The monetary limit in this subsection does not apply if the sources of funding for the bonds are grants.

(e) (1) The Authority may not approve a guaranty or a bond under this Part VI unless the Authority considers the economic impact of the contract, for which a bond is sought to be guaranteed or issued, to be substantial.

(2) To determine the economic impact of a contract, the Authority may consider:

(i) The amount of the guaranty obligation;

(ii) The terms of the bond to be guaranteed;

(iii) The number of new jobs that will be created by the contract to be bonded; and

(iv) Any other factor that the Authority considers relevant.

5-1037.

(a) To qualify for a surety bond or guaranty under the Program, a principal shall meet the requirements of this section.

(b) The principal shall satisfy the Authority that:

(1) (i) The principal is of good moral character; or

(ii) If the principal is not an individual, the principal is owned by individuals of good moral character;

(2) As determined from creditors, employers, and other individuals who have personal knowledge of the principal:

(i) The principal has a reputation for financial responsibility; or

(ii) If the principal is not an individual, a majority of the principal is owned by individuals with a reputation for financial responsibility;

(3) The principal is a resident of Maryland or has its principal place of business in Maryland; and

(4) The principal is unable to obtain adequate bonding on reasonable terms through normal channels.

(Over)

(c) The principal shall certify to the Authority and the Authority shall be satisfied that:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor;

(2) A bond is not obtainable on reasonable terms and conditions without assistance under the Maryland Small Business Surety Bond Program; and

(3) The principal will not subcontract more than 75 percent of the dollar value of the contract.”.

AMENDMENT NO. 3

On page 2, in line 30, strike “SUBSECTION (E) OF”.

On page 5, in line 23, strike “SUBSECTION (C) OF”.

AMENDMENT NO. 4

On page 2, in line 33, strike “allowed by regulation” and substitute “AUTHORIZED BY FEDERAL OR STATE REGULATION”.

On page 5, in line 26, strike “ALLOWED BY REGULATION” and substitute “AUTHORIZED BY FEDERAL OR STATE REGULATION”.

AMENDMENT NO. 5

On page 3, in line 1, strike “PUBLIC BODY” and substitute “UNIT”; strike in their entirety lines 5 through 7, inclusive, and substitute:

“(1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

(2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

(3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28, AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

(4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY INTEREST TO THE UNIT FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM (5)(I) THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS FURNISHED; AND”;

in line 8, strike “(2)” and substitute “(5)”; in lines 8 and 9, strike “OF THE FOLLOWING”; in line 10, after “SOLICITATION” insert “, INCLUDING”; strike beginning with “INCLUDING” in line 13 down through “TRUSTEE” in line 15 and substitute “OR ASSETS THAT ARE EVIDENCED BY A SECURITY INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE UNIT”; strike beginning with “THE” in line 16 down through “AND” in line 18 and substitute “§ 9-109 OF THE COMMERCIAL LAW ARTICLE;”; and in line 20, after “REMEDIED;” insert “AND”

3. IDENTIFY THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE SECURITY INTEREST IS PROVIDED;”.

AMENDMENT NO. 6

On page 3, in line 30, strike “THAT”; strike beginning with “IS” in line 31 down through “2.” in line 33 and substitute “THAT”; in line 33, after “THE” insert “CONTRACTOR OR”; and in line 34, strike “AND” and substitute:

“2. THAT MAY INCLUDE THE GRANTING OF A MORTGAGE OR DEED OF TRUST ON REAL PROPERTY LOCATED WITHIN THE STATE IF SATISFACTORY TO THE UNIT;”.

On page 4, strike in their entirety lines 1 through 6, inclusive, and substitute:

“3. FOR WHICH THE FACE AMOUNT OF THE MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY LOCATED WITHIN THE STATE DOES NOT EXCEED 75% OF THE CONTRACTOR’S OR INDIVIDUAL SURETY’S EQUITY INTEREST IN THE PROPERTY; AND

(Over)

4. FOR WHICH A MORTGAGE OR DEED OF TRUST ACCEPTED UNDER THIS SUBSECTION IS RECORDED BY AN OFFICIAL DESIGNATED BY THE UNIT WHERE THE REAL PROPERTY IS SITUATED IN ACCORDANCE WITH § 3-103 OF THE REAL PROPERTY ARTICLE; OR”;

in line 9, strike “AND”; and in line 12, after “PROVIDED” insert “; AND”

3. CONTAIN A PAYOUT CLAUSE IF THAT DEFAULT CANNOT BE REMEDIED.

(F) ANY ASSET LISTED UNDER SUBSECTION (E)(5) OF THIS SECTION SHALL BE PLEDGED ONLY FOR THE INTENDED SECURITY AND MAY NOT BE PLEDGED FOR ANY OTHER SECURITY OR CONTRACT IN OR OUTSIDE THE STATE UNTIL THE ASSET IS RELEASED BY THE UNIT”.

AMENDMENT NO. 7

On page 6, strike in their entirety lines 7 through 9, inclusive, and substitute:

“(1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

(2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

(3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28, AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

(4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY INTEREST TO THE PUBLIC BODY FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM (5)(I) THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS FURNISHED; AND”;

in line 10, strike “(2)” and substitute “(5)”; in lines 10 and 11, strike “OF THE FOLLOWING”; in

line 12, after “SOLICITATION” insert “, INCLUDING”; strike beginning with “INCLUDING” in line 15 down through “TRUSTEE” in line 17 and substitute “OR ASSETS THAT ARE EVIDENCED BY A SECURITY INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE PUBLIC BODY”; strike beginning with “THE” in line 18 down through “AND” in line 20 and substitute “§ 9-109 OF THE COMMERCIAL LAW ARTICLE;”; and in line 22, after “REMEDIED;” insert “AND”

3. IDENTIFY THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE SECURITY INTEREST IS PROVIDED;”.

AMENDMENT NO. 8

On page 6, in line 32, strike “THAT”; strike beginning with “IS” in line 33 down through “2.” in line 35 and substitute “THAT”; in line 35, after “THE” insert “CONTRACTOR OR”; and in line 36, strike “AND” and substitute:

“2. THAT MAY INCLUDE THE GRANTING OF A MORTGAGE OR DEED OF TRUST ON REAL PROPERTY LOCATED WITHIN THE STATE IF SATISFACTORY TO THE PUBLIC BODY;”.

AMENDMENT NO. 9

On page 7, strike in their entirety lines 1 through 6, inclusive, and substitute:

“3. FOR WHICH THE FACE AMOUNT OF THE MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY LOCATED WITHIN THE STATE DOES NOT EXCEED 75% OF THE CONTRACTOR’S OR INDIVIDUAL SURETY’S EQUITY INTEREST IN THE PROPERTY; AND

4. FOR WHICH A MORTGAGE OR DEED OF TRUST ACCEPTED UNDER THIS SUBSECTION IS RECORDED BY AN OFFICIAL DESIGNATED BY THE UNIT WHERE THE REAL PROPERTY IS SITUATED IN ACCORDANCE WITH § 3-103 OF THE REAL PROPERTY ARTICLE; OR”;

in line 9, strike “AND”; and in line 12, after “PROVIDED” insert “; AND”

3. CONTAIN A PAYOUT CLAUSE IF THAT DEFAULT CANNOT BE REMEDIED.

(D) ANY ASSET LISTED UNDER SUBSECTION (C)(5) OF THIS SECTION SHALL BE PLEDGED ONLY FOR THE INTENDED SECURITY AND MAY NOT BE PLEDGED FOR ANY OTHER SECURITY OR CONTRACT IN OR OUTSIDE THE STATE UNTIL THE ASSET IS RELEASED BY THE PUBLIC BODY”.

AMENDMENT NO. 10

On page 7, after line 12, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30, 2007, and annually thereafter through September 30, 2009, inclusive, the Procurement Advisor appointed by the Board of Public Works shall report to the Governor, and, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and House Health and Government Operations Committee, regarding the implementation of this Act during the immediately preceding fiscal year, including the impact of this Act on small business and minority business enterprises.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any requirement for bid security or for payment security or performance security due before the effective date of this Act.”;

in line 13, strike “2.” and substitute “4.”; and in line 14, after “2006.” insert “It shall remain effective for a period of 3 years and, at the end of September 30, 2009, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.”.